

MAKING SENSE OF MAFIA IN TURKEY: CONCEPTUAL FRAMEWORK AND  
A PRELIMINARY EVALUATION

by

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The aim of this dissertation is to make sense of mafia and make sense of mafia in Turkey. The discussions are limited to racketeering. That is, smuggling is not included. The arguments are developed on a conceptual level and reflected to Turkey.

As a specific concept in criminology, mafia or organized crime points at an organization accruing illegal gains through a multiplicity of crimes, using threat or violence. Departing from the criticisms of this conceptualization, in this dissertation, it is argued that white-collar or corporate crime should not be taken as distinct, and the slim line of intersection between political economy and criminology should not be disregarded. That is, committing a profit-oriented crime, mafia is not independent of the 'place of economy in society' and the state-business relations shaped therein. This is especially important in the context of neoliberal economic transformation, within which mafia, as a metaphor of reciprocity relations aiming at illicit gain on the borders of the legal economy, stigmatized by the economic transformation process itself, unless the rise of the market economy is restrained with a redistributive state and rule of law.

With respect to Turkey, first, the rare lines of knowledge on mafia are discussed. By and large, the works of legal scholars and criminologists are in line with the orthodox definition, and share the same shortcomings. The mafia metaphor is introduced with outlining the neoliberal economic transformation in the post-1980 period, and exemplified with the transformation of the "kabadayı", so-called 'Civangate' and Turkbank privatization.

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Başlık: Türkiye'nin Mafyasını Anlamlandırmak: Kavramsal Çerçeve ve Öndeğerlendirme

Bu tezin amacı, mafyayı ve Türkiye'nin mafyasını anlamlandırmaktır. Tartışma haraççılık ile sınırlandırılmış, yani kaçakçılık faaliyetleri konunun dışında tutulmuştur. Tartışmalar kavramsal bir düzeyde yapılmış ve Türkiye örneğine taşınmıştır. Özel bir kriminolojik kavram olarak mafya ya da örgütlü suç, tehdit ve şiddete başvuruyla çok sayıda suç işleyen ve bu yolla yasadışı kazanç elde eden bir örgüte işaret eder. Bu kavramsallaştırmanın eleştirilerinden hareketle, bu tezde, beyaz-yakalı ya da şirket suçlarının tamamen kapsam dışında tutulmaması ve kriminoloji ile siyasal iktisat arasındaki ince kesişim hattının gözardı edilmemesi gerektiği öne sürülmüştür. Bu minvalde, kar amaçlı bir suç işleyen mafya, 'ekonominin toplum içindeki yeri' ve bu yer içinde şekillenen devlet-iş dünyası ilişkilerinden bağımsız değildir. Bu bakma biçimi, neoliberal ekonomik dönüşüm süreci düşünüldüğünde daha da önem kazanır. Yasal piyasanın sınırlarında yasadışı kar elde etmeye yönelik karşılıklı ilişkilerine dair bir metafor olarak görülebilecek olan mafya, piyasa ekonomisinin yükselişi, sosyal devlet ve hukuk devleti tarafından sınırlanmadıkça, ekonomik dönüşüm süreci tarafından tetiklenecektir. Türkiye ile ilişkili olarak, öncelikle mafyaya ilişkin nadir rastlanan akademik çalışmalar üzerinde durulmuştur. Hukukçu ve kriminologların konuyu ele alma biçimleri, yukarıda verilen ortodoks tanım üzerinden ilerler ve yine yukarıda işaret edilen noktalardan eleştirilebilir. Mafya metaforu ile ilgili tartışmaya, 1980 sonrası neoliberal ekonomik dönüşümün ana hatları çizilerek başlanmış ve mafya metaforu, "kabadayı" figürünün dönüşümü, 'Civangate' olayı ve Türkbank özelleştirmesi ile örneklenmiştir.

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## CHAPTER I

### INTRODUCTION, OR "MAFIA AS A METAPHOR"

The aim<sup>1</sup> of the dissertation is: i) make sense of mafia<sup>2</sup> conceptually, and ii) provide at least a preliminary reading of the phenomenon for Turkey, in terms of economic transformation. The first aim is a *sine qua non* of the second, because without setting what is understood by 'mafia', it is not possible to identify the processes and examples in Turkey.

The subject is undoubtedly catchy, and almost everyone has a word to say about the mafia, yet it is often forgotten that mafia or organized criminality has a specific definition in the criminological literature. Its

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<sup>1</sup> The whole idea of this dissertation owes its existence to Ayşe Buğra's analyses of 'place of the economy in society' and especially in Turkish society, whether cited or not. I tried to relate this to the criminological literature on organized criminality, hoping not to have misunderstood her writing.

<sup>2</sup> The term mafia is preferred to organized crime -although especially in the first chapter, mafia, mafia-type activity and organized crime is interchangeably used- both in negation of 'organizational' obsession, and as a attribute to the original Western Sicilian example.

definition is not entirely agreed upon and free from criticisms. Furthermore, talking about the mafia or organized crime is talking about profit-oriented crime, yet criminological discussions on the subject, analyze the phenomenon in a given market economy, rarely addressing the political economic whole within which organized crime occur. This rarely addressed relation between the market economy and organized criminality is especially relevant to Turkey.

In this dissertation, mafia stands for activities (not necessarily 'organizations' using 'violence') based on reciprocity relations, aiming at illicit gain on the borders of the legal economy. A part of these activities are those addressed to under the rubric of racketeering (including protection, contract enforcement, dispute settlement, influence on and control of public concessions, permissions and conferment and awarding of contracts), the other part is so-called white-collar crime. Usually, they are related to corruption, but corruption is secondary to white-collar crime and racketeering.

The argument in this dissertation is that, regarding the periods of economic transformation, there is another aspect to the mafia: economic transformation stigmatizes illicit gain oriented activities. The trigger is on the

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part of the state. Corruption is not secondary to white-collar crime, and racketeering. Addressing the mafia problem, this metaphorical part, and hence the logic of transformation should not be ignored, or seen as 'something external'. In terms of economic transformation, the problem with the mafia is not 'infiltration' into the political and legal economic spheres, but as a metaphor<sup>3</sup>, it stands for 'the criminalization of the place of economy in society'. In other words, with respect to Turkey, organized crime and/or mafia-type activity has two meanings, or dimensions, triggered by transformation:

- i) the changing domain of racketeering,
- ii) racketeering, metaphorically covering corruption and white-collar crime -or, mafia becoming a metaphor of reciprocity relations involved in an illicit mode of doing business at the legal borders of the market economy.

To introduce what is meant a little further, two paths are possible in relating the two aims of this

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<sup>3</sup> Metaphor, as an extension, means creating an equivalence between different elements of experience and create meaning, enabling to understand one phenomenon through another, also what is common in both (Dragan Milovanovic, 'Law, Ideology and Subjectivity: A Semiotic Perspective on Crime and Justice', in: Gregg Barak (ed.), *Varieties of Criminology: Readings from a Dynamic Discipline* (Westport, Conn. and London: Praeger, 1993), pp.237).



dissertation. The first is to depart from the orthodox definition of the mafia/organized criminality (which emphasizes 'organization' and violence), as is reflected to the legal framework, and evaluate the possible examples there from. This basically means disregarding the criticisms surrounding the subject. These criticisms are especially important points of departure in terms of economic transformation, as they highlight how organized crime or the mafia relates to the market economy.

The second path departs from the criticisms outlined below, a broader definition, and a re-reading the common sense understanding of mafia in Turkey. This is what is meant by making sense of mafia conceptually. In this dissertation, the discussions are run basically on a conceptual level, and reflected to Turkey. This attempt is one of the contributions of this dissertation.

As for providing at least a preliminary reading of Turkey, it should be noted that, as the data for mafia in Turkey in this dissertation is based on the existing published materials, its scope is limited to the information generated within different lines of knowledge. Hence, at the face of the definition(s) of mafia, and the broader context of analysis developed in this dissertation, the main lines of discussion, or 'who is speaking about the mafia and with which definition' in

Turkey are inescapably both a limitation upon, and a part of making sense of mafia in Turkey.

As for the orthodox understanding, in Turkey as well, the orthodox understanding of who or what the mafia is, and its law enforcement formulation departs basically from the American conceptualization<sup>4</sup> which exhibits an obsession with the 'organizational' aspect, rather than the criminal actions<sup>5</sup>. This includes the Southern Italian phenomena. The common sense understanding, reinforced with the inflammatory news in the media<sup>6</sup> mixing up with

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<sup>4</sup> In an integrative effort, Maltz underlines the following characteristics as common to the American definitions of organized crime: "violence, sophistication, continuity, structure, discipline, multiple enterprises, and involvement in legitimate enterprises. Another element considered is the bonding ritual, such as those reported to have been used in making members of the *Mafia*" (Michael D. Maltz, 'Toward Defining Organized Crime', in: Herbert E. Alexander and Gerald E. Caiden (ed.s), *The Politics and Economics of Organized Crime* (Lexington, Mass. and Toronto: Lexington Books, 1985), p.24).

<sup>5</sup> In this sense, with this definition, the data upon which the research would be based is problematic: it is almost a cliché to state that crime data only those identified by law enforcement -the dark number problem. Furthermore, based on the existing data, the likelihood of reproduction of the very specific way within which the concept is legally defined, with all its biases, is high. Again, referring, for example, to the ethnic obsession inherent to the American conceptualization, it is likely that more Italians -or African-Americans, or Hispanics, or whoever the 'other' is- will be caught and criminological research would be more inclined towards asserting that mafia is an Italian phenomenon -or, 'Black Mafia' is a threat.

<sup>6</sup> Naylor underlines that the media aims at serving a public looking for thrills, and "a coldly calculating cartel uniting stone killers and Harvard MBAs is excellent for selling a copy; a jumble of crude, uncoordinated, and trigger-happy wheeler-dealers, some of whom are wired up on their own product, is much less so." Also, mass media's position is in symbiosis with the police which intends to "hype" the target to "enhance self-esteem and to coax more power and money from governments." R.T. Naylor, 'Mafias, Myths, and Markets',

gangster<sup>7</sup> of the movies, the typical example being the Godfather series<sup>8</sup>, further blurs the picture. Indeed, in a true social definition, organized criminals is "a set of people whom the police and other agencies of the State, regard or wish us to regard as 'really dangerous' to its essential integrity."<sup>9</sup>

More neutrally, organized criminal/mafia-type activity<sup>10</sup> can be seen as the realization of illicit gains<sup>11</sup> and can be decomposed into:

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in: R.T. Naylor, *Wages of Crime: Black Markets, Illegal Finance, and the Underworld Economy* (Ithaca and London: Cornell University Press, 2002), p. 30.

<sup>7</sup> For the creation of the gangster cult, see: David E. Ruth, *Inventing the Public Enemy: The Gangster in American Culture, 1918-1934* (Chicago and London: The University of Chicago Press, 1996).

<sup>8</sup> Especially regarding Mario Puzo's novel, see: Chris Messenger, *The Godfather and American Culture: How the Corleones Became "Our Gang"* (Albany: State University of New York Press, 2002).

<sup>9</sup> Michael Levi, "Perspectives on 'Organised Crime': An Overview", *The Howard Journal*, Vol. 37, No. 4 (1998), p. 335.

<sup>10</sup> The perspective here rests on Beare and Naylor's argument that for criminology and law enforcement, focusing on offenders, and taking crimes that were clearly larger to be imputed to individual malefactor as the work of an "organized crime" group seen as a self-aware collectivity is problematic, for it leads to "a semantic swamp in the form of a search of a definition of "organized crime" that relies on the characteristics of the organization more than the economic consequences of the organization's presumed actions." Whereas, "not only that the whole is qualitatively distinct from the sum of the parts (as does the concept of "organized crime") but also that the whole exists without the need for any conscious conspiracy by the parts. In effect organization (or disorganization) is merely and incidental factor that explains the particular structure through which an action takes place without necessarily affecting in any discernible way the fundamental nature of the action." (Margaret E. Beare and R. T. Naylor, *Major Issues Relating to Organized Crime: within the Context of Economic Relationships*, Law Commission of Canada, 1999. At: <http://www.lcc.gc.ca/en/themes/er/oc/nathan/>)

- i) in the illegal markets -like, smuggling,
- ii) in the legal markets -racketeering (including protection, contract enforcement, dispute settlement, influence on and control of public concessions, permissions and conferment and awarding of contracts).

The first part is excluded from the analysis -both for the sake of restricting the subject matter, and relying on the idea that illegal markets are endemic to all times and places. Discussing how it relates to the formal economy and how it changes with transformation might be an interesting subject, but it is likely to require a different conceptual framework. Also, the illegality of the market can trigger some sort of enforcement and provision mechanism, although "organization" is not a necessity.

Regarding the second part, alternative ways of "understanding" organized crime or mafia are hardly reflected to the official understandings.<sup>12</sup> A part of the

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<sup>11</sup> In a 'market economy', profit-driven crimes are either predatory, or market-based, or commercial. Money-laundering, violence and corruption are secondary to these crimes. For a typology of profit-driven crimes under an established 'market economy', see: R.T. Naylor, "Towards a General Theory of Profit-Driven Crimes", *British Journal of Criminology*, Vol. 43 (2003), pp. 81-101.

<sup>12</sup> William R. Geary, "The Creation of RICO: Law as a Knowledge Diffusion Process", *Crime, Law and Social Change*, Vol. 33 (2000), pp. 329-367.

alternative conceptualizations depart from two criticisms of "organized" crime:

- i) the mainstream/official definitions generate a fictitious threat paving the way for arbitrary intervention,
- ii) it renders corporate crime and/or white-collar crime invisible, where, in essence, organized crime is aimed at illicit gain.

White-collar crime is conceptualized with criminologist Edwin Sutherland's contention that crimes are not only committed by the poor and the powerless<sup>13</sup>, but as he concludes his classical study of 70 large corporations in the 1930s America, "the violations of law by corporations never violate the law inadvertently and in an unorganized manner. It does mean that a substantial portion of their violations are deliberate and organized."<sup>14</sup>

Sutherland's point, although path-breaking on its own, is not immune from ambiguities. In terms of defining

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<sup>13</sup> Edwin H. Sutherland, "White-Collar Criminality", *American Sociological Review*, Vol. 5 (1940), pp. 1-12, reprinted in: Gilbert Geis, Robert F. Meier, and Lawrence M. Salinger (ed.s), *White-Collar Crime: Classic and Contemporary Views* (New York and London: The Free Press, 3<sup>rd</sup> ed., 1995), pp. 29-38; Edwin H. Sutherland, "Is "White-Collar Crime" Crime?", *American Sociological Review*, vol. 10 (1945), pp. 132-139, reprinted in: Geis et al., pp. 39-49.

<sup>14</sup> E. Sutherland, *White-Collar Crime: The Uncut Version* (New Haven and London: Yale University Press, 1983), p. 193, cited in: Paddy Rawlinson, "Capitalistic Criminals and Oligarchs -Sutherland and the New "Robber Barons"", *Crime, Law and Social Change*, vol. 37 (2002), p.294.

white-collar crime, the color of the collar and "organization" there from implies too wide a range of activities, from embezzlement and fraud to corporate manslaughter.<sup>15</sup> That is, whether it is corporate or occupational crime. The former is discussed in terms of corporate *mens rea* -that, whether members of the business community commit crimes and corporations are crime free, or not.<sup>16</sup> That is one point is critical: it pushes the focus away from "big business" to middle-classization of white-collar crime.<sup>17</sup>

The causes of white-collar crime are seen in terms of the "criminogenesis of capitalism". In other words, it is argued that the pressures for profit in the market economy swings the company to illegal grounds, and the inner working of the firm legitimizes deviance, unless it is countered by effective government regulation<sup>18</sup> and its strict enforcement.<sup>19</sup>

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<sup>15</sup> Davin Nelken, 'White-Collar Crime', in: Mike Maguire, Rod Morgan, Robert Reiner (ed.s), *Oxford Handbook of Criminology* (Oxford, UK: Oxford University Press, 3<sup>rd</sup> ed., 2000), pp.848-853.

<sup>16</sup> Paul Ponsaers, "What is So Organised about Financial-Economic Crime? The Belgian Case", *Crime, Law and Social Change*, Vol. 37 (2002), pp. 191-201.

<sup>17</sup> Nelken, 'White Collar Crime', p.849; Laureen Snider, "The Sociology of Corporate Crime: An Obituary (or: Whics Knowledge Claims have Legs?), *Theoretical Criminology*, Vol. 4, No. 2 (2000), pp. 169-206.

<sup>18</sup> For the examples of the criminogenesis of deregulation, see: Paul Barnesi and Martin Ward, "The Consequences of Deregulation: A

Government regulation and its enforcement also bring forth discussions concerning corruption. A literature review of corruption discussions can be followed in Appendix A.

The recent conceptualization of corruption, point to a re-evaluation, in line with neoliberal thinking -it parallels the deregulation-self-regulation discussions in terms of white-collar criminality. Organized crime<sup>20</sup>, too, can be seen from the same logic: with respect to transformation, Gambetta's point on Sicily is that, under the state's insufficiency in providing a territorial monopoly of violence and sustain law and order, regarding

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Comparison of the Experiences of UK Building Societies with Those of US Savings and Loan Associations", *Crime, Law and Social Change*, Vol. 31 (1999), pp. 209-244; David Denham, "Marketization as a Context for Crime: The Scandals in Further Education Colleges in England and Wales", *Crime, Law & Social Change*, Vol. 38 (2000), pp. 373-388. For discussions of self-regulation, see: Denis Smith, "Beyond Self-Regulation: Towards a Critique of Self-Regulation as a Control Strategy for Hazardous Activities", *Journal of Management Studies*, Vol. 32, No. 5 (1995), pp. 619-424; Frank Pearce and Steve Tombs, "Ideology, Hegemony, and Empiricism: Compliance Theories of Regulation", *British Journal of Criminology*, Vol. 30, No. 4 (1990), pp. 423-443.

<sup>19</sup> Maurice Punch, "Suite Violence: Why Managers Murder and Corporations Kill", *Crime, Law and Social Change*, Vol. 33 (2000), pp. 243-280; Nelken, 'White-Collar Crime', pp.865-869.

<sup>20</sup> Economistic understandings of organized crime depart from Becker's analysis that crime is subject to economic analysis: the decision to commit a crime as a choice between costs and benefits associated to crime and asks how much punishment should be used to enforce legislations and how much crime should be allowed -given that enforcement would reflect a balance between costs of enforcement and the amount of social losses suffered when crimes go unpunished (Gary Becker, "Crime and Punishment: An Economic Approach", *Journal of Political Economy*, vol. 75 (1965), pp. 169-217). Then, the discussions proceed with respect to:

contract law and property law, mafia establishes itself as an institution that sells private protection.<sup>21</sup>

Yet, above, it is pointed out that mafia refers to a specific construct within criminology, the orthodox definition of which is based on 'organization', and regarding one basic criticism, with respect to the aim of the activities, it is not different from white-collar criminality, pointing at the 'criminogenesis of capitalism'. With respect to the state, deviations from the norms guiding public office, in terms of patronage,

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1. the firm-like and governmental qualities of organized crime: how it tends to be organized to enforce its own laws in illegal trade, to gain efficient protection, to centralize corruption and sustain intra-group order (See: Thomas C. Shelling, "Economics and Criminal Enterprise", *The Public Interest*, Vol. 7 (1967), pp. 61-78; Paul H. Rubin, 'The Economic Theory of the Criminal Firm', in: *The Economics of Crime and Punishment: A Conference Sponsored by American Enterprise Institute for Public Policy Research* (Washington, DC: American Enterprise Institute for Public Policy Research, 1973), pp. 155-166; Gianluca Fiorentini and Sam Peltzman, 'Introduction', in: Gianluca Fiorentini and Sam Peltzman (ed.s), *The Economics of Organized Crime* (Cambridge and New York: Cambridge University Press, 1995), pp. 1-30);
  2. whether organized criminal firm is 'organized' or not (see: Peter Reuter, *Disorganized Crime: The Economics of Visible Hand* (Cambridge, MA: MIT Press, 1983); Diego Gambetta and Peter Reuter, 'Conspiracy among the Many: the Mafia in Legitimate Industries', in: Fiorentini and Peltzman, pp. 116-136); and if it is a monopoly, whether it is desirable to have one (James M. Buchanan, 'A Defense of Organized Crime?', in: *The Economics of Crime and Punishment*, pp. 119-132).

<sup>21</sup> Diego Gambetta, *The Sicilian Mafia: The Business of Private Protection* (Cambridge, Mass.: Harvard University Press, 1993); Diego Gambetta, "Fragments of an Economic Theory of the Mafia", *Archives Européennes de Sociologie*, 29 (1988), pp.127-145; Diego Gambetta, 'Mafia: The Price of Distrust', in: Diego Gambetta (ed.), *Trust: Making and Breaking Cooperative Relations* (New York and Oxford: Basil Blackwell, 1988), pp.158-175. For Russia in terms of commercial dispute settlement, see: Federico Varese, *Russian Mafia: Private Protection in a New Market Economy* (Oxford and New York: Oxford University Press, 2001).



point at particularistic intervention into the economy, in developing countries was not ended with “minimizing” the state. Both the conceptualizations of neoliberal economic transformation and corruption is from a very specific methodological preference -methodological individualism and utilitarianism.

The analysis here is based on a methodological preference towards holism<sup>22</sup> -not in terms of the denial of human agency, but in terms of underlining that human agency is not an abstract category; it is shaped by the social constructions and norms. Institutions and history matter, and institutions may also be defined as “humanly devised constraints that shape human action.”<sup>23</sup> But, seeing economic action limited to an omnipresent market exchange, and the rest of the institutions as constraints or obstacles towards the unfolding of the market society<sup>24</sup>, is less promising an analytical tool in terms of understanding economic action, and criminal economic action in the market economy, than taking markets

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<sup>22</sup> For a discussion of methodological holism and individualism in the history of economic thought, see: Ayşe Buğra, *İktisatçılar ve İnsanlar: Bir Yöntem Çalışması* (Istanbul: İletişim, 1995).

<sup>23</sup> Douglass C. North, *Institutions, Institutional Change and Economic Performance* (Cambridge: Cambridge University Press, 1990), p.3.

<sup>24</sup> Daniel Ankarloo, “New Institutional Economics and Economic History”, *Capital and Class*, No.78 (Autumn 2002), pp.9–36.

themselves as institutions coexisting with non-economic forms in the economy with relative weights.

Indeed, creating market economies out of societies within which economic action is shaped by non-economic considerations or governed by states not similar to the liberal democratic example, especially the role of the state needs to be rethought.

In other words, "economy" may occupy different places in different societies; hence, transformation requires different measures to offset the criminal swings. The paradox is that, both emergent crime issues<sup>25</sup> and transformation are formulated within the same economistic logic which gained currency in the 1990s in its new-institutionalist version.

In trying to make sense of mafia, the point of departure in this dissertation is Polanyi's substantivist definition of economic and the conditions that enabled the endurance of the market economy as a special construct<sup>26</sup>: the liberal democratic state that has

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<sup>25</sup> Also, crime control and law enforcement too are formulated from the same perspective. For an evaluation and criticism, see: Ian Loader and Richard Sparks, 'Contemporary Landscapes of Crime, Order, and Control: Governance, Risk, and Globalization, in: Maguire et al., pp. 83-111.

<sup>26</sup> With the special construct I mean the Western European model, based on "universal rights of equal citizens in a "bargained economy"" rather than "the universal rights of property and contract of *formally* equal market participants" (Ayşe Buğra, "Class, Culture and the State: An Analysis of Interest Representation by Two Turkish Business Associations", *International Journal of Middle Eastern Studies*, Vol. 30 (1998), p.522). The "criminogenesis of capitalism" arguments are raised with reference to the second (American) model.

secured an infrastructural power, the rule of law and the welfare state. Even there, the existence of non-economic parts is underlined, especially with respect to flexible production. But, in essence, as Thompson's discussion of "moral economy" indicate, and regarding that reciprocity may take a negative form (giving without taking), the main emphasis is constraining the motive of gain by the formal regulatory frameworks of the state, and protecting livelihood of man by a formal redistributive scheme.

Or else, as it is discussed with the concept of 'informal economy', although non-economic components have a logic different from the formal ideology of the state and market rationality, both its place in the economic whole, and its form is shaped by the state (both by labeling, by tolerance or cooptation and through mimicking existing structures). The place it would occupy and shape it would take within the market economy and in the economies in transformation would not be the same. And, modes of doing business would be shaped accordingly.

The crux of the matter is, in late industrializing countries, the economy occupies a different place in the society: the state has a more uttered presence in the economy, but has a limited infrastructural power; its relations with society and economy are characterized with patronage and populism (and also a sustained use of

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despotic power). The livelihood of the individual relies on the endurance of traditional institutions -like family, kinship, being from the same city or district. In other words, reciprocity has a more uttered presence, and redistribution and regulation is not formal and general. State-business relations also reflect this particularism.

To this state-society-economy relation is introduced neoliberal transformation -ending up in crises and corruption. Implicitly, with transformation is legitimized the dominance of the motive of gain -which has to be regulated. At this point, the 'criminogenesis of capitalism' and the dynamics of informalism should be remembered: in a 'double movement', the business activity should be regulated and the livelihood of the individual be protected, so that the informal activity aimed at sustaining livelihood does not turn into outright criminality.

It was not the case with the post-1980 neoliberal transformation in the case of Turkey, and for this reason it constitutes a turning point. Neither the 'minimizing' state had an eye for formal and generalized regulation, nor did it provide the population with a formal redistributive scheme. Widening place of informal economy, in this regard is towards the negative extreme. The populist state and its clientelistic relations did

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not wither away, but persisted in more personalized forms.

To state once again where the discussions of organized crime/mafia, along with corruption and white-collar crime stand in this course of transformation in Turkey, the line of argument reflected to Turkey is quite simple. Capitalism is criminogenic unless regulated; or, economies may have different places in societies, yet, market economy is one specific construct created with regulation and securing the livelihood of the society against the motive of gain. The implementation neoliberal package (so-called Washington Consensus) in Turkey point to another way, through which the livelihood of the society is destructed and the meaning of the rule of law and formality is deprived. The place of informal is widened and turned from tones of gray to black, owing its existence to the changing role of the state. With reference to the logic of 'double movement', at a time it is expected to move towards strengthening infrastructural power, the rule of law and providing a formal and impartial regulatory and redistributive scheme, it reproduces the clientelistic structure, in a more particularist fashion, disregarding the law. In this sense, the logic of illicit gain attributed to organized

crime and white-collar crime is reinforced by the role of the state in the economy as well.

As to what this signifies, or why trying to 'make sense' of the mafia in Turkey, with special reference to the metaphorical level in economic transformation, the point of departure is one simple idea: to fight against a problem, it has to be defined first. Mafia metaphor constitutes a problem and a subject of study beyond curiosity, based on the outcomes of transformation, manifesting itself on a number of issues. The first is the public debts. After twenty-four years, Turkish economy is characterized as a crisis-prone economy, the recovery of which depends on short-term capital inflows. The public debts amount to 70 percent of the economy, which is tried to be compensated with a budget surplus, meaning a further reduction of government expenditures in human capital and infrastructure.<sup>27</sup> In this sense, although the exact cumulative figure is unknown, the contribution of public losses that has arisen as a result of corruption especially in the banking sector and are spoken of, is significant: for example, the amounts<sup>28</sup> spelled out on the 2000-2001 corruption operations, equal

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<sup>27</sup> Erinç Yeldan and Mark Weisbrot, "Is Turkey the Next Argentina?", *International Herald Tribune*, 4 December, 2004.

<sup>28</sup> The amounts cited in Şener add to 6,669 trillion liras (Nedim Şener, *Tepeden Tırnağa Yolsuzluk* (Istanbul: Metis, 2001), pp. 7-12).

to the 4 percent of GNP in 2001. The amount of the funds transferred by the Treasury for the 'syphoned' banks taken into the Savings Deposits Security Fund equal to the 12 percent of GNP in 2002.<sup>29</sup> Losses of the 20 banks transferred to the Savings Deposits Security Fund between 1997 and 2001 amount to 17.273 billion dollars<sup>30</sup> (about 9 percent of the GNP in 2001; the total amounts of credit used by the owners of the banks is about 9.114 billion<sup>31</sup>, representing a 5 percent of the GNP in 2001); the loss from the infamous Imarbank alone, transferred into the Fund in 2003 amount to 6,5 billion dollars<sup>32</sup> (amounting to the 2.7 percent of the GNP in 2003).

With the belief that the administration of economic transformation and the role of the state in the economy being marked with particularism, and corruption, the other manifestation is the lack of public trust<sup>33</sup> -lack

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<sup>29</sup> T. C. Sayıştay Başkanlığı, *Tasarruf Mevduatı Sigorta Fonuna Yapılan İkrarlar İzleme Raporu* (Ankara: T. C. Sayıştay Başkanlığı, 2004), p.8.

<sup>30</sup> Nedim Şener, *Uzanlar: Bir Korku İmparatorluğunun Çöküşü* (İstanbul: Güncel, 2004), p.185.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid., p.184.

<sup>33</sup> Adaman, Çarkoğlu and Şenatlar's survey show that the National Assembly, political parties, the central administration, and municipalities are not trusted as institutions. The police and the legal system's trust ranking is only medium (Fikret Adaman, Ali Çarkoğlu, Burhan Şenatlar, *Hanehalkı Gözünden Türkiye'de*

of belief that the governments will rule according to the public good and enforce justice without leaving room for uncertainty. In return, private trust is not subordinated to public trust -there is not any motivation that a person behaves towards the members of the society at large, in the same way that he or she behaves the members of his own group, or he should not privilege his or her own group<sup>34</sup>. In this sense, particularism, in relation to the state is reproduced and accruing illicit gains based on reciprocity relations, is legitimized.

Mafia-involvement *per se*, is minor to this frame. Throughout the 1980s and 1990s, at two instances, the roads of white-collar criminals and politicians/bureaucrats openly intersected with the mafiosi ('the prominent figures of the underworld') in Turkey: in the shooting of former General Director of Emlakbank, Engin Civan (1994), and in the Turkbank privatization (1998). And, since 1995, the National Assembly is after passing a new law, addressing 'criminal organizations acting for gain', which finally materialized in 1999. Whether this new law (Act No. 4422)

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*Yolsuzluğun Nedenleri ve Önlenmesine İlişkin Öneriler* (Istanbul: TESEV, 2001), p.41).

<sup>34</sup> Anthony Pagden, 'The Destruction of Trust and Its Consequences in the Case of Eighteenth-Century Naples', in: Gambetta, pp. 127-141.



touches the core of the problem of illicit gain is open to discussion.

Except from the policeman-criminologists and legal scholars, social scientific studies<sup>35</sup> of mafia or organized crime problem is unfortunately almost non-existent. The policemen-criminologists' and legal scholars' view reflect more or less the orthodox American understanding, which does not touch upon the process of transformation and mafia metaphor generated therein. To address this shortcoming, I tried to develop a macro framework to understand the mafia per se and the mafia metaphor in terms of changing place of the economy in society, triggered by the state in terms of transformation, through informal economy, and outline the basic processes in Turkey. This points out to the dynamics and measures to be designed in terms of addressing the issue. As discussed in the conceptual framework, the most important measure is restructuring the state towards a rule of law and a welfare state. The welfare state, or the formalized and generalized regulatory and redistributive schemes is especially important to drive informalism which manifested itself as legitimacy of illicit gain out of our lives. With this I

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<sup>35</sup> This lack is not due to academic laziness. But, that the mafia and corruption issues became 'visible' enough to be written on, only in the 1990s.

surely do not advocate authoritarianism, but I try to underline that the positive connotations of reciprocity relation and channeling demands generated there from, owe their existence to a formal and impartial regulatory and redistributive role of the democratic state in relation to the economy.<sup>36</sup> The contribution of this dissertation then would be reflecting criminological discussions about the mafia/organized criminality to a political economic framework to underline the criminogenesis of transformation, and provide a brief sketch of Turkey in the post-1980 neoliberal economic transformation. A part of this sketch is inescapably an evaluation of the existing material, the legal discussions being at the core.

The emphasis on economic transformation does not mean to say that pre-1980 period is white-collar crime-free or corruption-free. Just that, emphasis on gain and uttered tolerance for illicit gains on the part of the state and relations arising there from is different from the meaning and incidence of corruption or white-collar criminality one expects to see in the particularistic state-society, state-business relations, especially in

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<sup>36</sup> Ayşe Buğra, 'Ulus-devlet Topluluk Aidiyeti ve Bireyin Özerkliği', *Birikim*, No. 125-126 (1999), pp. 184-189.

the 1960s and 1970s. In the second case it is tones of gray, in the first case it is outright black.

To repeat once again, the conceptual framework elaborated to 'make sense of the mafia (in Turkey) rests on criminology and political economy (and also, in addressing reciprocity, economic anthropology). In terms of the three political economies, following Esping-Andersen<sup>37</sup>, in this dissertation, with political economy, not applying a rational choice or a public choice logic to the political realm, and not a short-hand for the study of relations between the economic and political realms, but "a particular theoretical framework as an alternative to mainstream economics"<sup>38</sup> is understood. The framework here is Polanyi-inspired and uses the discussions of market economy, embeddedness, reciprocity relations and informal economy to make sense of the mafia.

Borrowing concepts from economic anthropology in terms of understanding a market economic phenomenon as mafia may seem contradictory. But, analyzing mafia within the gray areas of interaction between economic and non-

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<sup>37</sup> Gosta Esping-Andersen, *Social Foundations of Post-Industrial Economics* (Oxford and New York: Oxford University Press, 1999), pp. 10-11.

<sup>38</sup> Ibid., p.11.

economic parts of the social whole, with respect to understand non-economic behaviors in the economy and how they interact with the economistic behavior, concepts from anthropology appear to be a more realistic analytical tool than extending the economistic logic to the non-economic<sup>39</sup>.

In this dissertation, the range of mafia-type activities constitutes a crime with respect to law. Also, six basic definitions defining crime can be thought of<sup>40</sup>: The first is the *legal* definition, where crime refers to acts prohibited, prosecuted and punished by criminal law. That is, the governments selectively ban or punish some acts and express this concern through legal sanctions of law violators.<sup>41</sup> Also, legal definitions of crime can be seen with respect to a universal sense of morality, a *moral consensus*, where the criminal is defined with respect to the moral outrage it creates. Read from a different angle, certain acts may be seen as serious whether or not

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<sup>39</sup> Pierre Bourdieu, 'The Economy of Symbolic Goods' (translated by Randall Johnson), in: Pierre Bourdieu, *Practical Reason: On the Theory of Action* (Stanford, Ca.: Stanford University Press, 1998), pp.92-123.

<sup>40</sup> Stuart Henry and Mark M. Lanier, "The Prism of Crime: Arguments for an Integrated Definition of Crime", *Justice Quarterly*, Vol.15, No.4 (December 1998), p.611.

<sup>41</sup> Ibid.

they have a place in the criminal law. What is seen as criminal can also be relative historically, temporarily and culturally relative (*rule-relativism*).<sup>42</sup> In terms of *power* and *political conflict*, the definition of crime depends on the power to define and resist definitions. The group and class interests are particularly important here.<sup>43</sup> *Social harm* or *analogous social injury* can also be central to the definition of crime. This approach “exposes the ways in which law conceals serious harmful behavior, either constructing less serious “administrative” categories ... , or by excluding some of the harms from the criminal realm, such as imperialism, racism, sexism, poverty, and other dimensions of human right.”<sup>44</sup>

As an integrative definition, the one brought forth by “constitutive criminology”<sup>45</sup> deserves attention.

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<sup>42</sup> Ibid., p.612.

<sup>43</sup> Ibid.

<sup>44</sup> Ibid.

<sup>45</sup> Constitutive criminology, as is put forth by Stuart Henry and Dragan Milovanovic, is a paradigmatic umbrella of critical criminology, or a holistic integrated criminological theory that rests on the wider range of critical social theories, with a special emphasis on the affirmative postmodern approaches. (Stuart Henry and Dragan Milovanovic, “Constitutive Criminology: The Maturation of Critical Theory”, *Criminology*, Vol.29, No.2 (1991), pp. 293–315, edited, abridged and reprinted in: Stuart Henry and Werner Einstadter (ed.s), *The Criminology Theory Reader*, New York and London: New York University Press, 1998 ; Stuart Henry and Dragan Milovanovic, ‘Introduction: Postmodernism and Constitutive Theory’, in: Stuart Henry and Dragan Milovanovic (ed.s), *Constitutive*

Acknowledging that humans have the rights to nutrition, nurturance, health, and the life, as well as the right "to develop free potentialities and to be protected from the predators who use power to undermine such development"<sup>46</sup>, they define crime as the ability to make a difference to others, where, "crimes are nothing less than moments in the expression of power such that those who are subjected to these expressions are denied their own contribution to the encounter and often to future encounters. Crime then is the power to deny others ... in which those subject to the power of another, suffer the pain of being denied their own humanity, the power to make a difference."<sup>47</sup> In this sense, the very existence of an informal economy is a crime of omission committed

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*Criminology at Work: Applications to Crime and Social Justice*, Albany, NY: State University of New York Press, 1999, pp. 3-16; Stuart Henry and Dragan Milovanovic, "Constitutive Criminology: Origins, Core Concepts, and Evaluation", *Social Justice*, Vol.27, No.2 (2000), pp. 268-290; Gregg Barak, Stuart Henry, Dragan Milovanovic, 'Constitutive Criminology: An Overview of an Emerging Postmodernist School', in: Brian D. MacLean and Dragan Milovanovic (ed.s), *Thinking Critically about Crime* (Vancouver: Collective Press, 1997), pp.93-99, reprinted at: <http://www.rf-institute.com/journal-pomocrim/vol-1-intro/00loverview.html>

<sup>46</sup> Henry and Lanier, "The Prism of Crime: Arguments for an Integrated Definition of Crime", p.614.

<sup>47</sup> Stuart Henry and Dragan Milovanovic, 'The Constitution of Constitutive Criminology: A Postmodern Approach to Criminological Theory', in: David Nelken (ed.), *The Futures of Criminology* (London: Sage, 1994), p.119, quoted in: Henry and Lanier, "The Prism of Crime: Arguments for an Integrated Definition of Crime", p.614.

by the state.<sup>48</sup> Although the framework developed here is far away from the constitutive criminology's analytical tool-kit, the insight of their definition is at the background of the analysis in this dissertation, especially addressing the mafia metaphor.

The next chapter will begin with an attempt to draw insights from (not develop comparisons with) the three main bodies of literature: United States, Western Sicily and Russia. The United States organized crime literature gives the classical academic and law-enforcement meaning of the term organized crime and mafia; and underlines the political nature of definitional issues. In other words, the insight is about the criminogenic nature of the market economy and how this is lost between definitions of "threat". The discussions around the Western Sicilian example underline the role mafia plays as an adoption mechanism, both to the changing market conditions and to the redistributive pattern. The roots of this adoption are in the traditional values, but this also signifies a double morality, as the mafiosi also appear as entrepreneurs. It is the role they play as middlemen between the society and the state, and do business at the

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<sup>48</sup> Stuart Henry, 'The Informal Economy: A Crime of Omission by the State', in: Gregg Barak (ed.), *Crimes by the Capitalist State: An Introduction to State Criminality* (Albany: State University of New York Press, 1991), pp. 253-270.

legal borders of the market that give them this room of maneuver. Russian example is another extreme of response where corruption, reciprocal exchange and mafia-type activity coexist and how criminal the overall economy might become, at the face of transformation. Yet, the responses are valid as long as the central authority accepts it as a response. It can hardly be said that it is the mafiosi that created corruption, or they just play a role as middlemen. The very brief outlines of the case with Russia highlights the parties in the triggering effect of transformation, similar to the Turkish example, although, in the studies about Russia too, the three concepts, corruption, white-collar criminality and organized criminality are seen as separate issues.

In third chapter, I have tried to unfold my conceptual framework. It stems from an "embeddedness" discussion on the one hand -to determine the place and role of reciprocity; and the specific (and idealized) conditions of the working of the market economy. The infrastructural power-rule of law-welfare state is not presented as an ideal model, but it delineates one important element in preventing reciprocity to swing to a negative extreme -that is, formalized and institutionalized regulation and redistribution. Of course, this was not involved in the initial



transformation packages, and hardly is it there in the Post-Washington Consensus.

Then parallel to the second chapter on concepts, and as a part of making sense of mafia in Turkey, I introduced the existing material in Turkish/on Turkey in the fifth chapter. The existing material is marked by a lack of academic interest. The major exception being policeman-criminologists, and the legal scholars. They exhibit an obsession with the “organization” issue, although at least regarding the law, the aim is to punish crimes aimed at illicit gain; and bear the signs of an essentialist reading of the mafia, although it is a feature of market economy/modern state. Another important source of data is journalistic works, which departs from the “kabadayı”<sup>49</sup> model and takes mafia as an external entity to corruption and white-collar crime. I paid a special attention to unfolding the legal framework because it is shown as the basic weapon of combat against ‘illicit gains’ in the context of the mafia, and shapes the policing efforts (and the common sense). Also, Art. No. 4422 was passed in the heydays of corruption scandals, to constitute a means of combat with the mafia. Yet, on the one hand, its usefulness should be evaluated within law’s own very specific logic and considerations,

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<sup>49</sup> *Kabadayı*, means bully, tough.

which constitute a limitation to the use of the article, on the other hand, the article addresses gain oriented crime but restricts it to the hierarchy-threat paradigm.

In trying to make sense of Turkey in the sixth chapter, I relied basically on the division between “kabadayı”, white-collar crime (although not explicitly named as such) and corruption, and tried to exhibit the mafia metaphor, as well as the transformation of “kabadayı”. The two points of intersection over which I have run my discussion is the shooting of Engin Civan by Alaattin Çakıcı (1994), and the Turkbank Scandal (1998). I have also included the figures available from police and justice statistics. Of course, these examples are to be read with the economic transformation process of Turkey in the post 1980 period at the background (as outlined in the fourth chapter) and the criminogenesis of capitalism argument, with respect to the changing place of economy in society (as outlined in the third chapter). The Turkish economic transformation is characterized by an arbitrary lack of regulations, and increasingly particularistic state-business relations. The major outcome of transformation is the crisis cycle; at least a part of existence is rooted in the mafia metaphor. The legal discussions, figures from the police, and justice statistics, give a restricted picture though.

Unfortunately the so-called Susurluk process remained out of the discussion. It does not mean that its importance is underestimated, or the relations therein are external to the mafia metaphor. I think, Susurluk process exhibits another feature of arbitrary use of state power, in this turn, in terms of warfare and relying on criminal elements therein is not a peculiarity of Turkey<sup>50</sup>. But, the crux of the matter is dispute on controlling the criminal gains, basically from drugs, accruing to PKK; and unfortunately, 'illegal markets' are not included to this dissertation. In this sense, my answer to 'would all these above mentioned features of mafia come into existence without the war in the South East?' is a "probably, yes". It points to two faces of 'criminalization of the state' in economic transformation: with respect to legal and illegal markets. The state behavior with respect to illegal markets, might have contributed to, but did not entirely determine its 'criminalization' with respect to the legal markets. For a future work, discussion of 'state crime' and 'illegal markets' in terms of the place of economy in society might be interesting.

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<sup>50</sup> See: Alfred Shulte-Bockholt, "A Neo-Marxist Explanation of Organized Crime", *Critical Criminology*, Vol. 10 (2001), pp. 225-242; R. T. Naylor, "The Insurgent Economy: Black Market Operations of Guerilla Organizations", *Crime, Law and Social Change*, Vol. 20 (1993), pp. 13-51.

Also, rather than providing a complete index of mafia affairs or corruption, the examples are restricted to the specific instances of roads that have crossed. The analyses gives names, but names show a symbolic presence; they are only the names of the figures that provide more details and a sharper existence. Even from these examples, one can decipher a further or parallel chain of relations. Yet, especially in relation to Turkey, the picture I tried to provide in the following pages is inescapably fragmented, both in relation to the criminological discussions, and its macro framework. The attempt is for exhibiting the content of the concepts, and for this reason, the chapters are not ended with interim conclusions, but the discussions carried and relations pointed at within the chapters are transferred to the next ones' introduction. To write analyses more nuanced than drawing the outer lines require a more nuanced data, which is not yet available.

## CHAPTER II

### MAFIA/ORGANIZED CRIME

It is almost impossible to give an ultimate answer to the question what mafia or organized crime is all about. The literature varies both across countries, across the activities, and across the interests of the researcher. Yet, typically, some lines of argument and contexts can be defined. At the first look, a few points are clear: (i) that the term mafia is either saved for the Western Sicilian context, or to specific organizations like Palermitan Cosa Nostra, Neapolitan Camorra or Chinese Triads or Japanese Yakuza and until 1970s, American Cosa Nostra. Otherwise, it is abstained from, due to the highly mystified use of the term in the daily language; (ii) there is more or less a consensus among scholars in terms of what counts as organized crime, or in the Italian context, mafia-type activity at large: illegal activities connected to protection, dispute settlement, contract enforcement (often referred

to as organized extortion) and operations in the illegal markets -drugs, gambling, prostitution, usury; (iii) by and large, the definitional criteria is either the organization and characteristics of the criminal group, or the type of the activity. The discussion will not focus on the illegal markets, but the meanings of illegal activities in the legal markets.

The commonly accepted legal definition of the mafia (or organized crime), including the illegal activities connected to protection, dispute settlement, contract enforcement (often referred to as organized extortion) comes from the United States. By and large, it is conceptualized around the conspiracy, ethnic-based and enterprise theories, with the conspiracy theory reflecting the official view.

In the United States, although the literature on organized crime goes back to the nineteenth century, the term acquired a new meaning during the 1920s and 1930s with Prohibition, as "gangster"s<sup>1</sup> were shown to form a category, operating on an illegal market, distinct from the effects of legislation on the social whole.<sup>2</sup> They

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<sup>1</sup> For the creation of the gangster cult, see: David E. Ruth, *Inventing the Public Enemy: The Gangster in American Culture, 1918-1934*, pp. 1-62.

<sup>2</sup> Michael Woodiwiss, *Organized Crime and American Power: A History* (Toronto, Buffalo and London: University of Toronto Press, 2001).

were seen both as a "threat" to the integrity of the system, and a manifestation of upward mobility.

The criminological theory that parallels this meaning is the so-called Chicago school of crime: social disorganization and Sutherland's differential association theories. The argument was that criminality was a product of rapidly urbanizing, industrializing urban slums, with high social mobility, and is a learned behavior.<sup>3</sup>

Building on Sutherland, Merton<sup>4</sup> in his so-called 'strain theory' turned the attentions to social structure. He underlined that people do not have a full and equal access to opportunity, yet the preservation of the structure of social power requires that those in the lower strata identify themselves with those at the top, and force them to conform with the cultural dictates of the society. American culture, for example, places a "heavy emphasis on wealth as a basic symbol of success, without a corresponding emphasis upon the legitimate avenues on which to march towards this goal."<sup>5</sup> The subsidiary theme in the American culture is that success or failure results only from personal qualities, "he who

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<sup>3</sup> J. Robert Lilly, Francis T. Cullen and Richard A. Ball, *Criminological Theory: Context and Consequences* (Thousand Oaks, London and New Delhi: Sage, 2002), pp.32-48.

<sup>4</sup> See, Robert K. Merton, *Social Theory and Social Structure* (Glencoe: The Free Press, revised and enlarged edition, 1957), pp. 131-194.

fails has only himself to blame"<sup>6</sup>. The separation of goals and institutionalized procedures of seeking them is a strain towards anomie. As developed by Durkheim, anomie refers to "a condition of relative normlessness in a society or group."<sup>7</sup> As he sees it, the concept refers to a group or society, not to individuals. Yet, "owing to their objectively disadvantaged position in the group as well as to distinctive personality configurations, some individuals are subjected more than others to the strains arising from the discrepancy between cultural goals and effective access to their realization. They are consequently more vulnerable to deviant behavior."<sup>8</sup> Hence, anomie and deviant behavior are interacting processes: "A mounting frequency of deviant but 'successful' behavior tends to lessen and, as an extreme potentiality to eliminate the legitimacy of the institutional norms for others in the system. The process thus enlarges the extent of anomie within the system"<sup>9</sup>

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<sup>5</sup> Ibid., p.139.

<sup>6</sup> Ibid., p.168.

<sup>7</sup> Ibid., p.161.

<sup>8</sup> Ibid., pp.180-181.

<sup>9</sup> Ibid., p.181.



Yet the problem Merton mentions appears in totally a different tone in the "threat" conceptualization on organized crime. The classical meaning of the "threat" version of the term is crystallized with the 1967 U.S. President's Organized Crime Commission and Commission member Robert Cressey's book<sup>10</sup>. In the opening sentence, Cressey puts forward that "In the United States, criminals have managed to put together an organization which is at once a nationwide illicit cartel and a nationwide confederation."<sup>11</sup> That is, the organization possesses the qualities of both an enterprise and a government. The nationwide alliance called (by the East Coast members as) "Cosa Nostra" is formed by at least twenty-four tightly knit "families", all Italians and Sicilians. Each family has a hierarchically organized structure, and "families" were linked to each other by "understanding, agreements, and "treaties", and by mutual deference to a "Commission" made up of the leaders of the most powerful "families".<sup>12</sup> The bosses are the leaders who direct the illegal activities of the "family", and

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<sup>10</sup> Robert Cressey, *The Theft of the Nation: The Structure and Operations of Organized Crime in America* (New York, Evanston and London: Harper & Row, 1969).

<sup>11</sup> Ibid., p.1.

<sup>12</sup> Ibid., p.x.

the illegal activities includes gambling, loansharking, import and wholesale of narcotics, labor racketeering, a virtual monopoly on cigarette vending machines, juke boxes, and they own:

"a wide variety of retail firms, restaurants and bars, hotels, trucking companies, food companies, linen-supply houses, garbage collection routes, and factories. Until recently, they owned a large proportion of Las Vegas. They own several state legislators and federal congressmen and other officials in the legislative, executive, and judicial branches of government at the local, state, and federal levels. Some government officials (including judges) are considered, and see themselves, members."<sup>13</sup>

In his analysis, the distinguishing characteristic of organized crime is that the crime is committed by a person who occupies a certain position in an established division of labor. Yet, it is a relation between a corrupter, a corruptee and an enforcer -that is, corruption and enforcement are essential to the structures such like Cosa Nostra. That is, the organization should function both as a business venture and an illegal invisible government, permanent and totalitarian and searching for immunity from law through intimidation or corruption.<sup>14</sup> It is a threat to the

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<sup>13</sup> Ibid., p.x.

<sup>14</sup> Cressey, *The Theft of the Nation*.

integrity of the system, because it tends to invest the profits it had acquired in the illegal businesses to the legal economic and political spheres.<sup>15</sup>

Cressey's analysis, known as alien conspiracy theory, or monolithic threat paradigm is central to the understanding of organized crime both in the scholarly work and in the eyes of the policy makers. The essence of the model is the idea that outsiders, especially Sicilians created organized crime in America. Also, within this understanding, organized crime groups are seen to exhibit the structural features legitimate corporations; they are seen as if they are after establishing a monopoly nationally and internationally; they undermine the foundations of democracy by corrupting public officials and professionals.<sup>16</sup>

In the following years, especially the existence of The Organization called Cosa Nostra, or "*Mafia*" is challenged. For example, Block showed that Cressey's narrative is counter-factual, especially due to The Organization he defines. Relying on the memoirs of the "*Mafia*" "soldier" Joseph Valachi, and disregarding his testimony before Senate Committee Investigating Organized

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<sup>15</sup> Ibid., p.1.

<sup>16</sup> Gary W. Potter, *Criminal Organizations: Vice, Racketeering, and Politics in an American City* (Prospect Heights, Ill.: Waveland Press, 1994), pp. 2-7.

Crime and the Illicit Traffic in Narcotics<sup>17</sup>, he gave an example of historical naivete.<sup>18</sup> The following analyses showed that Cressey's analysis reflected the bias coming from the previous understandings of Italian-American domination of criminal scene, and other ethnic groups existed. But, the focus on ethnicity remained.<sup>19</sup>

Although the emphasis on the concept of The Organization much criticized both theoretically and empirically, yet, one line of argument continued to focus on the criminal activity as the distinguishing characteristic of organized crime. As Albin put it:

"it appears that the most primary distinguishing component of organized crime is found within the term itself, mainly, organization. (...) Interaction is a key concept here: a mere aggregation of individuals performing a criminal act in the presence of one another would not, in itself,

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<sup>17</sup> 1963 McClellan Committee.

<sup>18</sup> Alan A. Block, "History and the Study of Organized Crime", *Urban Life: A Journal of Ethnographic Research* (1978), reprinted in: Alan A. Block, *Space, Time and Organized Crime* (New Brunswick and London: Transaction Publishers, 1994, pp. 3-20. Regarding the criminal syndicates operating in New York in the 1930s and 1940s, Block differentiates between enterprise syndicates, in illegal businesses, and power syndicates in the business of extortion (Alan A. Block, *East Side-West Side: Organizing Crime in New York, 1930-1950* (Cardiff: University College Cardiff Press, 1980), p.129).

<sup>19</sup> See for example: Francis A. J. Ianni, "New Mafia: Black, Hispanic and Italian Styles", *Society*, No.11 (March/April 1974), pp.26-39. For a recent example, see: Ko-Lin Chin, *Chinatown Gangs: Extortion, Enterprise, Ethnicity* (New York and Oxford: Oxford University Press, 1996). For a counter-example, regarding the conscious use of ethnic prejudices in the minority groups, see: Frank Bovenkerk, Dina Siegel and Damian Zaitch, "Organized Crime and Ethnic Reputation Manipulation", *Crime, Law and Social Change*, Vol.39, No.1 (2003), pp. 23-38.

constitute an organized act. ... Organization, then, is the basic distinguishing element between organized and other types of crime."<sup>20</sup>

At the one end, based on a fieldwork -the analysis of so-called Lupollo crime family- Ianni and Ianni, argued that organized criminal groups are a functional part of the American social system, in terms of supplying illegal goods to willing customers, and a viable social institution. They are not formal hierarchies posing a threat to the system, but are kinship relations, real or ritual, authority is defined with respect to age and expertise. They are involved in legal and illegal business activities. Destroying the existence of them depends on destroying the kinship pattern itself.<sup>21</sup> In a similar manner, Potter, in his study of organized crime activity in "Morrisburg", put forward that organized crime is a functional necessity of the American society, given the exigencies of the social life in the United States. It could be analyzed as a community subsystem, fulfilling the functional requirements of (i) production-distribution-consumption of illegal goods and services, (ii) socialization of its own participants to the illegal environment, (iii) social control through the enforcement

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<sup>20</sup> Joseph L. Albin, *The American Mafia: Genesis of a Legend* (New York: Appleton-Century-Crofts, 1971), p.35.

of certain norms of behavior, (iv) social participation into a community life, (v) providing mutual support to the in times of crisis.<sup>22</sup> In this sense, although it may sound like a pathology, it is a fundamental fact of social life.<sup>23</sup> Portraying organized crime as an American way of life, having a function in society, the early example is Daniel Bell, writing in 1953 that organized crime was the ladder of upward mobility for the Italian immigrants. And, it was a part of the American culture: it is an "open" society, with freedom of enterprise and desire for social advancement, which favors sharp practices of ambiguous morality.<sup>24</sup>

At the other end, the hierarchy paradigm continued its existence. For example, Abadinsky defined organized crime as:

"a non-ideological enterprise involving a number of persons in close social interaction, organized on a hierarchical basis, with at least three levels/ranks, for the purpose of securing profit and power by engaging in illegal and legal activities. Positions in the hierarchy and positions

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<sup>21</sup> Francis A. J. Ianni and Elisabeth Reuss-Ianni, *A Family Business: Kinship and Social Control in Organized Crime* (New York: Russel Sage Foundation, 1972).

<sup>22</sup> Potter, *Criminal Organizations*, pp.19-21.

<sup>23</sup> Ibid., p.21.

<sup>24</sup> Daniel Bell, 'Crime as an American Way of Life: A Queer Ladder of Social Mobility', 1953, reprinted in: Daniel Bell, *The End of Ideology: On the Exhaustion of Political Ideas in the Fifties* (Cambridge, Mass. and London: Harvard University Press, 1988), pp. 127-150.

involving functional specialization may be assigned on the basis of kinship or friendship, or rationally assigned according to skill. The positions are not dependent on the individuals occupying them at any particular time. Permanency is assumed by the members who strive to keep the enterprise integral and active in pursuit of its goals. It eschews competition and strives for monopoly on an industry or territorial basis. There is a willingness to use violence and/or bribery to achieve ends or to maintain discipline. Membership is restricted, although non-members may be involved on a contingency basis."<sup>25</sup>

In a broader sense Albinì defined organized crime as:

"any criminal activity involving two or more individuals, specialized or nonspecialized, encompassing some form of social structure, with some form of leadership, utilizing certain modes of operation, in which the ultimate purpose of the organization is found in the enterprises of the particular group."<sup>26</sup>

Yet, for him, the basis is the nature of the criminal act, not the way of organization.<sup>27</sup> Anderson, in her case study of so-called Benguerri family, argued that the nature of the group itself is important, because of the

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<sup>25</sup> Howard Abadinsky, *Organized Crime* (Boston and London: Allyn and Bacon, 1981), pp.20-21. He did not change the definition in his analysis of the life-history of Vito Palermo (a pseudonym) (Howard Abadinsky, *The Mafia in America: An Oral History* (New York: Praeger, 1981), pp.38-39.

<sup>26</sup> Albinì, *The American Mafia*, p.37.

<sup>27</sup> Ibid., p.49.

nature of the criminal act. Organized crime groups do not function like business firms. Their business may be individually owned, yet the groups are hierarchical and the leaders perform a government-like function. This is not for controlling the market they operate, but just to stay in business. For, they operate in illegal environment with no access to formal economic institutions for the enforcement of property rights, dispute resolution, or start-up capital.<sup>28</sup>

With the focus on the nature of the criminal activity that defines organized crime, the contrary could be argued as well. Reuter, in his study of loansharking, illegal gambling and bookmaking in New York, found the existence of very small competitive enterprises, instead of a hierarchical organization. He explained it again with respect to the nature of the illegal markets, where the participants' fear of the police and low degree of contract enforcement; impossibility for the firms to benefit from economies of scale, and establish an enterprise-based goodwill, and obtain external finance. Violence is another characteristic of illegal markets, not for the maintenance of monopoly power, but because the victims are unable to ask for police protection and

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<sup>28</sup> Annelise Graebner Anderson, *The Business of Organized Crime: A Cosa Nostra Family* (Stanford, Ca.: Hoover Institution Press, 1979).



the disputes within the illegal markets can not be settled with other means.<sup>29</sup>

In terms of activity, in seeing organized crime as illicit enterprise, Reuter is preceded by Smith who offered a continuum of entrepreneurial transactions reflecting different levels of legitimacy within a specific market. For him, illicit enterprise is "the extension of legitimate market activities into areas normally proscribed -i.e., beyond existing limits of the law-for the pursuit of profit and in response to latent illicit demand."<sup>30</sup> Yet, the degree of legitimacy, with respect to law, is subject to change. As the distinguishing criterion of what makes an enterprise illicit, he refers to two entrepreneurial technologies in the United States: "the mediating technology of power brokering and the service technology of security and enforcement."<sup>31</sup> The former stands for "the degree of positive sanctions supporting actions"<sup>32</sup>, the low degree of which creates the briber; the latter stands for "the degree of sanctions supporting scope of actions, exercise

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<sup>29</sup> Peter Reuter, *Disorganized Crime: The Economics of the Visible Hand*, Cambridge, Mass. and London: The MIT Press, 1983.

<sup>30</sup> Dwight J. Smith, Jr., *The Mafia Mystique* (Lanham, New York and London: University Press of America, 1990), p.335.

<sup>31</sup> Ibid., p.343.

of force, and confining of persons”<sup>33</sup>, the low degree of which creates the underground policeman as the illicit entrepreneur. The results would be extortion or the private monopoly of public rights. The historic example is the pirate. The threat they pose is due to the fact that the power they possess is attributed to them for their potential for violence or threat of violence.<sup>34</sup>

In an integrative effort, Maltz underlined the following characteristics as common to the definitions of organized crime: “violence, sophistication, continuity, structure, discipline, multiple enterprises, and involvement in legitimate enterprises. Another element considered is the bonding ritual, such as those reported to have been used in making members of the *Mafia*”<sup>35</sup> Defining it as a process, Lupsha underlined the key attributes of organized crime as:

- “- Ongoing interaction by a group of individuals over time.
- Patterns in that interaction: role, status, and specialization.

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<sup>32</sup> Ibid..

<sup>33</sup> Ibid., p.344.

<sup>34</sup> Ibid., pp.335-345. See also: Dwight Smith, Jr., “Paragons, Pariahs and Pirates: A Spectrum Based Theory of Enterprise”, *Crime and Delinquency*, Vol.26, No.3 (July 1980), pp. 358-386.

<sup>35</sup> Michael D. Maltz, ‘Toward Defining Organized Crime’, in: Herbert E. Alexander and Gerald E. Caiden (ed.s), *The Politics and Economics of Organized Crime* (Lexington, Mass. and Toronto: Lexington Books, 1985), p.24.

- Patterns of corruption of public officials, their agents, and individuals in private positions of trust.
- The use or threat of use of violence.
- A lifetime careerist orientation among the participants.
- A view of criminal activity as instrumental, rather than an end in itself.
- Goal direction toward the long term accumulation of capital, influence, power, and untaxed wealth.
- Patterns of complex criminal activity involving long term planning, and multiple levels of execution and organization.
- Patterns of operation that are interjurisdictional, often international in scope.
- Use of fronts, buffers, and "legitimate" associates.
- Active attempts at the insulation of key members from risks of identification, involvement, arrest and prosecution.
- Maximization of profits through attempts at cartelization or monopolization of markets, enterprises and crime matrices."<sup>36</sup>

In a more recent effort, Albanese put forward the following consensus: "Organized crime is a continuing criminal enterprise that rationally works to profit from illicit activities; its continuing existence is maintained through the use of force, threats, monopoly control, and/or the corruption of public officials."<sup>37</sup>

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<sup>36</sup> Peter A. Lupsha, 'Organized Crime in the United States', in: Robert J. Kelly (ed.), *Organized Crime: A Global Perspective* (New Jersey: Rowman and Littlefield, 1986), p.33.

<sup>37</sup> Jay S. Albanese, "The Causes of Organized Crime: Do Criminals Organize around Opportunities for Crime or Do Criminal Opportunities Create New Offenders", *Journal of Contemporary Criminal Justice*, Vol.16, No.4 (November 2000), p.411.

Beyond the idea that it is troublesome to define organized crime, what does the discussions centered around definitional issues in the American context suggest? Critics argue that the vastness of criteria in defining organized crime, creates multiple choices for law enforcement to invent a "threat"<sup>38</sup> and impose its own measures<sup>39</sup>, often meaning new legislation restricting civil liberties and more resources devoted to policing. An example is the triplet of Bank Secrecy Act, forcing the financial institutions to report cash transactions for tracing criminal assets, Continuing Criminal Enterprises Act and RICO statute<sup>40</sup> of 1970s.<sup>41</sup> It clearly

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<sup>38</sup> Van Duyne calls it a "threat assessment industry", which consists of "public agencies, private firms or persons, who are primarily interested in conveying an image of organized crime which suits their purposes. Frequently this image is an apocalyptic one: a huge threat of the sinister forces of darkness. The threat assessment reports are composed accordingly and sold for not too modest prices. As soon as society gets the desired feeling of being threatened, the Threat Assessment Industry offers protection that it has engineered and in the end we all pay voluntarily legal protection money." (Petrus C. Van Duyne, "Money-Laundering: Pavlov's Dog and Beyond", *The Howard Journal*, Vol.37, No.4 (November 1998), p.359.)

<sup>39</sup> R.T. Naylor, 'Mafias, Myths and Markets', in: R.T.Naylor, *Wages of Crime: Black Markets, Illegal Finance, and the Underworld Economy* (Ithaca and London: Cornell University Press, 2002), p.14.

<sup>40</sup> RICO (Racketeering Influenced and Corrupt Organizations) aims at criminalizing individual involvement in organized criminal activity, the most important of which to the day was racketeering. Briefly, RICO offenses are: "1. That a person, 2. through a pattern, 3. of racketeering activity or collection of unlawful debt 4. Directly or indirectly - (a) invests in, or (b) maintains an interest in, or (c) participates in 5. an enterprise 6.the activities of which affect interstate commerce." (Jeff Atkinson, "'Racketeer Influenced Corrupt Organizations," 18 U.S.C. Section 1961-1968: Broadest of the Federal Criminal Statutes", *Journal of Criminal Law and Criminology*, Vol.69, No.1 (1978), p.2.)

has the alien conspiracy/monolithic threat effect behind: the threat of The Organization's investing huge profits in the legal and political spheres were tried to be dealt with the Bank Secrecy Act; the emphasis on monopoly on illegal markets goods was reflected to Continuing Criminal Enterprises Act; and, the emphasis on extortion could be followed in RICO statute<sup>42</sup>. Also, RICO statute gave way to connecting any two offenses and turns them into a manifestation of conspiracy.<sup>43</sup>

The last decade's discussions of "transnational organized crime"<sup>44</sup> make sense in terms of creating

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<sup>41</sup> Naylor, 'Mafias, Myths and Markets', p.17.

<sup>42</sup> RICO statute, and the almost unchallengeable alien conspiracy conceptualization it created is shaped by the worldview of McCarthy Hearings, both in terms a search for a "national conspiracy", and a before-the-fact investigatory scheme (William R. Geary, "The Creation of RICO: Law as a Knowledge Diffusion Process", *Crime, Law and Social Change*, Vol.33 (2000), pp.329-330. RICO does not mention a mafia, yet in terms of legislative recreation, the usage of RICO in terms of corporate crime is met with criticism from the businessworld (William R. Geary, "The Legislative Recreation of RICO: Reinforcing the "Myth" of Organized Crime", *Crime, Law and Social Change*, Vol. 38 (2002), pp. 311-356.

<sup>43</sup> Naylor, 'Mafias, Myths and Markets', p.17.

<sup>44</sup> As a proponents' discussion of the concept, see: Louise I. Shelley, "Transnational Organized Crime: An Imminent Threat to the Nation State", *Journal of International Affairs*, Vol.48, No.2 (Winter 1995), pp.463-489. For definitions, see: Gerhard O. W. Mueller, "Transnational Crime: Definitions and Concepts", *Transnational Organized Crime*, Vol.4, No.3/4 (Autumn/Winter 1998), pp.13-21. For a critical evaluation, see: Margaret E. Beare, "'Structures, Strategies, and Tactics of Transnational Criminal Organizations: Critical Issues for Enforcement", paper presented at the Australian Institute of Criminology, Australian Customs Service and Australian Federal Police Transnational Crime Conference, Canberra (March 9-10, 2000).

"threat" of globalization. The term appeared with the 1994, at the Washington conference of high level U.S. law enforcement and intelligence personnel entitled "Global Organized Crime: The New Empire of Evil" and the United Nations' World Ministerial Conference on Organized Transnational Crime. In the United Nations conference, Secretary-General Boutros-Ghali, in his opening address, stated that organized crime groups adopted themselves to the new international context and

"illegality is gaining inexorably. It is corrupting the entire sectors of international activity. ... Transnational crime ... undermines the very foundations of the international democratic order. Transnational crime poisons the business climate, corrupts political leaders, and undermines human rights. It weakens the effectiveness and credibility of institutions and thus undermines democratic life. ... when States decide to take effective and, voluntary steps to combat transnational crime, and when they decide to cooperate with each other and harmonize their efforts, legitimate society regains all its power and strength."<sup>45</sup>

In December 2000, United Nations Convention Against Transnational Organized Crime was signed. In Article 2, organized crime group was defined in line with the criminal hierarchies / continuing criminal enterprise

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<sup>45</sup> United Nations, Background Release, *Statement by the Secretary-General on the Occasion of the World Ministerial Conference on Organized Transnational Crime*, Naples (November 22, 1994), cited in: Woodiwiss, *Organized Crime and American Power*, pp.383-384.

line. Crime control<sup>46</sup> was brought to the U.S. line, emphasizing undercover policing operations, witness protection programs and asset seizure.<sup>47</sup>

Another point the definitional discussions highlight is that, if it is not the potential of the illegal markets, it is the inclination of individuals or groups towards bending the rules of the market. Portraying the problem as it was restricted to a peculiar group, organized or disorganized, limits criminality with the street level and illegal markets, and shifts the public attention from systemic problems, corporate criminality and state criminality (especially important in terms of discussing the U.S. involvement in international smuggling and her covert operations abroad).<sup>48</sup> Also portraying the problem in terms of conspirational entities -that is, ethnic groups that were distinct from American life- contributes to labeling certain ethnic groups as criminal, yet introducing criminality as an American way of life, sustains the gray area of

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<sup>46</sup>Also, the internationalization of money laundering controls was a part of the control agenda, which is in line with what Naylor calls 'a quiet revolution' in law enforcement -that is, turning the attention to the proceeds of crime, rather than the criminals themselves. See: R.T. Naylor, "Wash-out: A Critique of the Follow-the-Money Methods in Crime Control Policy", *Crime, Law and Social Change*, Vol.32, No.1 (1999), pp.1-57.

<sup>47</sup> Woodiwiss, *Organized Crime and American Power*, pp.381-389.

<sup>48</sup> Woodiwiss, *Organized Crime and American Power*.

legitimacy, which shifts the attention further from the real core of the problem.

Italy, or more specifically Western Sicily, highlights another aspect of the mafia-type activity as illegal activities connected to protection, dispute settlement, contract enforcement (often referred to as organized extortion): a *modus vivendi* with respect to Italian unification, and the economic transformation -in terms of a change in the ownership of land- created from 1860s on. In almost all the histories of the mafia, its origins are traced back to the abolition of feudalism by a central state not strong enough to establish a monopoly of coercion. Corruption, also attributed to the existence of the mafia, is also a part of this response mechanism -for the Italian state, since unification, has constituted patronage relations with its periphery.<sup>49</sup>

As for what the word means, mafia existed prior to 1860s, in Southern language (whether Arabic in origin or not), almost always with a positive connotation: beauty, grace, pride, perfection, excellence etc. A beautiful girl or a tidy house is said to 'have mafia'.<sup>50</sup> In the

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<sup>49</sup> Judith Chubb, *Patronage, Poverty in Southern Italy: A Tale of Two Cities* (Cambridge: Cambridge University Press, 1982), pp. 15-54.



north, though, it would mean the contrary -for example, poverty and misery in Florentine language.<sup>51</sup> Indeed, the northern bias, going as far as latent racism<sup>52</sup>, has always given way to misunderstandings on the subject as it was then reduced to being typically a Sicilian phenomenon<sup>53</sup>, a criminal master-plan, a super-government of crime with its capital in Sicily.

Regarding the 'canon', "... mafia has been seen as a mirror of the traditional society, with a special attention on political, economic or -more frequently- socio-cultural factors; as a criminal firm or type of industry; as a more or less centralized secret

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<sup>50</sup> Henner Hess, *Mafia and Mafiosi: Origin, Power and Myth* (translated by Ewald Osers) (London: C. Hurst & Co., [1970] 1998), p.1; for a summary of the etymological discussions, see: Hess, *Mafia and Mafiosi*, pp.1-4; Diego Gambetta, *The Sicilian Mafia: The Business of Private Protection* (Cambridge, Mass.: Harvard University Press, 1993), pp.259-261.

<sup>51</sup> Hess, *Mafia and Mafiosi*, p.1.

<sup>52</sup> Or, an absent-minded form of mockery, as Sciascia tells. For example, there are anecdotes on the backwardness of hygienic conditions telling that the soap brought by the Garibaldinis were eaten by the sicilians, as they thought it was jam (Leonardo Sciascia, 'Letteratura e Mafia', 1964, reprinted in: Leonardo Sciascia, *Cruciverba* (Milan: Adelphi, 1998), p.164).

<sup>53</sup> As Sciascia puts it, it serves to the North's detachment from the problem, its responsibilities and the role of its wants in it. The educated Sicilian, on the other hand, under the northern effect, would tend to minimize and camouflage the problem (Sciascia, 'Letteratura e Mafia', p.164). As recent efforts to write a history of the south without a northern bias, see: Robert Lumley and Jonathan Morris (ed.s), *The New History of the Italian South* (Devon: University of Exeter Press, 1997); Salvatore Lupo, 'The Changing Mezzogiorno: Between Representations and Reality', in: Stephen Gundle and Simon Parker (ed.s), *The New Italian Republic: From the Fall of the Berlin Wall to Berlusconi* (London and New York: Routledge), pp. 247-260.

organization; as a juridical system more or less parallel to that of the State, or as *anti-State*."<sup>54</sup> In the literature, typically, from 1860s to the fascist repression<sup>55</sup>, the 'old' mafia is seen as a traditional response, rather than a type of industry or criminal firm; in the post-World War II period, it is said to have acquired an entrepreneurial aspect (the 'new' mafia), both making use of the clientelist relations with the state, profiting from the restructuring projects of the state, and through its involvement in the drug trade. Crosscutting these readings, it can be said that this *modus vivendi* had two dimensions<sup>56</sup>: entrepreneurial activity and power brokerage.<sup>57</sup> These dimensions have only adopted to the post-World War II change in the economic and political relations Italian state have constituted with Sicily.

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<sup>54</sup> Salvatore Lupo, *Storia della Mafia dalle Origini ai Giorni Nostri* (Rome: Donzelli, 1996), p.17.

<sup>55</sup> For a detailed account of the fascist repression, see: Christopher Duggan, *Fascism and the Mafia* (New Haven and London: Yale University Press, 1989).

<sup>56</sup> The organizational aspect of this response is not discussed in this part. For a recent discussion, that Cosa Nostra is not a hierarchical organization or firm, but a ritual kinship tie, see: Letizia Paoli, *Fratelli di Mafia: Cosa Nostra e 'Ndrangheta* (Bologna: Il Mulino, 2000).

<sup>57</sup> Lupo argues that this parallels Block's conceptualization of power syndicate and enterprise syndicate. (Lupo, *Storia della Mafia*, p.27; for Block, see: *ff*.18)

The classical expression<sup>58</sup> of this *modus vivendi* is Anton Blok's study of 'community of "Genuardo"'<sup>59</sup>. For him, *Mafia*, in reference both to the peasant community and the larger society that surrounds<sup>60</sup> it, "... is a form of unlicensed violence and those who are involved in it are called *mafiosi* (sing. *mafioso*)."<sup>61</sup> They are rural entrepreneurs and political middlemen:

"recruited from the ranks of peasants and shepherds, and entrusted with the task of surveillance on the large estates (latifundia) of absentee landlords, they consisted a particular society of middlemen - individuals who operate in different social realms and who succeeded in maintaining a

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<sup>58</sup> Another classical expression is Schneiders, in their case-study of Villamaura, who defined mafia as: "an organization and ideological response to these conditions, of power on the one hand and pending obsolescence on the other. By neutralizing the police and the judiciary it protected a wide range of business interests that depended on profit, at least partly, on the illegal acts including the use, threat, or implied threat of violence. Most, if not all, of the first mafiosi were rural entrepreneurs." (Jane Schneider and Peter Schneider, *Culture and Political Economy in Western Sicily* (New York, San Francisco, London: Academic Press, 1976), p.9). The conditions they refer to are Sicily's incorporation to the world system, the threats this posed to latifundism and its pastoral base, and the development of state institutions under the conditions of what they call 'broker capitalism' in consequence. To promote solidarity among members, and to influence the behaviours of the others, and to border *prepotenza* (arrogance, the overbearing action), mafia had exploited *omertà* as an ideology. Extortion with a threat of violence, under a political shield, gives the mafia, in their definition and analysis, an anti-peasant character. (Schneider and Schneider, *Culture and Political Economy in Western Sicily*, pp. 173; 179; 192-195).

<sup>59</sup> Anton Blok, *The Mafia of a Sicilian Village, 1860-1960: A Study of Violent Peasant Entrepreneurs* (Prospect Heights, Illinois: Waveland Press, [1974] 1988).

<sup>60</sup> In the Sicilian context, the bond between the two dimensions is maintained by the 'landed interests' which is the centrifugal force (Ibid., p.93).

<sup>61</sup> Ibid., p.6.

grip on the intrinsic tensions between the spheres. *Mafiosi* managed these tensions by means of physical force. Poised between landowning elite and peasants, between city and countryside, and between the central government and the village, they sought to monopolize the links between these various groups and segments of the society."<sup>62</sup>

They lived in symbiosis with the formal authority:

disregarded its law, but needed its existence.<sup>63</sup> *Mafia*, for him, is the product of the centralization efforts of the State: it emerged in the nineteenth century when Bourbon state was trying to weaken traditional land-owning aristocracy and favoring the emancipation of peasantry through a redistribution of land.<sup>64</sup> Hence, it was a *modus vivendi*, reflecting the tensions between the central government and landowners, and between landowners and the state<sup>65</sup>, through which not only the peasants, but

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<sup>62</sup> Ibid., pp.xxvii-xxviii.

<sup>63</sup> This is what Charles Tilly, in his 'Foreword' to the book, called a nice paradox: "At first view, the set of social arrangements called mafia is the antithesis of a strong government; yet that same mafia couldn't exist without great concentration of power in national states. The reason is simple: the *mafioso* can't push ordinary people around without having some claim on the protection of someone wealthier and more powerful than he is, and the great landlords who protect the *mafiosi* can't enjoy their surprising freedom of action unless they have fashioned a sort of non-intervention agreement with the regional and national authorities." (Ibid., pp.xviii-xix).

<sup>64</sup> Ibid., p.6;10;213.

<sup>65</sup> Ibid., p.92.

the landowners and the State "... arranged and rearranged themselves in conflict and accommodation."<sup>66</sup>

In a similar vein, Arlacchi understands mafia as "a form of behavior and a kind of power"<sup>67</sup> The mafia behavior is based on honor -defined as, virility for man, and sexual shame for woman- and *omertà*<sup>68</sup>. The role of the *mafioso*, is to safeguard the socio-economic *status quo*, in other words, safeguard the collective interests threatened by the transformation, creating a territorial monopoly of violence. This does not mean that he has enforces just, unwritten laws, as against the unjust, written laws of the state. He performs the functions of 'protection'<sup>69</sup>, 'oppression', and 'mediation', yet the

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<sup>66</sup> Ibid., p.10.

<sup>67</sup> Pino Arlacchi, *Mafia Business: The Mafia Ethic and the Spirit of Capitalism* (translated by Martin Ryle) (London: Verso, 1986), p.4

<sup>68</sup> That is manliness, from the *umo*, Sicilian for man; far more than that, it means, "... sovereign man, the kind of man whose property and dependents are respected by others because, he has proven himself capable of defending them." (Schneider and Schneider, *Culture and Political Economy in Western Sicily*, p.193). To respect and to be respected, following the famous Sicilian ethnologist Pitrè, if the man himself does not have the adequate power, he collaborates with those of the 'same thoughts' and 'same sentiments', whether he knows them in advance or not (G. Pitrè, *Usi e Costumi, Credenze e Pregiudizi del Popolo Siciliano*, 1889, quoted in: Sciascia, 1998: p.165).

<sup>69</sup> Disregarding 'mediation', and focusing only on protection and guarantees -in terms of dispute settlements, retrieval of stolen property, or cartel protection from free-riders and competitors, Gambetta suggests that the mafiosi are the entrepreneurs of a very specific commodity: trust. It is not a fictitious protection from the dangers mafia itself might create, but real protection in the

services he offers is for gaining power. For the traditional mafia, power builds on honor.<sup>70</sup>

This ambiguous morality is also underlined by Henner Hess, for example, in his classical study, repeats that mafia is the outcome of the collapse of the feudal order and the failure of the bureaucratic state to establish its monopoly of coercion. Under the conditions of double morality characterizing Sicily, and the prevalence of *omertà* as a subcultural norm system, mafia is a method, and functions as a self-help institution. It is there for material or prestige gain, but also fulfills the needs for protection (protection against crime, conflict settlement, debt settlement, guarantee of contracts etc.) and mediation (including with those in higher government positions). *Mafiosi's* power rests on potential for the use of violence, and also being known as competent in handling certain tasks.<sup>71</sup>

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Sicilian environment characterized with a high degree of distrust (to the state, and in market transactions) which can not be changed by Italian unification. Its assets are reputation, intelligence, secrecy, and a potential for violence. The mafia does not sell a generalized trust, but injects regulated doses of distrust to render the trust it sells more in demand. (Diego Gambetta, *The Sicilian Mafia*; Diego Gambetta, "Fragments of an Economic Theory of the Mafia", *Archives Européennes de Sociologie*, 29 (1988), pp.127-145; Diego Gambetta, 'Mafia: The Price of Distrust', in: Diego Gambetta (ed.), *Trust: Making and Breaking Cooperative Relations* (New York and Oxford: Basil Blackwell, 1988), pp.158-175.)

<sup>70</sup> Arlacchi, *Mafia Business*.

<sup>71</sup> Hess, *Mafia and Mafiosi*.

*Mafia* can also be seen as the institutionalized forms of Sicilian cultural values, a social hybridization, at the face of unsuccessful centralization efforts of the State and the introduction of capitalistic relations. Raimondo Catanzaro, for example, underlines two traditional codes of Sicilian culture: code of honor (living according to one's means and guarding the sexual integrity of women; also, *omertà* as a quality that can be acquired by violence) and instrumental friendship (voluntary exchange of resources). As the Italian central state chose to establish patronage relations with its periphery, instrumental friendship as a Sicilian cultural code rendered mafia as an institution of intermediation between the center and the local authorities. At the face of the state incapacity to establish a monopoly of legitimate violence, mafia acquired autonomy for violence in sustaining the existing coalitions. It has adopted to change, for it either made use of the new institutions for its own ends, or found traditional use of new institutions.<sup>72</sup>

In sum, the Western Sicilian *modus vivendi* suggests that, illegal activities connected to protection, dispute

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<sup>72</sup> Raimondo Catanzaro, *Il Delitto come Impresa: Storia Sociale della Mafia* (Padova: Liviana Editrice, 1988; 'instrumental friendship' is used in: Raimondo Catanzaro, "Enforcers, Entrepreneurs, and Survivors: How the Mafia has adapted to change", *The British Journal of Sociology*, Vo.36, No.1 (March 1985), pp.34-57.

settlement, contract enforcement (often referred to as organized extortion), is a part of adopting to the changing conditions, both fulfilling the needs of the society, and a way of profit-making. Yet, it is conditioned not only by the weakness of the state in imposing its rules and claiming the monopoly of coercion, but the state's choosing to coexist with the groups in the society who can act as mediators with the population at large. It may be a response, but it can not remain as a response unless the legitimate structure approves it.

The Russian experience in the post-1985 can be read as another example of adoption to a change from a centrally-planned economy coexisting with a second economy, characterized by informal networks of personal relationships and corrupt bureaucracy, to the market economy. In the same line with Gambetta, although the mafia-type activity as illegal activities connected to protection, dispute settlement, contract enforcement (often referred to as organized extortion), can be understood as a response to the ill-enforced property law and contract law -which are the foundations of the market economy-<sup>73</sup>, the picture seems to be more complicated.

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<sup>73</sup> Federico Varese, *Russian Mafia: Private Protection in a New Market Economy* (Oxford and New York: Oxford University Press, 2001).



The most common forms of economic activities in the 'second economy' of the Soviet Union included: services rendered outside office hours, private construction teams, private sale of goods produced, parallel production in state enterprises where diverted and surplus materials were used and production took place within the off-hours, location of scarce supplies, merchandising and establishment of contacts by brokers, and last but not least, bribery.<sup>74</sup> Also, there were independent criminal gangs<sup>75</sup>, involved in smuggling and 'protection' of illegal enterprises in the second economy.<sup>76</sup>

The Gorbachev period opened up the Pandora's box: The Law on State Enterprises (1987) loosening the state control over state enterprises and Law of Cooperatives (1988) lifting the restrictions on economic activities, ceiling on profits, size of cooperatives and price controls, led to investment of funds accumulated in the second economy to the formal. This meant, some of the enterprises or joint stock companies were bought or

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<sup>74</sup> G. Grossman, "The Second Economy in the USSR", *Problems of Communism*, vol.16, no.5, (1977), pp.25-40.

<sup>75</sup> The backgrounds of which go back to the *Vory v Zakone* ('Thieves in Law'). See: Stephen Handelman, *Comrade Criminal: Russia's New Mafia* (New Haven and London: Yale University Press, 1995)

established by the criminal groups themselves; also, the basis of extortion is widened. After the political monopoly of the Communist Party was abolished in 1990, "the dictates of economic power took over from that of political power"<sup>77</sup>. The officials engaged in active partnership with the criminal groups, rather than turning a blind eye on them. When the 1991 reforms initiated, the entrepreneurial base of Russia was already the criminal organizations.<sup>78</sup> Russian capitalists then operate in a gray zone: the state administration expected to regulate the economy is still after economic returns, and investors with shadow economy backgrounds dominate the business scene. Through the criminalization of the economy as such, economic policy is brought in line with the economic interests of criminal groups.<sup>79</sup> The range of extortion activities suggest that the coercive power of the state is entirely 'privatized'.<sup>80</sup> This situation is maybe what criminal state may mean.<sup>81</sup>

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<sup>76</sup> Patricia Rawlinson, 'Russian Organized Crime: A Brief History', in: Phil Williams (ed.), *Russian Organized Crime: The New Threat?* (London: Frank Cass, 2000), pp.44-45.

<sup>77</sup> Ibid., p.49.

<sup>78</sup> Ibid., pp.45-50.

<sup>79</sup> Yuriy A. Voronin, 'The Emerging Criminal State: Economic and Political Aspects of Organized Crime in Russia', in: Williams, pp.53-62.

Seen from the society, this "aggressive particularism" gave rise to 'protection' of various kinds.<sup>82</sup> This situation, except from the winners from the transformation, (in the context of Kazakhstan) can be named as *bardak* (chaos), denoting fear, insecurity and lack of trust at the face of newly introduced market powers, and an underlying order sustained by reciprocal relations, either aimed at sustaining the livelihood through mutual help, or racketeering. The basic components of *bardak* are accumulation of private wealth in a few hands (through privatizations, particularist credit allocation, and widespread bribery); widespread violence (associated both with the mafia and street gangs), and a dominant feeling of loss (due to decreasing welfare, disappearing job security, and vanishing of an egalitarian society).<sup>83</sup>

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<sup>80</sup> Joseph Serio, 'Threats to the Foreign Business Community in Moscow', in: Williams, pp.96-105.

<sup>81</sup> Rawlinson calls it the proactive phase of organized criminality, where organized crime groups gain control of the legitimate economic structures, including law enforcement and manipulate politics (Rawlinson, 'Russian Organized Crime', p.31), and Shelley, the form authoritarianism now acquired in the Russian context (Louise I. Shelley, 'Post-Soviet Organized Crime: A New Form of Authoritarianism, in: Williams, p.123).

<sup>82</sup> Caroline Humphrey, "'Icebergs' Barter, and the Mafia in Provincial Russia", *Anthropology Today*, Vol. 7, No. 2 (1991), pp. 8-13.

<sup>83</sup> Joma Nazpary, *Sovyet Sonrası Karmaşa: Kazakistan'da Şiddet ve Mülksüzleşme* (translated by Selda Somuncuoğlu) (Istanbul: İletişim, 2003).

## CHAPTER III

### CONCEPTUAL FRAMEWORK

In search of making sense of the mafia both as an activity and as a metaphor, the conceptual framework to this end is Polanyi-inspired<sup>1</sup> -that is, tries to build on Polanyian concepts, especially "embeddedness", or "the place of economy in society".

To the aims of this dissertation, Polanyi's holistic view of the economy is an important starting point to discuss that:

- i) the economy can be seen beyond the state-market duality, and reciprocity relations also play a certain role in an economy,
- ii) the market economy is a special construct,
- iii) the space for and shape of reciprocity relations depend on the role of the state in constituting a regulatory and redistributive scheme in terms of the

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<sup>1</sup> Sally Randles, "Issues for a Neo-Polanyian Research Agenda in Economic Sociology", *International Review of Sociology*, Vol.13, No.2 (2003), p.410.

"place of economy in societies", especially explicit in informality and economic transformation,  
iv) and, underline the criminogenesis of the market economy.

Two Meanings of Economic, the 'Place of Economy in Society', and the Market Economy

Polanyi argues (following Aristotle) that man is a social, not an economic animal<sup>2</sup>; the reason men get involved in exchange relationships is not to maximize their self-interest but to maintain his/her social ties.<sup>3</sup> As he puts it: "man's economy is, as a rule, submerged in his social relations."<sup>4</sup> In other words, the economy is embedded in economic and non-economic institutions -that is, kinship organizations, political and religious systems.<sup>5</sup>

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<sup>2</sup> Karl Polanyi, 'Our Obsolete Market Mentality', in: Karl Polanyi, *Primitive, Archaic and Modern Economies* (edited by George Dalton), (Boston: Beacon Press, 1968), p.65.

<sup>3</sup> Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Time* (Boston: Beacon Press, 1957), pp. 47-49.

<sup>4</sup> Polanyi, 'Our Obsolete Market Mentality', p.65.

Thinking the human economy solely in terms of self-regulating markets and the identification of "economic phenomena" with "market phenomena" is a fallacy.<sup>6</sup> As he puts it, "to narrow the sphere of the genus *economic* specifically to market phenomena is to eliminate the greatest part of man's history from the scene. On the other hand, to stretch the concept of the market until it embraces all economic phenomena is artificially to invest all things economic with the peculiar characteristics that accompany the phenomenon of the market."<sup>7</sup> Market economy -the self-regulated system of markets, an economy directed only by market prices- and the market society it brought forth -for, a market economy can only function in a market society<sup>8</sup>- is not universal, but rather the peculiarity of the nineteenth century Europe, and it is a utopia destined to fail.<sup>9</sup> Although the fulfillment of the

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<sup>5</sup> Karl Polanyi, 'The Economy Embedded in Society', in: *The Livelihood of Man*, (edited by Harry W. Pearson), (New York, San Francisco and London: Academic Press, 1977), p.47.

<sup>6</sup> Karl Polanyi, 'The Economistic Fallacy', in: *The Livelihood of Man*, p.6.

<sup>7</sup> Ibid., p.6.

<sup>8</sup> Polanyi, *The Great Transformation*, p.57.

<sup>9</sup> In the opening sentence of *The Great Transformation*, he writes: "Nineteenth century civilization has collapsed." (p.3) As he put it, the nineteenth century civilization rested on four institutions (two economic and two political, or two national and two international): the balance-of-power system, the international gold standard, the self-regulating market, and the liberal state

physical needs is a part of the human condition, "no society can exist that does not possess some kind of substantive economy."<sup>10</sup>

In other words, there are two different meanings of economic, and economic activity can not be seen only in its formal meaning, as a 'rational' way of relating 'insufficient' means to ends.<sup>11</sup> In its substantive meaning, following Karl Polanyi, economy is "an instituted process of interaction between men and his environment, which results in a continuous supply of want satisfying means."<sup>12</sup> Process points out to motion, both in terms of place (production), and in terms of changing 'hands' (transaction and dispositions)<sup>13</sup>; and "the instituting of the economic process vests that process with unity and stability; it produces a structure with a definite function in society; it shifts the place of the process in society; thus adding significance to its

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(Polanyi, *The Great Transformation*, p.3). The collapse gave way to fascism, Stalinism and the Second World War.

<sup>10</sup> Polanyi, 'The Economistic Fallacy', p.6.

<sup>11</sup> Karl Polanyi, 'The Economy as an Instituted Process', in: Karl Polanyi, Conrad M. Arensberg and Harry W. Pearson, *Trade and Market in Early Empires: Economies in History and Theory*, (New York: The Free Press, 1957), p. 243.

<sup>12</sup> Ibid., p.248.

<sup>13</sup> Ibid., p.248.

history; it centers interest on values, motives and policy."<sup>14</sup>

In the substantivist sense, the economic activity (that is, production and distribution) and hence "the place of economy" in all societies is governed by three principles of behavior and three consequent institutional patterns, existing with relative weights. These are the pairs of exchange-market, reciprocity-symmetry<sup>15</sup>, and redistribution-centricity<sup>16</sup>.<sup>17</sup> Among these pairs, "several subordinate forms may be present alongside the dominant one, which may itself reoccur after a temporary eclipse."<sup>18</sup> For example, 'reciprocity', which was given a subordinate role in the market economy, could be reintroduced in a time of emergency.<sup>19</sup> These principles

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<sup>14</sup> Ibid., pp.249-250.

<sup>15</sup> Kinship operates through, and individual relations and give-and-take of goods and services are paired out over, symmetry. (Polanyi, *The Great Transformation*, pp. 47-48).

<sup>16</sup> State-like structures operate through, and the collection, storage, and redistribution of goods and services are assured by, centricity (Ibid., p.49).

<sup>17</sup> Ibid., pp. 44-46.

<sup>18</sup> Polanyi, 'Forms of Integration and Supporting Structures', in: *The Livelihood of Man*, p.42.

<sup>19</sup> Ibid., pp.42-43.



of behavior<sup>20</sup> are "more than simple aggregates of corresponding forms of behavior on the personal level"<sup>21</sup> and their integrative effect is "conditioned by the presence of definite institutional arrangements such as symmetrical organizations, central points and market systems, respectively."<sup>22</sup> From a different angle, it is not the personal behaviors that produce such structures, yet "the societal effects of individual behavior depend on the definite institutional conditions."<sup>23</sup>

The rise of the exchange-market pair in the nineteenth century Europe is an exception to the general working of the system. This rise is not a natural outcome of the spreading out of markets, nor the invention of money, but a result of the highly artificial and administered stimulants<sup>24</sup>, yet it transformed the human society. For such a system to work, markets should be self-regulated, should be disembedded from the social relations, and the production process should be organized

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<sup>20</sup> He refers to reciprocity, redistribution and exchange as 'patterns of integration' in 'The Economy as an Instituted Process' (Polanyi, 'The Economy as an Instituted Process').

<sup>21</sup> Ibid., p.251.

<sup>22</sup> Ibid..

<sup>23</sup> Ibid..

<sup>24</sup> Polanyi, *The Great Transformation*, pp. 57-58.

in terms of buying and selling activities.<sup>25</sup> The crucial step is the commodification of land, labor and money as if they were produced for sale. The commodification, or commodity fiction of land, labor and money, that is, leaving the fate of man, nature and purchasing power to the mercy of the price-making markets, came with the 'delusion' of economic determinism -the idea that "incentives on which everyday life is organized spring from "material" motives. ... As regards society, ... its institutions were "determined" by the economic system."<sup>26</sup> (Fear of ) hunger or (lure of) gain became the sole incentives for the person to participate in economic life; these incentives were the sole instruments of material welfare and these incentives would keep the mechanism running.<sup>27</sup>

Along with the economic determinism, the society was seen as comprising of atomistic individuals acting in accordance to the rules of economic rationalism. This meant placing the human existence to frame of the reference of the market.<sup>28</sup> Economic action was "natural"

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<sup>25</sup> Ibid., pp.68-69 and 73.

<sup>26</sup> Polanyi, 'Our Obsolete Market Mentality', p.61.

<sup>27</sup> Ibid., pp.62-63.

<sup>28</sup> Polanyi, 'The Economistic Fallacy', pp.12-14.

to men and only "material" motives were real.<sup>29</sup> Justice and law was understood with respect to markets: "A man's property, his revenue and income, the price of his wares were now "just" only if they were formed in the market; and as to law, no law really mattered except that which referred to property and contract."<sup>30</sup> Under these conditions, "instead of economic system being embedded in social relationships, these relationships were now embedded in the economic system."<sup>31</sup> The political and economic spheres in the society necessarily went through a split<sup>32</sup> and "all along the line human society had become an accessory of the economic system"<sup>33</sup>.

Following Polanyi, leaving the fate of human beings, their natural environment and the amount and use of their purchasing power to the mercy of the market mechanism would result in the demolition of the society. The cause of demolition was the disintegration of the cultural

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<sup>29</sup> Ibid., pp.14-15.

<sup>30</sup> Ibid., p.16.

<sup>31</sup> Polanyi, 'Our Obsolete Market Mentality', p.70.

<sup>32</sup> Polanyi, *The Great Transformation*, p.71.

<sup>33</sup> Ibid., p.75.

environment rather than economic exploitation.<sup>34</sup> In his own words:

"In disposing on man's labor power the system would, incidentally, dispose of the physical, psychological, and moral entity "man" attached to that tag. Robbed of the protective covering of cultural institutions, human beings would perish from the effects of social exposure; they would die as victims of acute social dislocation through vice, perversion, crime, and starvation. Nature would be reduced to its elements, neighborhoods and landscapes defiled, rivers polluted, military safely jeopardized, the power to produce food and raw materials destroyed. Finally, the market administration of purchasing power would periodically liquidate business enterprise, for shortages and surfeits of money would prove as disastrous to business as floods and droughts in primitive society."<sup>35</sup>

Faced to the dangers the inescapable inclusion of the fictitious commodities (namely, land, labor and money) into the buying and selling activities might have posed to the society, nineteenth century history experienced a "double movement". On the one hand 'exchange' relations and 'market' as a self-regulated pattern were spread, on the other hand, restrictions were brought on the fictitious commodities.<sup>36</sup> In other words, "economic liberalism was the organizing principle of a

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<sup>34</sup> Ibid., p.157.

<sup>35</sup> Ibid., p.73.

<sup>36</sup> Ibid., p.76.

society engaged in creating a market system,"<sup>37</sup> yet, "there was nothing natural about *laissez-faire*; free markets could never have come into being merely by allowing things to take their course."<sup>38</sup> That is, "the road to free market was opened and kept open by an enormous increase in continuous, centrally organized and controlled interventionism"<sup>39</sup> of the nation-state. In the formulation of Polanyi, the state could be seen as the crystallization of the contradictory impulses of the market society. It is necessarily "both a universal, representing the interests of society against the market, and a class state, pursuing the agendas of the capitalist state, since the reproduction of capitalist relations was necessary to preserve society."<sup>40</sup>

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<sup>37</sup> Ibid., p.135.

<sup>38</sup> Ibid., p.139.

<sup>39</sup> Ibid., p.140.

<sup>40</sup> Fred Block and Margaret Somers, 'Beyond the Economistic Fallacy: The Holistic Social Science of Karl Polanyi', in: Theda Skocpol (ed.), *Vision and Method in Historical Sociology* (Cambridge: Cambridge University Press, 1984), p.68.

## The Scope of Reciprocity Relations

"Embeddedness", or "the place of economy in society" has two different but interrelated contexts: i) the economy in the substantivist and formal senses have two different normative attributes. Disembedding the economy from the social whole, brings forth its own worldview, and creates a market society, which leads to its own demolition, unless translated to a legal framework that guarantees the livelihood of man; ii) the economic activity in general exist and can be understood as the interaction between the three societal modes of institutional integration, reciprocity, redistribution and exchange.<sup>41</sup>

In the first context, in line with flexible production<sup>42</sup>, the notion of "embeddedness" is seen as the conceptual center of a 'moral economic' challenge to the market economy, which becomes, above all, a means of underlining the moral superiority of the communal values and reciprocal exchange.<sup>43</sup> What is implied is the

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<sup>41</sup> H. Neşe Özgen, "Ekonominin Sosyolojiyle Yeni Valsi: Yeni Ekonomik Sosyoloji", paper presented at ERC/METU Conference on Economics, September 18-20, 1997.

<sup>42</sup> Ayşe Buğra, "Labour, Capital, and Religion: Harmony and Conflict among the Constituency of Political Islam in Turkey", *Middle Eastern Studies*, Vol. 38, No. 2 (2002), pp. 191-192.

importance of the role of reciprocity relations, in the sense that relations based on family, kinship, neighbourhood, friendship and the like, are those that are not based on the maximization of individual gain or profit, and these relations based on solidarity, loyalty and trust have a potential for generating an egalitarian response to the shortcomings or harms of the market economy. Returning to E. P. Thompson, the term 'moral economy' is to be used not to discuss whether pre-market societies or non-market forms of exchange is more 'moral'<sup>44</sup> but to underline an important aspect of the mechanisms of response to the dangers of the free market. As he puts it, the popular responses were not simple and rational responses to economic stimuli, but were actions

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<sup>43</sup> William James Booth, "A Note on the Idea of the Moral Economy", *The American Political Science Review*, Vol. 87, No. 4 (December 1993), pp. 949-954; William James Booth, "On the Idea of the Moral Economy", *The American Political Science Review*, Vol. 88, No. 3 (September 1994), pp. 653-667.

<sup>44</sup> This criticism is directed also to E. P. Thompson both ways. (see: A. W. Coats, "Contrary Moralities: Plebs, Paternalists and Political Economists", *Past and Present*, No. 54 (February 1972), pp. 130-133; Elisabeth Fox-Genovese, "Many Faces of a Moral Economy: A Contribution to a Debate", *Past and Present*, No. 58 (February 1973), pp. 161-168.) In response, he underlines that his point of reference is not to claim that the classical political economic approach to the market is immoral, nor does he favor the paternalists. (E. P. Thompson, 'Moral Economy Reviewed', in: E. P. Thompson, *Customs in Common* (New York: The New Press, 1991), pp. 268-272.) His point is clear: the new political economy was not immoral or unconcerned for the public good, but was "disinfested of intrusive moral imperatives. The old pamphleteers were moralists first and economists second. In the new economic theory questions as to the moral polity of marketing do not enter, unless as preamble and peroration." (E. P. Thompson, 'The Moral Economy of the English Crowd in the Eighteenth Century', *Past and Present*, No. 50 (1971), reprinted in: E. P. Thompson, *Customs in Common*, p. 202.)

of survival legitimized within a different set of values.<sup>45</sup> He accepts that the term could be taken more loosely. Citing William Reddy, who defines moral economy as "a set of values and moral standards that were violated by technical and commercial change"<sup>46</sup> and claims that "something like a moral economy is bound to surface anywhere that industrial capitalism is bound to surface"<sup>47</sup>, Thompson underlines that the notion of 'moral economy' can also be used as an "anti-capitalist critique continually regenerating itself"<sup>48</sup>. Yet, he uses the term in discussing the food riots of the eighteenth century England and argues that:

"It is possible to detect in almost every eighteenth century crowd action some legitimizing notion. By the notion of legitimation I mean that the men and women in the crowd were informed by the belief that they were defending traditional rights or customs; and, in general, that they were supported by the wider consensus of the community. (...) It is of course true that riots were triggered off by soaring prices, by malpractices among dealers, or by hunger.

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<sup>45</sup> He says in *The Making of the English Working Class*, he referred to food riots as being "legitimized by the assumptions of an older moral economy, which taught the immorality of ... profiteering upon the necessities of the people." (Thompson, 'The Moral Economy Reviewed', p.337.)

<sup>46</sup> William Reddy, *The Rise of Market Culture* (Cambridge, Mass., 1984), pp. 331-334, cited in: *Ibid.*, p.340.

<sup>47</sup> Reddy, *The Rise of Market Culture*, pp. 331-334, cited in: *Ibid.*, pp. 340-341.

<sup>48</sup> *Ibid.*, p.341.



But these grievances operated within a popular consensus as to what were legitimate and what were illegitimate practices in marketing, milling, banking, etc. This in its turn was grounded upon a consistent traditional view of social norms and obligations, of the proper economic functions of several parties within the community, which, taken together, can be said to constitute the moral economy of the poor. An outrage to these moral assumptions, quite as much as actual deprivation, was the usual occasion for direct action."<sup>49</sup>

More crucial to this discussion of moral economy is that in the course of the nineteenth century, the moral economy of the poor was reflected in the legal definitions of rights that protect livelihood of man.<sup>50</sup>

As for the second context, repeating it once again, following Polanyi, how economies are instituted is about "the way in which the economy acquires unity and stability, that is the interdependence and recurrence of its parts. This is achieved through the combination of a very few patterns which may be called forms of integration."<sup>51</sup> As the forms of integration, reciprocity stands for "movements between correlative points of

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<sup>49</sup> Thompson, 'The Moral Economy of the English Crowd in the Eighteenth Century', p.188.

<sup>50</sup> Ayşe Buğra, 'Bir Toplumsal Dönüşümü Anlama Çabalarına Katkı: Bugün Türkiye'de E.P. Thompson'ı Okumak', in: Ahmet H. Köse, Fikret Şenses and Erinç Yeldan (ed.s), *İktisat Üzerine Yazılar I: Küresel Düzen: Birikim, Devlet, Sınıflar* (Istanbul: İletişim, 2003), pp.191-218.

<sup>51</sup> Polanyi, 'The Economy as an Instituted Process', p.250.

symmetrical groupings; redistribution designates appropriational movements towards a center and out of it again; exchange refers here to vice-versa movements taking place between "hands" under a market-system."<sup>52</sup> As extension of the Polanyian discussion of "embeddedness", these three forms of integration or principles of behavior, can also understood as synonymous to three types of 'economic exchange'. It is then argued that, all economies, including market economies are inescapably embedded and interdependent to the social-structural and cultural-structural elements of the society. The organization of economic life can not be reduced into impersonal market exchange and its maximization logic, as the three modes of exchange -those based on reciprocity relations, redistributive schemes of the state and impersonal market relations- coexist.<sup>53</sup> What is meant here with reference to Polanyi is not Granovetter's analysis common in New Economic Sociology<sup>54</sup> that all

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<sup>52</sup> Ibid., p.250.

<sup>53</sup> Bernard Barber, "All Economies are "Embedded": The Career of a Concept, and Beyond", *Social Research*, Vol. 62, No. 2 (Summer 1995), pp. 387-413. Mingione's concept of 'systems of social integration' is a similar reading (Enzo Mingione, "Life Strategies and Social Economies in the Postfordist Age", *International Journal of Urban and Regional Research*, Vol. 18, No. 1 (1994), pp. 24-45).

<sup>54</sup> For a criticism of New Economic Sociology, see: H. Neşe Özgen, "Ekonominin Sosyolojiyle Yeni Valsi: Yeni Ekonomik Sosyoloji".

economic action is embedded in networks of interpersonal relations.<sup>55</sup> For the Polanyian conceptualization refers to the organization of the economic system as a whole in terms of the relations between the economic and non-economic parts, not the patterns of relations between individuals at the micro level.<sup>56</sup>

"Embeddedness" does not always have a positive connotation, and reciprocity relations may not always mean equality and morality. It may serve as a means to mask the relations of domination hidden within, and also mask the issues of distribution or inequality, which are the basic problems of the economy.<sup>57</sup> Following Sahlins, reciprocity is a "whole class of exchanges, a continuum of forms"<sup>58</sup> which could be defined through two extremes

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<sup>55</sup> Mark Granovetter, "Economic Action and Social Structure: The Problem of Embeddedness", *American Journal of Sociology*, Vol. 91, No.3 (November 1985), pp. 481-510.

<sup>56</sup> Michele Cangiani, "The Forgotten Institution", *International Review of Sociology*, Vol. 13, No. 2 (2003), pp. 333-334. See also: Barber, "All Economies are "Embedded": The Career of a Concept, and Beyond", pp. 406-407. In the same vein, for an evaluation and criticism of economistic understanding of reciprocity relations, see: Fikret Adaman and Yahya M. Madra, "Theorizing the "Third Sphere": A Critique of the Persistence of the "Economistic Fallacy"", *Journal of Economic Issues*, Vol.36, No.4 (2002), pp. 1045-1078.

<sup>57</sup> Andrew Sayer, 'Markets, Embeddedness and Trust: Problems of Polysemy and Idealism', published by the Department of Sociology, Lancaster University at: <http://www.comp.lancs.ac.uk/sociology/soc047as.html>, 2002.

<sup>58</sup> Marshall Sahlins, *Stone-Age Economics* (Chicago: Aldine Publishing Company, 1972), p.191.

and a mid-point.<sup>59</sup> One of its ends is 'generalized reciprocity, the solidarity extreme', referring to "transactions that are putatively altruistic, transactions on the line of assistance given and, if possible and necessary, assistance returned"<sup>60</sup>, like sharing, hospitality, free gift, help, *noblesse oblige*. The midpoint is 'balanced reciprocity', referring to direct exchange, where "in precise balance, the reciprocation is the customary equivalent of the thing received and is without delay"<sup>61</sup>, like buying-selling, gift-exchange. It is less personal and more economic than 'generalized reciprocity'. The other end is 'negative reciprocity, the unsociable extreme', "the attempt to get something for nothing with impunity, the several forms of appropriation, transactions opened and conducted toward net utilitarian advantage"<sup>62</sup>, such like gambling or theft. It is the most impersonal type of exchange in the

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<sup>59</sup> Adding Sahlin's reciprocity spectrum to Polanyian analysis, for both to differentiating between positive and negative reciprocity and for relating reciprocity to redistribution is introduced by Ayşe Buğra (See especially: Ayşe Buğra, "The Immoral Economy of Housing in Turkey", *International Journal of Urban and Regional Research*, Vol. 22, No. 2 (1998), pp. 305-306; Ayşe Buğra, 'Modern Toplumlarda Karşılıklı İlişkilerinin Ahlaki İçerimleri', in: Ayşe Buğra, *Devlet-Piyasa Karşıtlığının Ötesinde: İhtiyaçlar ve Tüketim Üzerine Yazılar* (translated by Bahadır Sina Şener) (Istanbul: İletişim, 2000, pp. 134-135.)

<sup>60</sup> Ibid., pp.193-194.

<sup>61</sup> Ibid., p.194.

<sup>62</sup> Ibid., p.195.

spectrum, and the most economic, where the participants try to maximize their utilities at the expense of the other.<sup>63</sup>

The form the reciprocity relations take depends on social distance, that is, how the 'other' is defined in the exchange. As the distance increases, the range of what is given could decrease, compared to what is expected in return, and reciprocity relations move close to the negative extreme.<sup>64</sup> The same logic works for the 'morality' of transactions; relations with the 'enemy' may not necessarily follow the prevailing morality, yet may remain unpunished.<sup>65</sup> In other words, both solidarity shown and the morality of transactions depend on how 'close' the second party is. The form the reciprocity relations take also change with the power structure -that is, how the privileges and responsibilities are defined in the rank order.<sup>66</sup> Redistribution, in this sense, can also be seen as a system of reciprocities<sup>67</sup>; generalized

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<sup>63</sup> Ibid., pp.193-195.

<sup>64</sup> Ibid., pp.196-197.

<sup>65</sup> Ibid., pp.197-199.

<sup>66</sup> Sahlin discusses it in terms of 'kinship rank' (Ibid., pp.204-210).

<sup>67</sup> Yet, there are differences. Redistribution is the complement of social unity, reciprocity, social duality. Where reciprocity are

reciprocity, for example, once centralized and formalized, turns into redistribution. It also means that, the state may not be a centralized and formalized form of reciprocity, but remain to be particularist in nature, determining privileges and responsibilities.<sup>68</sup>

### Informal Economy as a Manifestation of Reciprocity Relations

The role and form the reciprocity relations take and the way they surface both in relation to redistribution and exchange, can also be followed through "informal economy" discussions. The term refers to economic activities that are 'other', that is "the relations that do not conform with the rules set down by the state in its role as the overseer of the economy"<sup>69</sup> and also includes the activities for which the rules do not exist.<sup>70</sup> At the one end, the term is discussed in

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'between' relations, redistribution is a 'within' relation. Redistribution stipulates a social center, reciprocity, two sides and two distinct economic interests. (Ibid., p. 188).

<sup>68</sup> Ayşe Buğra, "Bir Krize ve Bir Ahlaki Ekonominin Çöküşüne Dair", *Birikim*, No. 145 (2001), p.51.

<sup>69</sup> Philip Mattera, *Off the Books: The Rise of the Underground Economy* (New York: St. Martin's Press, 1985), p.1.

relation to the income-earning processes, cutting across the social structure, which are "unregulated by the institutions of the society, in a legal and social environment in which similar activities are regulated."<sup>71</sup> At the other end, the term is seen as corresponding to an exchange relationship of goods and services, a response within the formal system to scarcity concerning the goods and services that were not freely available in the formal system, such like "rationed or restricted goods, access to decision makers, influence on administrative decisions, or more generally preferential treatment at the hands of the modern bureaucracy."<sup>72</sup> It was also seen as a problem of measurement, and included activities that evade "public monitoring or entry into the general accounts as well as any obligatory or reciprocal corporate assessment (that is tax)."<sup>73</sup> The term includes

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<sup>70</sup> Leen Boer, "(In)formalization: The Forces Beyond", *International Journal of Urban and Regional Research*, vol.18, no.3 (1990), p.411.

<sup>71</sup> Alejandro Portes and Manuel Castells, 'World Underneath: The Origins, Dynamics, and Effects of the Informal Economy', in: Alejandro Portes, Manuel Castells, and Lauren A. Benton (ed.s), *The Informal Economy: Studies in Advanced and Less Developed Countries* (Baltimore: The Johns Hopkins University Press, 1989), p. 12.

<sup>72</sup> Larissa Adler Lomnitz, "Informal Exchange Networks in Formal Systems", *American Anthropologist*, no.90 (1988), p.43.

<sup>73</sup> M. Estellie Smith, 'The Informal Economy', in: Stuart Plattner (ed.), *Economic Anthropology* (Stanford: Stanford University Press, 1989), p.294.

a wide range of activities<sup>74</sup> from unpaid domestic work, employment without contract, informal self-employment to drug trafficking and fraud.<sup>75</sup>

Discussions of the informal economy came into the agenda, in the 1970s, with the technological change and the crisis of the welfare state in Europe and North America, the 'dual economy' discussions for the Third World<sup>76</sup>, and the analyses of the 'second economy'<sup>77</sup> in the

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<sup>74</sup> Although the taxonomies are constructed based on the structural position and the interest of the researcher, the category 'informal' is frequently defined under the umbrella term 'underground', within which it is distinguished from illegal or criminal. For example, for Feige, the umbrella term 'underground' consists of illegal, unreported, unrecorded and informal economies, differentiated by the income generation process: where informal economy consists of incomes generated by economic agents operating informally, in the illegal economy, the generation of income involves economic activities in violation of legal statutes (Edgar L. Feige, "Defining and Estimating Underground and Informal Economies: The New Institutional Economics Approach", *World Development*, vol.18, no.7 (1990), pp.991-992). Portes, putting forward that it is the process of production and distribution that could serve as a basis of differentiation, rather than the character of the final product as in Feige, states that the criminal could be distinguished from the informal. In the former, the final product is illicit, with licit or illicit production and distribution processes, where in the latter, production and distribution activities is illicit, ending up with a licit product (Alejandro Portes, 'The Informal Economy and Its Paradoxes', in N. J. Smelser and G. R. Swedberg (ed.s), *The Handbook of Economic Sociology* (Princeton N.J.: Princeton University Press and Sage Foundation, 1994), p.482).

<sup>75</sup> For a spectrum of informal activities, see: Boer, "(In)formalization: The Forces Beyond", p.410.

<sup>76</sup> See for example, Smith, 'The Informal Economy', pp. 297-303; Portes, 'The Informal Economy and Its Paradoxes'.

<sup>77</sup> See for example, Gregory Grossman, "The 'Second Economy' of the USSR", *Problems of Communism*, 26 (1978), pp. 25-40; Gregory Grossman, 'Informal Personal Incomes and Outlays of the Soviet Urban Population', in: Alejandro Pores, Manuel Castells, and Lauren A. Benton (ed.s), *The Informal Economy: Studies in Advanced and Less Developed Countries*, pp.150-172.



Soviet world, and acquired a new meaning and a vaster domain in the globalization process as a support structure with the emphasis on the retreat of the state and spread of the markets. It was seen both in a positive and a negative way. The positive view underlined the support mechanisms and opportunities informal economy created for those that are left behind the market relations and welfare schemes of the state. The negativities were attributed to the tax evasion side of informal activities, and the burdens this created for the responsible citizens.<sup>78</sup> Yet, the common point is that activities in the informal economies are embedded transactions, that is reciprocity relations that operate on a socio-cultural logic that is different from economic rationality and the formal ideology of the state.<sup>79</sup>

In terms of a broader social whole, where a social system is more "bureaucratically formalized, regulated, planned and yet unable to fully satisfy social requirements, the more it tends to create informal mechanisms that escape the control of the system"<sup>80</sup>. The paradox is that, "order creates disorder. The formal

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<sup>78</sup> See for example, Smith, 'The Informal Economy', p.299; Portes, 'The Informal Economy and Its Paradoxes', p.427.

<sup>79</sup> Lomnitz, "Informal Exchange Networks in Formal Systems", p.43.

economy creates its own informality"<sup>81</sup>. In other words, both in terms of the market and redistributive relations, informal economy serves as a last resort to be turned to.<sup>82</sup> And, the logic of reciprocity relations in the informal economy is different but not distinct from the formal logic of the market and the formalized and centralized redistributive schemes of the state. It emerges from and is constantly transformed by the wider political economy. It has a dual existence with respect to the formal economy: it is autonomous, but at the same time dependent.<sup>83</sup>

One dimension of these relations is how informal is defined by the formal outlines of the market set by the state. At the first look, what gives certain types of economic activity the name informal is the legal outlines of the formal economy itself. In doing so, formal economy also defines both the areas for those who are dissatisfied with the existing system, and the place for reciprocity relations as a safety net for those who are

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<sup>80</sup> Ibid., p.43.

<sup>81</sup> Ibid., p.54.

<sup>82</sup> Smith, 'The Informal Economy', p.309.

<sup>83</sup> Stuart Henry, "The Political Economy of Informal Economies", *ANNALS of the American Academy of Political and Social Science*, no.493 (September 1987), pp.137-153.

unable to survive the conditions of the formal economy.<sup>84</sup>  
The border between formal and informal is a shifting  
one<sup>85</sup>, determined by the pressures of the interest groups  
within the formal economy searching for closing off  
opportunities to outsiders.<sup>86</sup>

The informal activities in this sense has a 'moral  
economic' dimension, as they may be seen as a symbolic-  
resistance to the "counter-cultural behavior on the part  
of those controlling the government or economic sector"<sup>87</sup>  
and also an outcome of "the accepted patterns (read  
"traditions") and normative thinking of individuals who  
simply do what has always been done, unaware that some or  
all of their activities have come under censure."<sup>88</sup>

Also, the formal economy supports informal  
economies, as they contribute to economic growth.  
Informal income opportunities in the Third World serve to  
the needs of the market economy at large, informal field  
is a test bed for innovations and it is a means for  
escaping the bureaucratic restrictions. Working off-the-

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<sup>84</sup> Henry, "The Political Economy of Informal Economies",  
pp.141-143; Smith, 'The Informal Economy', p.308.

<sup>85</sup> Boer, "(In)formalization: The Forces Beyond", p.411.

<sup>86</sup> Ibid., p.415.

<sup>87</sup> Smith, 'The Informal Economy', p.312.

books is even celebrated as indicative of the spirit of capitalism.<sup>89</sup> As informal economic activities found to be destructive or threatening to the working of the formal economy, they are controlled, undermined and/or destroyed.<sup>90</sup> In a less direct manner, this is done by a politics of labelling, which paradoxically would attract many more participants by informing them of its existence.<sup>91</sup> Following Boer, the informal activities can be divided into four categories: those that serve to the needs of the formal system, which can be stimulated and formalized; those that are harmful to the formal system, and be suppressed; those that are not particularly harmful, and be tolerated; and those that occur so often that they are almost impossible to be suppressed.<sup>92</sup>

The informal structures themselves are transformed by the formal economy, as the principle of cooptation operates, when the informal activity has something that is of use to the formal economy.<sup>93</sup> In sum, informal

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<sup>88</sup> Ibid., p.312.

<sup>89</sup> Henry, "The Political Economy of Informal Economies", pp.145-148.

<sup>90</sup> Ibid., p.148

<sup>91</sup> Ibid., pp.149-150.

<sup>92</sup> Boer, "(In)formalization: The Forces Beyond", p.418.

economy emerges from the contradictions of the market economy, but it is hardly an opposition. It is more a tool for "rounding the corners of market exchange."<sup>94</sup>

The second dimension is concerned with the form the reciprocity relations take with respect to the redistributive structure of the state. This can be thought of with respect to the Sahlins's spectrum of reciprocity. Within the formal system, "informal modes of exchange grow in the interstices of the formal system, thrive on its inefficiencies, and tend to perpetuate them by compensating for the shortcomings and by generating factions and interest groups within the system."<sup>95</sup> Informal modes of exchange are governed by the rules of sociability -that is, culturally defined rules of obligation between partners, the relative degree of "inappropriateness" of the activity, whether the activity aims at profit making or survival, the degree of repression, and the tolerance of the society towards breaking bureaucratic rules.<sup>96</sup> The rules of sociability

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<sup>93</sup> Stuart Henry refers to an extreme version of this as the Geiger's Law: "when the counter culture develops something of value, the establishment rips it off and sells it back" (Henry, "The Political Economy of Informal Economies", p.150).

<sup>94</sup> Ibid., p.152.

<sup>95</sup> Lomnitz, "Informal Exchange Networks in Formal Systems", p.43.

<sup>96</sup> Ibid., p.43 and 54.

may vary from culture to culture, but in all, a collective security device against threats from the formal system is ensured via 'trust'.<sup>97</sup>

Generating factions and groups within the formal system -that is, within the formal redistribution pattern of the state- the degree of formalization, centralization, extensiveness of the redistributive schemes of the state, and whether the state treats its citizens as equals within the regulatory and redistributive patterns, determine the space left to and the form of the reciprocity relations, as informal networks, reciprocity relations 'mimic the existing power structure'<sup>98</sup>. They may be symmetrical, or asymmetrical as in patron-client relations.<sup>99</sup> The degree of "inappropriateness" of the activity, whether the activity aims at profit making or survival, and the tolerance towards breaking bureaucratic rules can also vary within

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<sup>97</sup> Lomnitz, "Informal Exchange Networks in Formal Systems", p.52. Of course, trust is not only "correct expectations about the actions of other people that have a bearing on one's own choice of action when that action must be chosen before one can monitor the actions of those others" (Partha Dasgupta, 'Trust as a Commodity', in: Diego Gambetta (ed.), *Trust: Making and Breaking Cooperative Relations*, p.51). Within the context of this dissertation, it parallels Luhmann's differentiation between trust and confidence (Niklas Luhmann, 'Familiarity, Confidence and Trust: Problems and Alternatives', in: Gambetta, pp.94-107) and Pagden's discussion of *Fede Pubblica* and *Fede Privata* (Anthony Pagden, 'The Destruction of Trust and its Economic Consequences in the Case of Eighteenth-century Naples', in: Gambetta, pp.127-141).

<sup>98</sup> Lomnitz, "Informal Exchange Networks in Formal Systems", p.54.

the society in terms the role of the state. The activities, which seems like aiming at the survival of the group, is likely to constitute a path to be reproduced at the face of the selective intervention of the state, and swing to a negative extreme.<sup>100</sup> Economic transformation and crises, would trigger this swing, unless regulated and taken into a formal and extensive redistributive scheme. The gray field of informal economy, turns into outright black.<sup>101</sup>

#### The Role of the State and Economic Transformation

In terms of both the Polanyian perspective on the market economy -that is, the idea that market economy is created through state intervention- and in terms of the form and extent of sustained reciprocity relations in terms of the informal economy, the role of the state -and in this sense, the modern state and developmental state,

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<sup>99</sup> Lomnitz, "Informal Exchange Networks in Formal Systems".

<sup>100</sup> Ayşe Buğra, 'Modern Toplumlarda Karşılıklılık İlişkilerinin Siyasi ve Ahlaki İçerimleri', in: Ayşe Buğra, *Devlet-Piyasa Karşıtlığının Ötesinde: İhtiyaçlar ve Tüketim Üzerine Yazılar* (translated by Bahadır Sina Şener) (Istanbul: İletişim, 2000), pp. 129-154; Ayşe Buğra, "The Immoral Economy of Housing in Turkey", *International Journal of Urban and Regional Research*, Vol. 22 (1998), pp. 303-317.

and the role attributed to the state especially in terms of transformation has to be mentioned, to highlight some further characteristics of the role of the state Polanyi spoke of, in contrast with the transformation paradigms.

Based on the Weberian tradition, institutionally, the state has four main elements:

- "1. a *differentiated* set of institutions and personnel, embodying,
2. *centrality*, in the sense that political relations radiate outwards from the centre to cover a
3. *territorially demarcated area*, over which it exercises,
4. a monopoly of *authoritative binding rule-making*, backed up by a monopoly of the means of physical violence."<sup>102</sup>

The state's autonomy is dependent on its ability to "provide a *territorially centralized* form of organization."<sup>103</sup> 'Binding rule making' is an umbrella terms that covers: (i) maintaining the internal order, which includes the protection of the majority of the society from arbitrary usurpation of economically and socially powerful groups, and also the protection of property from the propertyless; (ii) sustaining military defence; (iii) maintenance of communications

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<sup>101</sup> Endre Sik, "From Multicolored to Black and White Economy: The Hungarian Second Economy and the Transformation", *International Journal of Urban and Regional Research*, Vol. 18 (1994), pp. 46-70.

<sup>102</sup> Michael Mann, 'The Autonomous Power of the State: Its Origins, Mechanisms and Results', in: John A. Hall (ed.), *States in History* (Oxford and New York: Basil Blackwell, 1986), p. 112.



infrastructures; (iv) economic redistribution, including the authoritative distribution of material resources between the different social segments, including the protection of economically inactive; and regulating the trade and currency regime in terms of external economic relations.<sup>104</sup>

Its power in being a territorially centralized form of organization with a monopoly on binding rule-making can be understood in two different senses: despotic power refers to the actions state elite undertakes without any routine or institutionalized negotiation with the society -that is, doing whatever is wanted, and infrastructural power refers to the capacity of the state to penetrate and coordinate the society and implement political decisions.<sup>105</sup>

The infrastructural power of the state is gained through: (i) a division of labor between and a central coordination of the activities of the state, (ii) literacy, which enables transmittal of legal messages and ascribing legal responsibilities through the state's territories, also codifying and storing these responsibilities, (iii) providing an ultimate guarantee

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<sup>103</sup> Ibid., p.109.

<sup>104</sup> Ibid., pp.120-121.

<sup>105</sup> Ibid., p.113.

of value in exchange of commodities, including coinage, weights and measures, (iv) rapid communication of messages and transportation of people.<sup>106</sup> The making of the modern states in Europe points to a long-term historical growth of infrastructural power at the face of industrialization and development of the market economy. Out of necessity for taken-for-granted and enforceable rules, the multiplicity of the state functions and need for territorial centrality, the state becomes a different socio-spatial organization.<sup>107</sup>

The replacement of despotic power with infrastructural power can also be followed in the modern meaning of the rule of law doctrine. The rule of law doctrine put forth that no man can be punished arbitrarily, that is except for a breach of law; that no man is above the law and equal before the law.<sup>108</sup> In the formal sense, it includes the formal criteria to be met by law: being open to public, not secretive; being prospective not retrospective; being clear, coherent and stable; lawmaking being guided by the law; making and

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<sup>106</sup> Ibid., p.116-117.

<sup>107</sup> Ibid., pp.119-125.

<sup>108</sup> David Clark, 'Many Meanings of the Rule of Law', in: Kanisha Jayasuriya (ed.), *Law, Capitalism and Power in Asia, the Rule of Law and Legal Institutions* (London: Routledge, 1999), p.31.

administering laws with accountable persons;  
administering the law in accordance with the law. Also,  
it includes institutional arrangements such like  
independent judiciary and legal profession, access to  
courts, the right to fair hearing and impartial law  
enforcement.<sup>109</sup>

Although it is widely criticized that equality  
before law and impartial law enforcement is an  
ideological mask of the underlying inequalities and  
exploitation within the market economy, it is also  
discussed that the rule of law doctrine led to ruling  
class's limiting its own powers at the risk of a loss of  
legitimacy. That is, bringing the subordinates into line  
and the elimination of arbitrariness and uncertainty  
brought forth the behavior of the ruling class's being  
subordinate to the rules themselves.<sup>110</sup> In this sense,  
rule of law is an 'unqualified human good', to the extent  
that it restricts arbitrary power.<sup>111</sup>

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<sup>109</sup> Ibid., p.32.

<sup>110</sup> Ibid., p.34.

<sup>111</sup> E. P. Thompson writes that "the rule of law itself, the imposing of effective inhibitions upon power and the defence of the citizen from power's all exclusive claims, seems to me to be an unqualified human good." (E. P. Thompson, *Whigs and Hunters: The Origins of Black Act* (Harmondsworth: Penguin, 1975), p.266, cited in: Daniel H. Cole, "'An Unqualified Human Good': E. P. Thompson and the Rule of Law", *Journal of Law and Society*, 28/2 (2001), p. 182). For a review of the significance of Thompson's comment and the mass of criticism surrounding it, see: Cole, "'An Unqualified Human Good'", pp. 177-203.

In terms of the modern legal order, rule of law is based on two assumptions:

- i) the political leaders are assumed to rule in the interests of the public good, rather than their own, and when they make mistakes, they are accountable for what they do,
- ii) legitimacy comes from obeying the law, and in democratic systems coming into power through fair and free elections.<sup>112</sup>

The idea of "rule of law" should also be thought in line with its substantive aspects, such as fairness and equality, and the subjection of markets to social regulation, which is crystallized in the welfare state.<sup>113</sup> This role was broader than establishing and protecting property and contract law, and included an active engagement in regulating the labor market, through the introduction of employment rights, job protection, and consolidation of rights to education and health and guaranteeing a minimum standard of living.

Looking at late industrializing countries, in the post-war development theories, state is also seen as an agent to implement structural change: accelerate

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<sup>112</sup> Clark, 'Many Meanings of the Rule of Law', pp.34-35.

industrialization, modernize agriculture and provide the infrastructure necessary for urbanization. Its legitimacy depended upon how successful it is in undertaking development.

In line with the logic of import substituting industrialization strategy, their political regimes were characterized with populism, whose characteristics were:

- "1. a personalistic and paternalistic, though not necessarily charismatic, pattern of political leadership,
2. a heterogeneous, multiclass political coalition concentrated in subaltern sectors of society,
3. a top-down process of political mobilization that either bypasses institutionalized forms of mediation or subordinates them to more direct linkages between the leader and the masses,
4. an amorphous or eclectic ideology, characterized by a discourse that exalts subaltern sectors or is antielitist and/or antiestablishment,
5. an economic project that utilizes widespread redistributive or clientelistic methods to create a material foundation for popular sector support."<sup>114</sup>

Clientelism, or so-called patronage can be defined as an unsymmetrical power relation, which tends "... to form an extended system; to be long term, or at least not restricted to a single isolated transaction; to possess a

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<sup>113</sup> Lawrence Tshuma, "The Political Economy of the World Bank's Legal Framework for Economic Development", *Social and Legal Studies*, Vol. 8, No.1 (1999), p. 86.

distinctive ethos; and whilst not always illegal or immoral, to stand outside the officially proclaimed formal morality of the society in question.”<sup>115</sup>

As its development project (import substituting industrialization) failed, in the late 1970s, the state came to be characterized with rent-seeking activities, distorting the efficiency and dynamism of the economy, and hence seen as the source of the problem rather than the solution. The solution was a neoliberal turn.

Neoliberal economic transformation meant minimizing the role of the state to an overseer of the economy, and outward orientation, as formulized in the Washington Consensus: fiscal discipline, changing public sector priorities, implementation of a tax reform, undertaking financial liberalization, establishing the competitiveness of the exchange rate, undertaking trade liberalization, abolishing the barriers impeding foreign direct investment, carrying out privatization, and deregulation.<sup>116</sup> The same package was referred to the

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<sup>114</sup> Kenneth M. Roberts, "Neoliberalism and the Transformation of Populism in Latin America: The Peruvian Case", *World Politics*, Vol. 48, No.1 (1996), p.88

<sup>115</sup> Ernest Gellner, 'Patrons and Clients', in: Ernest Gellner and John Waterbury (ed.s), *Patrons and Clients in Mediterranean Societies*, (Liverpool: Duckworth, 1977), p.4.

<sup>116</sup> John Williamson, 'In Search of a Manual for Technopols', in: John Williamson (ed.), *The Political Economy of Policy Reform* (Washington, DC: Institute for International Economics) 1994, pp. 26-27.

'transition'<sup>117</sup> economies of the Soviet Block<sup>118</sup>, to the destination of multiparty parliamentary democracies with large private sectors, with the state establishing the basic economic institutions, consciously protecting it, but becoming non-interventionist to the political sphere.<sup>119</sup> Especially, the adverse effects of financial liberalization were enormous. The distinguishing

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<sup>117</sup>The policy changes aimed at forming a market economy were referred to as 'economic transition' rather than 'economic transformation'. The former points out to a certainty that once the necessary measures were applied, the desired outcome will be obtained. A third way is not discussed at all. The word 'transformation' on the other hand, puts the emphasis on actual processes, keeping in mind that the introduction of new elements into the existing structure might end up at a point uncertain at the moment, but the outcome will be determined in combination with the adaptations, rearrangements, reconfigurations (C. G. A. Bryant and E. Mokrzycki, 'Introduction: Theorizing the Changes in East-Central Europe', in: C. G. A. Bryant and E. Mokrzycki (ed.s), *The New Great Transformation?: Change and Continuity in Eastern Europe*, (London and New York: Routledge, 1994), pp.3-4.

<sup>118</sup> The support these policy choices found in 'transition' economies (and the developing world as well) could be understood in terms of isomorphisms, meaning "... the adoption of foreign institutional and policy models through the influence of foreign actors". Three types of institutional isomorphisms were at work: *coercive* (where "...a less powerful unit acquires the characteristics of a more powerful one from which is dependent of resources"), *normative* ("... a process by which different units come to resemble each other via a common normative framework") and *mimetic* ("... a process of simple imitation of other units which are perceived as particularly successful or legitimate") (Klaus Nielsen, "Institutional Frameworks for the Market Economies: Systemic Vacuum and Transformation Process in Eastern Europe", Paper presented at the Fourth International Karl Polanyi Conference, (November 11-14, 1992)).

<sup>119</sup> See for example, Jeffrey Sachs, "What is to be Done?", *The Economist* (January 13, 1990), pp.19-24; Olivier Blanchard, Maxim Boycko, Marek Dabrowski, Rudiger Dornbusch, Richard Layard, Andrei Schleifer, *Post Communist Reform: Pain and Progress*, (Cambridge, Mass.: The MIT Press, 1993); D. Lipton and J. Sachs, "Creating a Market Economy: The Case of Poland", *Brookings Papers on Economic Activity*, no.1 (1990), pp.75-147.

character of this second great transformation or the second wave of globalization<sup>120</sup> is that money, as a fictitious commodity, is only a nominal quantity, with no equivalent in terms of commodity or gold. The instability it creates in the exchange rates, stimulates short-term speculative gains, pushes capital away from production and renders the financial system and the entire economy fragile.<sup>121</sup>

Washington Consensus came under challenge due to the financial crises the premature financial account liberalization gave rise to, and so-called 'state-failure' expressed as widespread administrative corruption. Also, the appropriateness of the measures were opened into discussion with success stories like

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<sup>120</sup> By and large, the neoliberal globalization can be characterized with:

"1. protection of interests of capital and expansion of the processes of capital accumulation on a world scale;

2. a tendency towards homogenization of state policies and state forms to render them instrumental to the protection of capital and new processes of capital accumulation on a world scale, via a new 'market ideology';

3. the formation and expansion of a new tier of transnationalized institutional authority above the state's, which has the aim and purpose of re-articulating states to the purposes of facilitating global capital accumulation; and

4. the political exclusion of dissident social forces from the arena of state policy-making, in order to desocialize the subject and insulate the neoliberal state form against the societies over which they preside, thus facilitating the socialization risk on behalf of capital."

(Barry K. Gills, 'Introduction: Globalization and the Politics of Resistance', in: Barry K. Gills (ed.), *Globalization and the Politics of Resistance* (New York: Palgrave, 2002), p.4.)

<sup>121</sup> Erinç Yeldan, *Küreselleşme Sürecinde Türkiye Ekonomisi: Bölüşüm, Birikim, Büyüme* (Istanbul: İletişim, 2001), pp. 19-25; Ayşe Buğra, "Piyasa Ekonomisi Macerası: Dün ve Bugün", *Birikim*, No.170/171 (June-July 2003), pp.10-20.



Vietnam or Malaysia, in deviation from the neoliberal norms. On the aftermath of especially the Asian crisis, it was recognized that states have an important role to play in the transformation process. And, this idea constituted the basis of Post-Washington consensus. Yet, following Stiglitz, the idea that the effectiveness of the states can be improved introducing market-like mechanisms gained currency. This idea included introducing an internal incentive structure and reward systems to improve the state bureaucracy, restructuring through privatization and enhancing competition of state agencies by contracting public services to the private sector. It was coupled with the "good governance agenda" (including democratization, the rule of law, human rights protection, transparency, participation and accountability).<sup>122</sup>

From a critical stance, it was argued that the Post-Washington Consensus measures are implemented by the same institutions that were responsible for the current situation; this makes the credibility of the institutions questionable. Put in more strict terms, it is open to

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<sup>122</sup> Martin Minogue, 'Power to the People? Good Governance and the Reshaping of the State', in: Uma Kothari and Martin Minogue (ed.s), *Development Theory and Practice: Critical Perspectives* (Houndmills: Palgrave, 2002), pp.117-135; Ziya Öniş and Fikret Şenses, "Rethinking the Emerging Post-Washington Consensus: A Critical Appraisal", mimeographed (2004), at: <http://home.ku.edu.tr/~zonis/OnisZiyaandSensesFikret-Post-WashingtonConsensus.pdf>.

question whether it constitutes another surveillance mechanism for international capital. Also:

- i) a bias towards domestic reforms: although regulating the domestic financial system and banking sector is emphasized, the destructive effects of short-term capital flows is not mentioned;
- ii) the emphasis on income distribution and poverty alleviation is contradictory with the stabilization measures which pointed out to a social spending decrease,
- iii) although the importance of education is emphasized, employment policies, or a restructuring of the domestic industries to create employment capacities went unmentioned. The emphasis is put on foreign investment;
- iv) the regulation of transnational corporations are left to the host states;
- v) creating transparent and accountable institutions is seen restricted to the domain of individual states, not to the international level;<sup>123</sup>
- vi) although democracy and the role of civil societies are mentioned, within a participation, stakeholding, partnership language, struggle, differentiation and

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<sup>123</sup> Minogue, 'Power to the People? Good Governance and the Reshaping of the State', pp.117-135; Öniş and Şenses, "Rethinking the Emerging Post-Washington Consensus: A Critical Appraisal".

class is evacuate; it is open to question whether the channels of criticism towards neoliberal policies would be kept open,<sup>124</sup>

vii) More importantly, the rule of law is understood only in its formalist meaning and disregarding its substantive meaning -providing equity and justice- and judging law with efficiency norms (especially in terms of economic laws) is questionable.<sup>125</sup>

It is also important to note that the minimal state required by the Washington Consensus (and Post-Washington Consensus as well), gave way to a mutation of populism. Although the mass base of political support shifted to the informal sector, with a limited capacity to advance their own interests, often a more authoritarian version of political populism was used to impose liberalism and economic liberalism was used to strengthen populist leadership, without much of contradiction. The administration of economic transformation was carried in a top-down version, often by a charismatic leader, in an

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<sup>124</sup>In this sense, it is argued that Post-Washington Consensus is creating a liberal populism. See: Graham Harrison, "Administering Market Friendly Growth? Liberal Populism and World Bank's Involvement in the Administrative Reform in Sub-Saharan Africa", *Review of International Political Economy*, vol. 8, No. 3 (2001), pp.528-547.

<sup>125</sup> Tshuma, 'The Political Economy of the World Bank'.

autocratic manner, in an anti-organizational fashion and beyond the democratic checks and balances -for example, relying on decree power.<sup>126</sup>

### Terms of Analysis

What has all the above mentioned discussion say about where to look making sense of the contexts of *mafia* both as an activity and a metaphor?

First of all, especially explicit in the discussions about the United States, is the nature of the market economy itself: the domination of economic relations over the social institutions of the society is criminogenic. Negating the liberal view that "markets civilize behaviour and create harmonious and peaceful societies by bringing people into relations of mutual dependency, trust and profit"<sup>127</sup>, Rosenfeld and Messner in their 'institutional-anomie theory' underline that the level of

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<sup>126</sup> See: Kurt Weyland, "Neopopulism and Neoliberalism in Latin America: Unexpected Affinities", *Studies in Comparative International Development*, Vol. 31, No. 3 (1996), pp. 31-31; Kenneth M. Roberts, "Neoliberalism and the Transformation of Populism in Latin America: The Peruvian Case", *World Politics*, Vol. 48, No.1 (1996), pp. 82-116.

<sup>127</sup> Richard Rosenfeld and Steven F. Messner, 'Markets, Morality, and an Institutional -Anomie Theory of Crime', in: Nikos Passas and Robert Agnew (ed.s), *The Future of Anomie Theory*, Boston: Northeastern University Press, 1997, p.210.

order and disorder in a society is an outcome of the balance between the destructive forces of the market are counterbalanced by non-economic institutions. With reference to Polanyian distinction between the markets and the market society<sup>128</sup>, they state that "economic dominance stimulates the emergence of anomie at the cultural level, and it erodes the structural restraints against crime associated with the performance of institutional roles."<sup>129</sup> Following Rosenfeld and Messner, the economic dominance is manifested through the devaluation non-economic goals faced to the economic; non-economic goals conform with the economic in times of conflict; and non-economic realms are penetrated by economic norms.<sup>130</sup> Unless the non-economic institutions, the function of which is to "confer moral legitimacy on the means of social action"<sup>131</sup>, the economistic standpoint with its emphasis on efficiency as the sole criterion evaluating economic action, and the institutional balance

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<sup>128</sup> They somehow refer it as if the distinction belongs to Elliott Currie (Elliott Currie, 'Crime in the Market Society', *Dissent* (Spring 1991), pp.251-259, cited in: Rosenfeld and Messner, 'Markets, Morality, and an Institutional -Anomie Theory of Crime', p.213).

<sup>129</sup> Rosenfeld and Messner, 'Markets, Morality, and an Institutional -Anomie Theory of Crime', p.213.

<sup>130</sup> Ibid..

<sup>131</sup> Ibid., p.216.

it represents, is likely to give rise to an ethic of anomie, with high rates of criminality.<sup>132</sup>

The criminogenic quality of the markets is more explicit in Elliott Currie. He argues that the dominance of the market economy, and hence the absence of the public provision of support, creates high rates of crime for the following reasons:

"(1) the progressive destruction of livelihood; (2) the growth of extremes of economic inequality and material deprivation; (3) the withdrawal of public services and supports; (4) the erosion of informal and communal networks of mutual support, supervision and care; (5) the spread of materialistic, neglectful, and "hard" culture; (6) the unregulated marketing of the technology of violence (i.e., guns); and (7) the weakening of social and political alternatives."<sup>133</sup>

The formalism, generalism and impartialism of the provision of support are assumed. This is one of the crux of the matters in terms of economic transformation. Patronage and populism discussions indicate that provision of support -redistribution- can also be partial and remain partial as in neopopulism discussions, despite the disruptions transformation create. This is likely to

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<sup>132</sup> Ibid..

<sup>133</sup> Elliott Currie, 'Market, Crime, and Community: Toward a Mid-Range Theory of Post-Industrial Violence', *Theoretical Criminology*, Vol.1 (1997), pp. 147-172, cited in: Lilly et al., *Criminological Theory: Context and Consequences*, p.65.

strengthen the criminogenic quality of the markets, in terms of crime in general and economic crime in particular, as the criminal uses of existing particularistic relations would also become a possibility.

Organized criminal, or the mafia-type activity taken to mean racketeering (including protection, dispute settlement, contract enforcement, influence on and control of public concessions, permissions and awarding of contracts) that signifies economic gain is not solely a criminal matter, but can be understood in terms of reciprocity relations manifested in the dynamics of the informal economy and shaped by the relations between formal and informal.<sup>134</sup>

It has been stated above that the form and the limits of informality, and whether reciprocity takes a positive or negative quality, are determined by the state and the characteristics of its regulatory and redistributive patterns. The lack of the rule of law both in the sense of implying despotic power in regulation, and in the sense of the lack of a generalized and impartial redistribution, triggered reciprocity to the point of taking without giving, extended to redistribution and market-exchange.

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<sup>134</sup> R.T. Naylor, "From Underworld to Underground: Enterprise Crime, "Informal Sector" Business and the Public Policy Response", *Crime, Law and Social Change*, 24 (1996), pp. 79-150.

The criminogenesis of the market is significant in terms of economic transformation. In the preceding pages, it was put forth in that the fall of the market economy was due to the transformation of moral economic demands, crystallized in the welfare state, in an impartial and formal way, restraining its own abuse of power. In this sense, the direction towards the market economy with an emphasis on material gain, in countries characterized with populism, and lack of a formal and general redistributive scheme, would be the reshaping the state in terms of infrastructural power - rule of law - welfare state. Instead, "retreat of the state" from the economy implied new grounds being opened to its use of power, often beyond the law. This paves the way for pushing the reciprocity relations of the past to the negative extreme, and reproducing this already existing basis of legitimacy for informality towards material gain, as in the case of criminalization of the modes of doing business. In other words, trying to undertake the task of creating a market economy, from an economy based on partial quality of reciprocity, even with the state's redistributive and regulatory framework, at the face of the motive of gain, both the state, and the modes of doing business swing to 'taking without giving'. At the face of widening opportunities of the market, the mafiosi as a self-help institution (as in the case of Italy), is



likely to adapt to the changing conditions and establish itself as an interface between the state and the businessworld. The illicit gains symbolized by the mafia (with a certain traditional root, and an urge for adaptability especially due to its entrepreneurial base, judging from Italy), appears as a metaphor of corruption and white-collar crime (as observed in Russia).

## CHAPTER IV

### OUTLINES OF NEOLIBERAL ECONOMIC TRANSFORMATION IN TURKEY

In Chapter III, the logic of 'instituting the market economy' and the logic of economic transformation were outlined. As a specific historical instance, the endurance of the market economy, as a special construct owed its existence to the liberal democratic state, rule of law and the welfare state. Yet, economy may occupy different places in different societies. Reciprocity relations may endure. Regarding that reciprocity may take a negative form (giving without taking), the main emphasis is constraining the motive of gain by the formal regulatory frameworks of the state, and protecting livelihood of man by a formal redistributive scheme. As is discussed with the concept of informal economy, the place and the form of the informal economy within the

economic whole is shaped by the state, and so would the modes of doing business.

In late industrializing countries, the economy occupies a different place in the society: the state has a more uttered presence in the economy, but has a limited infrastructural power; its relations with society and economy are characterized with patronage and populism (and also a sustained use of despotic power). The livelihood of the individual relies on the endurance of traditional institutions -like family, kinship, being from the same city or district. This means, reciprocity has a more uttered presence, and redistribution and regulation is not formal and general. State-business relations also reflect this particularism.

In other words, "economy" may occupy different places in different societies; hence, transformation requires measures different than the 'retreat' of the state to offset the criminal swings.

To exhibit the macro setting the data or information regarding mafia in Turkey, within which both as mafia *per se* or mafia as a metaphor can be placed, this chapter aims to provide a brief sketch of the post-1980 neoliberal economic transformation in Turkey. It delineates that transformation has ended in a point far away from the initial premiss that leaving the resource allocation to the unregulated market will bring

prosperity, and also changing the industrialization strategy and liberalizing the prices in the economy did not result in the retreat of the state. The basic macroeconomic indicators can be followed in Appendix B.

From 1961 on, Turkey's industrialization strategy was based on import-substitution. Import substitution was based on the idea of developing domestic industries starting with consumer goods towards intermediate and investment goods, through protective trade measures, foreign exchange limitations and expansionary policies for creating a demand in the internal market, with agricultural surpluses. It is expected that the domestic industries would shift or are forced to shift in the end to capital goods production and turn towards exportation. Yet, the enduring protectionist policies, high exchange rates, or the opportunities of the internal market, or the costliness of moving towards capital intensive methods, pave the way for the exhaustion of the import substituting industrialization, manifesting itself in balance of payments crisis and inflation. The exhaustion of it is also blamed on the vested interests between the governments and industrialists, in terms of the lack of autonomy of the former in making necessary decisions to remove the protective shield. The so-called easy stage of

import industrialized industrialization was already passed in 1977's Turkey.<sup>1</sup>

The economic crisis manifested itself as a balance of payment crisis and increasing inflation, in the late 1970s were seen to be based on "inflationary financing of public sector deficits, the inefficiencies of the long standing inward-looking development strategy, and the oil price shocks of 1973 and 1979-80."<sup>2</sup> Ecevit government decided to introduce a stabilization program and applied for a stand-by with the IMF, under increasing inflation rate and foreign exchange shortage, yet the 1978 and 1979 stabilization packages were not successful in meeting the crisis. Both packages aimed at: (i) reducing the balance of payments deficits through expansion of exports via a currency devaluation and restriction of imports, and (ii) controlling inflation through reducing the part of the public sector borrowing via controlling budget expenditures, tax reforms, reduction in subsidies and reduced rates of growth of guaranteed prices of agricultural imports. This clearly implied a outward orientation of the economy and a restraint in public sector finances. Applying for a stand-by under conditions

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<sup>1</sup> See: Roger Owen and Şevket Pamuk, *A History of Middle Eastern Economies in the Twentieth Century* (London: I.B. Tauris, 1998), pp.110-115; Henri J. Barkey, *The State and Industrialization Crisis in Turkey* (Boulder: Westview, 1990).

of urgency, Ecevit government believed that there was nothing structurally wrong with the economy, but the crisis was an outcome of the external conditions, especially the oil price shocks. Ecevit government's perception of the economic conditions as such, was also seen as a reason of failure of the stabilization program. In this sense, the government was after obtaining additional foreign finance and rescheduling the short-term foreign debts as a cure for the balance of payments deficit, and a period of restrictive public expenditures to decrease the inflation.<sup>3</sup> From a pro-reform perspective, Ecevit government had done "too little too late"<sup>4</sup>. Demirel minority government (formed in November 1979), and his planning undersecretary Turgut Özal, started negotiating a new stand-by agreement with the IMF and began preparing another set of structural adjustment measures for external orientation of the economy, known as 24 January 1980 decisions. These decisions included:

i) concerning foreign economic relations: a devaluation of Turkish lira (from \$1=TL 47 to \$1=TL 70) to be applied to almost all sales and purchases of foreign exchange; a move towards a more flexible exchange

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<sup>2</sup> Osman Okyar, 'Turkey and the IMF: A Review of Relations, 1978-82', in: John Williamson (ed.), *IMF Conditionality* (Washington, DC: Institute for International Economics, 1983), p. 533.

<sup>3</sup> Ibid., pp.534-541.

rate policy to be determined by the Ministry of Finance in consultation with the central bank through simple communiques;

- ii) concerning internal prices: elimination of subsidies in fertilizers and petroleum products, price increase in the output prices of state economic enterprises, abolishment of price controls of manufactured products by the private sector firms, and an increase in the interest rates.<sup>5</sup>

The talks between Turkey and OECD and IMF began by February 1980. The debts to OECD countries were graced for three years (to be extended to five years, if the relations between IMF and Turkey were to proceed satisfactorily). The IMF stand-by, signed in July 1980, is said to contain measures towards fiscal discipline, import liberalization, bringing the interest rates to positive levels, and restrictions on central bank finance of state economic enterprise losses. Two issues that had arisen during the negotiations were interest policy and wage increases. Deposit and lending rates of commercial banks were liberalized on 1 July 1980, and after the military coup d'état of 12 September 1980, the Military Council, closing down labour unions and banning strikes,

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<sup>4</sup> Ibid., p.541.

<sup>5</sup> Ibid., pp. 543-544.

suspending wage negotiations under collective bargaining, 'solved' the wage increase problem.<sup>6</sup>

Stabilization and structural adjustment programs of 1980 represented a radical neoliberal turn in the economic policy and an outward orientation lead by the private sector as a development strategy. In other words, the adjustment program, in line with the previously discussed Washington consensus, aimed at: "(1) making prices flexible, (2) removing controls not only on prices but also on quantities, (3) reducing direct government participation in the economy, and (4) avoiding destabilization of the economy through fiscal deficits."<sup>7</sup>

In terms of the course of this major transformation of Turkish economy, two phases can be identified: until 1988 the neoliberal turn was characterized with trade liberalization measures and liberalization of the interest rate; and from 1989 onwards, with financial liberalization. The first wave of reforms in the post-crisis adjustment<sup>8</sup> (1981-1982) under the military regime

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<sup>6</sup> Ibid., pp. 545-550.

<sup>7</sup> Ziya Öniş, 'Political Economy of Turkey in the 1980s: Anatomy of Unorthodox Liberalism', in: Metin Heper (ed.), *Strong State and Economic Interest Groups: The Post-1980 Turkish Experience* (Berlin and New York: Walter de Gruyter, 1991), p.27.



(with Turgut Özal as the Deputy Prime Minister in charge of Economic Affairs) began with 24 January decisions' devaluation in the exchange rate, liberalization of access to foreign exchange for exporters and banks involved in exportation, and changes in the export subsidies. Export promotion measures included, export credits (40 percent for industrial exports), tax 'rebates' which worked basically as subsidies.<sup>9</sup> The export subsidy rate was on the average 22 percent from 1980 to 1982. Most of the subsidies went to sectors with a longer past in import-substitution and public sector domination, such like transportation equipment, ferrous and non-ferrous metals and electrical and nonelectrical machinery. Agriculture lost subsidies. On the import side, the quota list was reduced and eliminated by 1981. The import liberalization also gave an advantage to exporters, as the import tax on the raw materials and intermediary goods were reduced to zero.<sup>10</sup>

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<sup>8</sup> The periodization is from: Erinç Yeldan, *Küreselleşme Sürecinde Türkiye Ekonomisi: Bölüşüm, Birikim ve Büyüme* (Istanbul: İletişim, 2001).

<sup>9</sup> It worked as subsidies because, following Webb and Öniş, "first, the subsidy rate was not related to the total amount of taxes paid by the exporter and could exceed it. Second, the rebate scheme was introduced before the value added tax; when the actual value added tax rebate was added, the prior rebate scheme remained as a pure subsidy." (Ziya Öniş and Steven B. Webb, 'Turkey: Democratization and Adjustment from Above', in: Stephen Haggard and Steven B. Webb (ed.s), *Voting for Reform: Democracy, Political Liberalization and Economic Adjustment* (New York: Published for the World Bank, Oxford University Press, 1994), p. 157.

With the removal of price controls and price increases in the state economic enterprises worked as an adjustment to suppressed inflation and showed an upward move (from 59 percent in 1979 to 110 percent in 1980) and remained in 30 percent levels in 1981 and 1982 (37 percent in 1981 and 31 percent in 1982) mainly due to overlapping wage contracts and unwillingness of the military government to push for tight fiscal and monetary policy at the face of the Banker's Crisis of 1982 (which led to Turgut Özal's resignation from the military government), and choosing instead to prevent bankruptcies.<sup>11</sup> The Banker's Crisis of 1982 was an outcome of the interest rate liberalization of July 1980 leading to a chaos with an unpayable increase in interest rates mainly by small banks and private brokers.<sup>12</sup>

Throughout this period, the reform program worked clearly against the wage earners -who were deprived of the rights to negotiate, with the coup d'état- and farmers.<sup>13</sup>

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<sup>10</sup> Ibid., pp. 154-158.

<sup>11</sup> Ibid., pp. 158-160.

<sup>12</sup> Korkut Boratav, 'İktisat Tarihi, 1981-1994', in: Sina Akşin (ed.), *Türkiye Tarihi, Cilt 5: Bugünkü Türkiye, 1980-1995* (Istanbul: Cem, 1995), p.162.

<sup>13</sup> Öniş and Webb, 'Turkey: Democratization and Adjustment from Above', Boratav, 'İktisat Tarihi, 1981-1994', p. 163.

The second sub-period began with November 1983 elections and Turgut Özal's Anavatan Partisi (ANAP, Motherland Party)'s coming into power. Özal government was more committed to a market-oriented approach, including "the deemphasizing of subsidies, actively managing the interest rate, and liberalizing imports, including the quantitative restrictions and a reform of tariffs. Some changes, such as the shift to a negative list system, were sudden, but others, including the lowering of tariffs, were introduced gradually and selectively."<sup>14</sup> Foreign exchange regulations were liberalized in 1983-1984: Turkish citizens were allowed to hold foreign exchange and open bank accounts denominated in foreign exchange, the banks were allowed to deal in foreign exchange.<sup>15</sup>

For the periods of post-crisis adjustment (1981-1982) and export-led growth (1983-1987), looking at fixed capital investments in the private and public manufacturing sectors<sup>16</sup>, Turkish economy managed to be export oriented

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<sup>13</sup> Öniş, 'Political Economy of Turkey in the 1980s', p.34; Boratav, 'İktisat Tarihi, 1981-1994', p.163.

<sup>14</sup> Öniş and Webb, 'Turkey: Democratization and Adjustment from Above', p. 162.

<sup>15</sup> Ibid., pp. 162-164.

but was not industrialized towards exportation.<sup>17</sup> Fixed capital investments in the private sector were directed towards housing, and public sector investments towards energy and transportation.<sup>18</sup> In other words, the export and production increases in the manufacturing sector was based on the repression in wages, increases in the use of idle capacities and export subsidies, but was not transformed into a "sustainable" strategy<sup>19</sup> based on the necessary investments in fixed capital.<sup>20</sup>

Yet, in sharp contrast, public sector presence in the economy did not decrease: coupled with the legal

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<sup>16</sup> Fixed capital investments in the private manufacturing sector showed a 13.6 percent (annual average) decline in 1977-1980 period, and increased by 4.8 percent and 7.7 percent in real terms in the 1981-1982 and 1983-1987 periods subsequently. Fixed capital investments in the public manufacturing sector, due to the policy decisions aimed at minimizing the public sector, decreased by -11.2percent in 1981-1982 and -9.6percent in 1983-1987. Total real investments in the manufacturing sector, following a net decrease of -9.7 percent in the crisis period of 1977-1980, decreased -0.8percent in 1981-1982 and showed a slight increase of 3.7 percent in 1983-1987 (Yeldan, *Küreselleşme Sürecinde Türkiye Ekonomisi*, pp. 46-47).

<sup>17</sup> Ibid., p.47.

<sup>18</sup> Ibid., pp. 47-48.

<sup>19</sup> See also: Fikret Şenses, 'An Assessment of the Pattern of Turkish Manufactured Growth in the 1980s and its Prospects', in: Tosun Arıcanlı and Dani Rodrik (ed.), *The Political Economy of Turkey: Debt, Adjustment and Sustainability* (London: Macmillan, 1990), pp. 60-77. Sound macroeconomic management, basically lower interest rates, on domestic borrowing, crowding out the finance of export-oriented investments was also cited to be the reasons why Turkey could not get on the export oriented industrialization path (Merih Celasun, 'Fiscal Aspects of Adjustment in the 1980s', in: Arıcanlı and Rodrik, p.37-59; Tercan Baysan and Charles Blitzer, 'Turkey's Trade Liberalization in the 1980s: Prospects for its Sustainability', in: Arıcanlı and Rodrik, pp.9-36.

frame, the municipal investments and the public sector investments increased, but shifted from manufacturing to infrastructure; it dominated the banking sector; and in the capital market, 90 percent of the securities traded in the Istanbul Stock Exchange (established in 1986) were public sector issues. Also, the newly created extra-budgetary funds gave the government the ability to raise non-tax revenues to be spent without parliamentary approval.<sup>21</sup> Yet, the price increases in state economic enterprises lagged behind the general price increases, and the Treasury's role in contributing to the investments of state economic enterprises were restricted, pushing them towards domestic and external borrowing. Özal government undertook the first privatizations, also in this period.<sup>22</sup>

Regarding taxation, several exemptions were brought in favour of companies in corporate tax. In incomes tax, the obligation to give a wealth declaration is abolished in 1984. With the introduction of value added tax in 1985, the tax system, although made favourable to business, was rendered dependent on the wage earners and the consumers; and the tax income eroded.<sup>23</sup> The

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<sup>20</sup> Yeldan, *Küreselleşme Sürecinde Türkiye Ekonomisi*, p. 48.

<sup>21</sup> Öniş, 'Political Economy of Turkey in the 1980s', pp. 32-33.

<sup>22</sup> Boratav, 'İktisat Tarihi, 1981-1994', p. 166.

government chose to finance the inescapable budget deficit through increasing domestic borrowings.<sup>24</sup>

The ending of the foreign debt's grace period in 1984 also added up to increasing debt burden of Turkey in 1985-1987.<sup>25</sup> In 'exhaustion', in 1988, Özal government ended up in a stabilization program, with the main requisite of fiscal restraint to reduce inflation (which was then 70 percent), went astray.<sup>26</sup>

Following the defeat in municipal elections in 1989, ANAP turned more sharply towards 'populism', giving a substantial rise in the salaries of civil servants and public sector workers, and increasing agricultural subsidies. This wage increase was coupled with erosions in the union base through layoffs, moves towards more 'flexible' modes of employment.<sup>27</sup> Although the increases in wages contributed to an increase in tax income, the burden of domestic debts and state economic enterprises' losses, resulted in increasing the budget deficit. Yet, the state economic enterprises, transferred to Public

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<sup>23</sup> Ibid..

<sup>24</sup> Ibid..

<sup>25</sup> Celasun, 'Fiscal Aspects of Adjustment in the 1980s', p.57.

<sup>26</sup> Öniş and Webb, 'Turkey: Democratization and Adjustment from Above', pp. 172-173.

<sup>27</sup> Boratav, 'İktisat Tarihi, 1981-1994', pp.167-168.

Participation Administration, were left without restructuring nor privatized<sup>28</sup> by the following Doğru Yol Partisi (DYP, True Path Party) - Sosyal Demokrat Halkçı Parti (SHP, Social Democrat Populist Party).<sup>29</sup>

The sharpest policy move in this period was the liberalization of capital movements -which basically meant the removal of controls towards capital flight- and the full convertibility of Turkish lira in 1990.<sup>30</sup> As a consequence, the 'unregulated financial liberalization' of 1989-1993, in search of an external finance of budget deficits, ended with the artificial appreciation of Turkish lira, inviting short-term capital entries to a country with high interest rates, and coupled with the expansionary policies, high inflation, a large amount of foreign trade and current account deficits in 1993.<sup>31</sup> Also, the budget deficit was increasingly financed from domestic resources that borrowed abroad. In other words,

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<sup>28</sup> Öniş underlines that privatization has never been consistently addressed to in the post-1980 course of structural adjustment, with a regulatory framework, but turned to in times of crisis, for raising incomes (Ziya Öniş, "The Evolution of Privatization in Turkey: The Institutional Context of Public-Enterprise Reform", *International Journal of Middle Eastern Studies*, Vol. 23 (1991), pp.163-176; Metin Ercan and Ziya Öniş, "Turkish Privatization: Institutions and Dilemmas", *Turkish Studies*, Vol. 2, No. 1 (2001), pp. 109-134.).

<sup>29</sup> Boratav, 'İktisat Tarihi, 1981-1994', p. 168.

<sup>30</sup> Ibid..

the direct borrowing of the public sector from abroad is replaced with an indirect borrowing.<sup>32</sup> The government and the Central Bank's adoption of a low interest rate policy and the reduction of the investment ratings of Turkey by two international rating institutions led to an outflow of short-term capital and a fiscal crisis, translated into a balance of payments crisis leading to a high depreciation of foreign exchange in 1994.<sup>33</sup>

The post-1989 period<sup>34</sup> up until the liquidity crisis of 2000-2001 is characterized with a boom-crisis cycle dependent on the inflow of funds<sup>35</sup>. The premiss that financial liberalization would provide the countries with low savings rates, with the necessary foreign savings to be channeled to investments, act as a constraint on a

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<sup>31</sup> Boratav, 'İktisat Tarihi, 1981-1994', pp. 169; Yeldan, *Küreselleşme Sürecinde Türkiye Ekonomisi*, pp.50-51.

<sup>32</sup> Ziya Öniş and Ahmet Faruk Aysan, "Neoliberal Globalization, the Nation-State and Financial Crises in the Semi-Periphery: A Comparative Analysis", *Third World Quarterly*, Vol.21, No.1 (2000), p.129.

<sup>33</sup> Ibid., p.130.

<sup>34</sup> This period can also be read in terms of financial globalization.

<sup>35</sup> For other similar experiences in comparison, see: Öniş and Aysan, "Neoliberal Globalization, the Nation-State and Financial Crises in the Semi-Periphery", pp. 119-139; Ziya Öniş, 'Neoliberal Küreselleşmenin Sınırları: Türkiye Açısından Arjantin Krizi ve IMF'ye Karşılaştırmalı bir Bakış', in: Ahmet H. Köse, Fikret Şenses and Erinç Yeldan (ed.s), *İktisat Üzerine Yazılar II: İktisadi Kalkınma, Kriz ve İstikrar: Oktar Türel'e Armağan* (İstanbul: İletişim, 2003), pp. 505-532; Nurhan Yentürk, *Körlerin Yürüyüşü: Türkiye Ekonomisi ve 1990 Sonrasında Krizler* (İstanbul: İstanbul Bilgi Üniversitesi Yayınları, 2003), pp. 207-272.



restraint on inflation, and increase financial deepening in domestic financial markets did not materialize.<sup>36</sup>

The stabilization program, so-called 5 April decisions, in response to the crisis is limited to decreasing the budget deficit via cutting expenditures and an additional "welfare tax", but did not attempt at restricting the short-term capital flows, nor introduced a tax reform. The cycle of expansionary government expenditures through debt-high inflation-high interest rates-short term capital inflow-appreciation of the exchange rate-current account deficit cycle began its rerun in the 1996.<sup>37</sup>

Again, in 1999, Turkey undertook a three-year stabilization program, involving a fiscal discipline, privatization, structural reforms (including tax reform, agricultural reform, banking sector reform and pension reform), and a pre-announced exchange rate was taken as the nominal anchor for inflation targeting, and the Central Bank announced a restraint in the monetary base and that the inflow of funds will not be sterilized, to maintain a decrease in the interest rates. Taking exchange rate as the sole nominal anchor (without

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<sup>36</sup> Yentürk, *Körlerin Yürüyüşü*; Yeldan, *Küreselleşme Sürecinde Türkiye Ekonomisi*.

correctionary devaluations), is seen at the heart of the 2000-2001 crisis. The appreciation of currency and expected decrease in interest rates was channeled into importation of consumer goods leading to an increase in the current account deficit. The banking sector beared signs of fragility: they had high amount of government bonds, high open positions, high unreturned debts, inconsistencies in maturities of deposits and loans, coupled with insufficient monitoring, despite the establishment of Bank Supervisory Board. Basically the increasing current account deficit, and short term debt/international reserves ratio put the sustainability of the program in question. The outflow of capital and increased liquidity demand of the banking sector in November 2000 (worsening after tension between Prime Minister and President in February 2001) were met with the refusal of the Central Bank to sell foreign exchange and funding the banks in the interbank market, and a huge increase in interest rates. The exchange rate anchor was given up and a devaluation was undertaken in February 2001.<sup>38</sup> Between 1999-2001 twelve private banks (in 1999

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<sup>37</sup> Nurhan Yentürk, 'Kısa Dönemli Sermaye Girişlerinin Makroekonomik Yapı Üzerindeki Etkileri: 1994 Krizinin Öncesi ve Sonrası', in: Yentürk, p.194.

<sup>38</sup> C. Emre Alper, "The Turkish Liquidity Crisis of 2000: What Went Wrong", *Russian and East European Finance and Trade*, Vol. 37, No. 6 (2001), pp. 58-80; Yentürk, 'Finansal Sermaye Girişi Gölgesinde İstikrar Uygulaması: 2000 İstikrar Paketinin İncelenmesi', in: Yentürk, pp.57-72.

Interbank, Egebank, Esbank, Yurtbank, Sümerbank, Yaşarbank; in 2000, Etibank, Bank Kapital and Demirbank; in 2001, İhlas Finans, Ulusalbank and İktisat Bank) were transferred to Savings Deposits Security Fund.<sup>39</sup>

Regarding the real economy, the persistence of high interest rates, both rendered investment in industry difficult and drew private savings from production to interest gains from the financial markets. Hence, export competitiveness of industrial manufacture was left to the exchange rate depreciations and pressures on wages. With an increasing debt burden, the government expenditures, on the other hand, shifted away from infrastructural investments and health and education expenditures eroded. Defense and security expenditures show an increase due to the ongoing war in the South-East. The income distribution on the other hand, deteriorated against non-interest earning wage labor and farmers. The private manufacturing sector's intensification of labor-shedding and an increase in small-scale production, as a response, should also be considered. The informalization of labor<sup>40</sup>

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<sup>39</sup> Şaban Aslan, *Hortum ve Cinnet* (Istanbul: Om, 2001), pp. 526-527.

<sup>40</sup> An estimate of informal labor, as cited by Boratav et al., is through employed labor force that is not under any social security coverage, and not entitled as self-employed: "based on the State Institute of Statistics (SIS) *Household Labor Survey* data, report that the ratio of marginal labor to total employment in the

and the increasing poverty, especially on the aftermath of 1994 and 2000-2001 crises were not met with a response from the social security measures.<sup>41</sup>

The "Program of Transition to a Stronger Economy" of 2001, once again aimed at putting an end to the debt dynamics that is at unsustainable levels, restructuring the public administration, controlling the economy through independent boards and establishing the macroeconomic balance. Debt is financed through restricting government expenditures and privatization. This program and its outcomes until today was criticised, although by a minor group of economists, on several grounds:

- i) it is seen as a program for leading the financial capital out of the crisis, prioritizing a restraint in public expenditures and financial market restructuring to break the debt crisis, but not including any measure to change the production structure of the industry, characterized with low levels of fixed capital investment and increase its

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industry increased to 49 percent in 1994, and stabilized around 44 percent following 1995, from 41 percent in 1980." (Korkut Boratav, A. Erinc Yeldan and Ahmet H. Köse, 'Globalization, Distribution and Social Policy: Turkey, 1980-1988', CEPA Working Paper, No. 20 (2000), p. 36).

<sup>41</sup> Boratav, Yeldan and Köse, 'Globalization, Distribution and Social Policy: Turkey, 1980-1988'.

competitive power. The competitive power is once again left dependent on creating an exportable surplus out of domestic demand restrictions - decreasing labor costs;

- ii) it mentioned no restraints on the inflow of short-term capital which has obvious adverse effects in reproducing the debt cycle;
- iii) it did not mention social policy measures, to compensate the losses from decreasing wages and increasing poverty<sup>42</sup>;
- iv) it relied over-optimistically on foreign investments in production increases, rather than devising a savings policy.<sup>43</sup>

As another justification of transformation, it was also claimed that the existence of state presence in and intervention to the economy, and hence not being immune from pressures, lays at the heart of the import substituting industrialization's failure. The state's taking leave of the productive and regulative role and

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<sup>42</sup> The percent of population living beyond the relative poverty line is 17,25 (World Bank, *Turkey: Poverty and Coping After Crises* (Report No: 24185) (Washington: World Bank Human Development Unit, Europe and Central Asia Region, 2003), cited in: Ayşe Buğra and N. Tolga Sınmazdemir, "Yoksullukla Mücadelede İnsani ve Etkin Bir Yöntem: Nakit Gelir Desteği", Research Paper (Istanbul: Boğaziçi Üniversitesi Sosyal Politika Forumu, n.d.), p.29.

<sup>43</sup> Bağımsız Sosyal Bilimciler - İktisat Grubu, "Güçlü Ekonomiye Geçiş Programı Üzerinde Değerlendirmeler", at: <http://www.bagimsizsosyalbilimciler.org/bsbmetin.html>.

becoming an overseer of the market economy would do away with the crises.

The sketch of administration of economic transformation in Turkey indicate that 'retreat of the state' and disappearance of populism was not a fulfilled promise either. Quite the contrary, the state had a persistent existence in terms of transformation, with more decisions to make and more resources to redistribute in a particularist manner. And the legacy it has left, in terms of Özal period is quite costly: the legitimization of the logic of gain, with a disregard for the rule of law, and missing societal forces in opposition.

In terms of patronage, center-periphery relations are accepted to be a feature of Turkey, where local notables provide the link. In the single-party period, "the nation-state bureaucracy, which was ideologically opposed to the primordial relationships of the notables, had no choice but to turn a blind eye to these relations without necessarily legitimizing them. The notables provided support from the periphery for the system and in return benefited from their exclusive access to the central authorities."<sup>44</sup> The multi-party democracy

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<sup>44</sup> Ayşe Güneş-Ayata, 'Roots and Trends of Clientelism in Turkey', in: Luis Roniger and Ayşe Güneş-Ayata (ed.s), *Democracy, Clientelism and Civil Society* (Boulder: Lynne Rienner, 1994), p.52.

established the dyadic patronage: exchange of favors for votes, where notables are turned into party-affiliated brokers. With JP, "Patronage in the form of roads, water, electricity, schools and so forth, was channeled through the party and was the common instrument of voter mobilization. Vertical linkages were established and strengthened; the party became an important means of access to state resources."<sup>45</sup> These links were important in terms of the state control of credit facilities and state domination of the economy through state economic enterprises. In the 1980 coup, the target also was these linkages which were seen as corrupt, "having little concern for moral principles and being oriented toward competition for spoils."<sup>46</sup> Yet, with ANAP, patronage relations with the periphery continued. By and large, the post-1980 experienced an increase in the demands for resources distributed through the clientelistic political system -as there are greater resources to be distributed with economic transformation and the demands are higher, including better living conditions and improvement in socio-economic status, triggered also by migration.<sup>47</sup>

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<sup>45</sup> Ibid., p.54.

<sup>46</sup> Ibid., p.57.

<sup>47</sup> Ibid., pp.59-60.

It endured because the differential distribution of resources was not translated to a formal system. Put in another way, this means reciprocity relations has played an enduring role in terms of the place of economy in society. Before 1980s, state intervention into the economy was dominated by reciprocal mechanisms. The manifestations of it, following Buğra, were limited commodification of labor -with a high agricultural employment; high micro enterprises based on family labor or labor based on reciprocal relations; the state through its economic enterprises acting as the "employer of last resort"; the redistributive practices of the state assuring stability and employment based on clientalism; and reliance on informal solutions as in the urban housing problem is solved by "gecekondu"s.<sup>48</sup> With transformation, agriculture began to resolve at the face of import liberalization, tourism boom and war in the South East; the migrating peasants could not find any formal housing requirements, but could not find the "gecekondu" opportunity either, at the face of the middle-class housing boom. With the dissolution of unions with the 1980 coup d'état, labor force was increasingly pushed beyond formal employment opportunities; the crisis conditions increased unemployment and poverty, but these

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were not met with social security measures. Indeed, the state-society relations did change, but towards particularism.<sup>49</sup>

Particularism gains its meaning through Turgut Özal's administration of economic transformation, beginning from 1983, and being reproduced therefrom, which, following Öniş, can be read in terms of neopopulism. The point crucial to the discussion in this dissertation is that, it is characterized by Özal's underestimation of the rule of law and democratic procedures, with the pretext of speedy implementation of reforms beyond the pressure of the interest groups. It manifested itself in his preference in ruling by government decrees, creation of extra budgetary funds to implement government spending beyond parliamentary control, and attempts at bypassing the established bureaucracy -either through establishing new institutions or appointing people with no bureaucratic experience (as in his so-called "princes")- which resulted in a bureaucratic split and increased the tensions between the bureaucracy and politicians (with 'princes' not being immune from this tension).<sup>50</sup> Also, the sudden changes

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<sup>48</sup> Ayşe Buğra, "The Place of Economy in Turkish Society", *The South Atlantic Quarterly*, Vol. 102, No. 2/3 (2003), pp.455-458.

<sup>49</sup> Ibid., pp.458-462.

were experienced in interest rates, tax laws and export promotion procedures, rendered the business environment more in uncertainty, and triggered the search for personalized solutions. In a parallel way, depending on closeness to government circles, certain businessmen were arbitrarily enriched, or punished.<sup>51</sup> Although Buğra argues that state-business relations is marked with a weak commitment to a legal framework<sup>52</sup>, arbitrarily changing, or bypassing, or disregarding the law, as it was in the Özal period, and claiming it is legitimate to do so for speedy reform, gave the businessmen the legitimacy to see law as something to be disregarded and disobeyed, and reproduced the particularistic relations with politicians.<sup>53</sup>

Although other examples from management of infrastructure expenditures, allocation of bank credits, or the spending extra budgetary funds, "fictitious

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<sup>50</sup> Ziya Öniş, "Turgut Özal and His Economic Legacy: Turkish Neo-Liberalism in Critical Perspective", *Middle Eastern Studies*, Vol.40, No.4, July 2004, pp.113 - 134.

<sup>51</sup> Ayşe Buğra, *Devlet ve İşadamları* (translated by Fikret Adaman) (Istanbul: İletişim, 1994), pp.212-222.

<sup>52</sup> Characterized with, with a weak legal basis of property law, the possibility of extensive regulatory powers to be given to the governments, the implementation of retroactive decisions, a disregard of the legal framework by the governments in times of economic urgency, the businessman's refraining from applying to legal system for the solution of his problems with the state, the state's preferring to alter the policies rather than punishing the abuser (Ibid., pp.233-239).

<sup>53</sup> Ibid., p.238.

exports"<sup>54</sup> constitute a good example of disregard for law. The bureaucratic split in the incentive mechanisms and the accuracy of the Foreign Trade Company Model to export promotion is discussed, and the amount of "fictitious exports" is calculated in various studies.<sup>55</sup> Yet what is interesting to the aims of this dissertation is that, although the existence of "fictitious exports" has entered into the agenda of the bureaucracy by 1984, the attempts at intervention and punishment were blocked within the same bureaucracy. Every attempt to investigate "fictitious exports" was met with counter measures.

The "fictitious exports" were first recognized by the Under Secretary of Treasury and Foreign Trade, Ekrem Pakdemirli, through an unexplainable increase in exports to Switzerland (128 percent for the first three months of

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<sup>54</sup> In the Turan Çevik lawsuit, it is defined as exportation of a non-existent good from a non-existing or non-functioning firm through bogus invoicing to a non-existing or non-functioning firm abroad, and transfer foreign exchange of an unknown source, to benefit from the export subsidization schemes (Çetin, *Soygun*, p.159).

<sup>55</sup> See: Ziya Öniş, 'Organization of Export-Oriented Industrialization: The Turkish Foreign Trade Companies in a Comparative Perspective', in: Tevfik F. Nas and Mehmet Odekon (ed.s), *Economics and Politics of Turkish Liberalization* (Bethlehem: Lehigh University Press and London and Toronto: Associated University Press, 1992), pp. 73-100; Selim İlkin, 'Exporters: Favoured Dependency', in: Heper, pp. 89-98; Öniş and Webb, 'Turkey: Democratization and Adjustment from Above'. About 20 to 25 percent of exports between 1984-1987 are seen as fictitious, the amount of the public loss in subsidizing "fictitious exports" being 1 trillion liras (Çetin, *Soygun*, p.65). The degree of "overinvoicing" is also cited in: Öniş, 'Export-Oriented Industrialization', p. 92.

1984) at odd prices.<sup>56</sup> It resulted in Pakdemirli's order to the Central Bank to block the payment of the export rebates of eight firms. Oddly enough, these eight firms were known to support Nationalist Democracy Party in the 1983 elections. Pakdemirli's attempt was met with Özal and his Deputy Prime Minister Kaya Erdem's denial.<sup>57</sup> In 1985, Pakdemirli ordered the freezing of ten other firm's payments<sup>58</sup>. This time, Undersecretary of Treasury and Foreign Trade's authority to investigate "fictitious exports" were challenged and its investigation files were required to be returned to State Planning Organization on Özal's oral request<sup>59</sup> and the payments of the suspicious firms were released<sup>60</sup>. The introduction of value added tax, "fictitious exports" were caught throughout 1985 and 1986 mainly invoice controls. This was responded with a change in the decree law regarding tax rebates. By 1 January 1987, with the additional article, invoice bills were not counted as required documents, and the change was retroactive, which practically meant an amnesty for

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<sup>56</sup> Çetin, *Soygun*, pp.100-101.

<sup>57</sup> Ibid., pp.104-109.

<sup>58</sup> The tax rebate of these ten firms amounted to 6,965,000,000 lira (or, around 13,445,946 dollars) (Ibid., pp.112-113).

<sup>59</sup> Ibid., p.114.

the "fictitious exporters".<sup>61</sup> Also, all investigative power was transformed into SPO.<sup>62</sup> The major blow came to "fictitious exports" as it was defined in a criminal lawsuit against Turan Çevik, as "export smuggling", with an eleven year prison term. In response, in 1988, the government with changed the prison term in the article "assembled export smuggling", to capital punishment: the so-called 'economic punishments for economic crimes'.<sup>63</sup>

The legitimation of illicit gains, in this regard for a policy purpose<sup>64</sup> at its lightest explanation<sup>65</sup>, and

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<sup>60</sup> Ibid., pp. 120, 122-123, 126.

<sup>61</sup> Ibid., pp.127-131.

<sup>62</sup> Ibid., pp.137-140.

<sup>63</sup> Ibid., pp.159-166.

<sup>64</sup> Throughout the 1990s, the underregulation of the banking sector and politicization of banking permits would constitute another venue of rent. The banking sector in the 1990s is characterized with a significant weight of public banks, with their politicized borrowing and lending operations. Their duty-losses are met with heavy borrowing by the Treasury, creating an upward pressure on interest rates. The private banks were characterized with high amounts of 'open positions', rendering them vulnerable to speculative attacks, leading to failures on the aftermath of devaluations. Also, the granting of banking licenses is highly politicized. The banks granted licenses on the aftermath of 1991 elections went bankrupt within a decade. The regulatory framework is weak and uncertain. Especially regarding ceilings on connected bank lendings and non-performing loans, the government authorities made limited attempts, until 1999, to cut the links between the banks and their owning holding companies. Although the deposit insurances are limited with a 50 billion lira ceiling, the liabilities of the banks transferred to the Savings Deposits Insurance Fund are taken under insurance in 2001. The holding of government securities by the banks, which allowed for the cheap financing of government deficit also handicapped the implementation of regulation. Also, being placed under surveillance was regarded as a serious regulatory option, allowing for the further injection of public funds to the banks (Ziya Öniş and C. Emre Alper, "Soft Budget Constraints,

government's conscious counter-measures of any investigation and sentencing, paved a way for so-called "plundering" of public resources, with an implicit approval of the government. In terms of countering such like blows, it should also be noted that, on the aftermath of the coup d'état, the ability of the social actors to generate a pressure for the governments in terms of power abuses, distributional issues or corrupt practices remained minimal. Political class, reducing the meaning of democracy to elections, remained in isolation from the rest of the society. The dislocations arising from the transformation process were countered with antipolitics: a systematic attack on the traditional political class, political culture, institutions, and actors, to recreate a support for the continuation of transformation in the given sense. The motive of gain, richness and consumerism is glorified<sup>66</sup> and presented as

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Government Ownership of Banks and Regulatory Failure: The Political Economy of the Turkish Banking System in the Post-Capital Account Liberalization Era", mimeo. (2002), at: [www.econ.boun.edu.tr/papers/pdf/wp-02-02.pdf](http://www.econ.boun.edu.tr/papers/pdf/wp-02-02.pdf).; Şaban Aslan, *Hortum ve Cinnet*, p.40.

<sup>65</sup> It is commonly believed that Özal allowed "fictitious exports" deliberately, in agreement with the smugglers, to provide a premium for their inflow of funds (see, for example: Çetin, *Soygun*, pp. 69-91).

<sup>66</sup> For various manifestations of this post-1980 glorification of consumerism and richness, see: Rifat N. Bali, *Tarz-ı Hayat'tan Life Style'a: Yeni Seçkinler, Yeni Mekanlar, Yeni Yaşamlar* (Istanbul: İletişim, 2002).

a seduction for the society.<sup>67</sup> One further implication of this trend is that the state would be drawn further into an institution of repressive functions, with the alienated, excluded individual, stuck in with the survival strategies, provides a fertile ground for cultivating support for reactionary, ultra-nationalistic or obscurantist ideologies and manifestations of violence.<sup>68</sup>

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<sup>67</sup> Ümit Cizre-Sakallıoğlu and Erinç Yeldan, "Politics, Society and Financial Liberalization: Turkey in the 1980s", *Development and Change*, Vol.31 (2000), pp.493-506.

<sup>68</sup> Boratav et al., pp. 29-32.

## CHAPTER V

### MAKING SENSE OF MAFIA IN TURKEY I: THE EXISTING LITERATURE ON THE MAFIA IN TURKEY

In the introduction, in line with the aim of making sense of mafia conceptually and in reflection to the aim of providing a preliminary evaluation, definitional issues concerning mafia were pointed at. It was stated that the concept has a specific definition in criminology and this definition was not free from criticisms. This point was further elaborated in the second chapter.

The introduction also started with underlining that the subject as the mafia is ambiguous. One primary basis of ambiguity is the data problem. Although data remains to be a serious limitation on the possibilities of writing about the mafia, in search of making sense of the mafia in Turkey, what is already been written in Turkish and on Turkey can give an idea of both the available materials, and the implied understanding of the subject. The implied understanding of the subject and its



shortcomings is especially relevant with respect to the official criminological definitions as underlined in the works of policeman-criminologists.

In other words, how organized crime or mafia problem is understood in Turkey/in Turkish is a component of the 'preliminary evaluation', for it not only gives the limits of data, it also provides the lines of reproduction of the orthodox understanding, upon which any discussion concerning the mafia problem is likely to be held, despite the implications of economic transformation. The writings on the mafia in Turkey/in Turkish follow three main lines: i) the legal construction of criminal association, ii) police understanding of the mafia, iii) journalistic understanding. As it is exemplified in the next chapter, this dissertation uses the journalistic division between white-collar crime, organized crime and corruption as a starting point to discuss the mafia metaphor. Also, it argues that police understanding and legal construction, obsessed with 'organization' and in search of proving threat, looses the essence of the law: 'criminal gain'.

Before presenting these writings, data problem deserve a more words: the studies whose definitions and approaches are discussed in the second chapter are case studies or general evaluations based on either data obtained in

cooperation with the police<sup>1</sup>, or on archival material<sup>2</sup>, or on a fieldwork<sup>3</sup>. Also, depending on the aim of the author, both the existing literature, the materials in the existing literature, any daily news in the media is re-evaluated from a new perspective<sup>4</sup>. In terms of popular representation of the mafia, television serials, movies or novels constitute another set of data, yet this colorful terrain of study is beyond the scope of this dissertation<sup>5</sup>.

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<sup>1</sup> For example: Anderson, *The Business of Organized Crime*; Ianni and Ianni, *A Family Business*; Abadinsky, *The Mafia in America: An Oral History*; Cressey himself is a member of 1967 President's U.S. Organized Crime Commission, and the testimonies therein are used in his book (Cressey, *The Theft of the Nation*).

<sup>2</sup> For example: Hess, *Mafia and Mafiosi*; Blok, *Mafia of a Sicilian Village*.

<sup>3</sup> For example: Paoli, *Fratelli di Mafia*; Potter, *Criminal Organizations*; Reuter, *Disorganized Crime*.

<sup>4</sup> For example: Naylor, *Wages of Crime*.

<sup>5</sup> Yet, let me note that in the last two years, the existing popular understanding of the mafia is also shaped by the highly popular television serial *Kurtlar Vadisi* (Valley of the Wolves) which explicitly claims to be a mafia serial. With its ambiguous attributes to commonly known characters and events of the *Susurluk* process, it is seen to have verisimilitude. Of course, the rest of the story is perceived to be real: it presents a highly hierarchical representation of mafia: a Council, which controls the entire smuggling and racketeering activities, headed by a respectable businessman, known also as the Baron. The strategy of combat legitimized in the series is the use of secret agents by an organization above the existing enforcement and information agencies and beyond the control of law. Both for the business world, and for the common people, the ladder of upward mobility is being a mafia boss or being recruited by the mafia. Yet, the mafia evil is represented by the Council, the secret agent/mafia boss is always benevolent, kills or collects extortion money because he has to. Not to mention that through the character of the secret agent/mafia boss and the group he controls, both a specific jargon and outlook is rendered popular, and murdering in the name of 'destroying the Council and saving the country' is legitimized.

In *Türkiye'nin Mafyası* (The Mafia of Turkey)<sup>6</sup>, criminologists Bovenkerk and Yeşilgöz addressing the data problem, both in general and for studying Turkey, underline that there is a distance between criminology and Turkey. While the general lack of interest both from criminology and social sciences to the problem of organized crime leaves the issue to journalism which does not use criminological categories, the entire books' being written in Turkish draws criminology away from Turkey. Besides, especially for the American criminological enterprise, Turkish organized criminality becomes a matter of interest as long as it intersects with the American national or international policies.<sup>7</sup> The lack of academic interest in Turkey is also reflected in the fact that among the classical studies, only Arlacchi's *Mafia Business* is translated into Turkish<sup>8</sup>. Hess is commonly referred to by Murat Çulcu, but as it is discussed below, he misreads Hess and develops an anachronic and essentialist narrative. Bovenkerk and

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<sup>6</sup> Frank Bovenkerk and Yücel Yeşilgöz, *Türkiye'nin Mafyası* (translated by Nurten Aykanat and Haluk Tuna) (Istanbul: İletişim, 2000).

<sup>7</sup> Ibid., pp.23-25. They also add that although they had seen indications of the role of military in organized criminality, criticizing the military in Turkey being a taboo, they could not have the opportunity to prove this role (Ibid., p.24).

<sup>8</sup> Pino Arlacchi, *Mafya Ahlakı ve Kapitalizmin Ruhu* (translated by Bahadır Sina Şener) (Istanbul: İletişim, 2000).

Yeşilgöz also add that, in criminology, regarding the rate of crimes that are unknown to the police (dark number problem), reliance on the police data only is seen to be incomplete and one-sided.<sup>9</sup>

Of course, the lack of interest of the social sciences to the organized crime problem can not be blamed on the lazyness or indifference of the scholars, but on a visibility problem. The data, primary or journalistic, to write about the mafia in one way or another, gained visibility -often accidentally- in the second half of the 1990s. Rather than being a problem of the 1990s, it might be argued that it reached a point of saturation such that it had fallen into daylight, accidentally or otherwise. Almost all of the materials cited in the following pages are published beginning from the 1990s.

In this sense, one set of primary data for Turkey is the criminal law, the context and characteristics of which will be discussed in the below. The official point of view is reflected primarily on General Directorate of Security, Anti-Smuggling and Organized Crime Department (*Emniyet Genel Müdürlüğü Kaçakçılık ve Organize Suçlarla Mücadele Daire Başkanlığı*)'s five reports<sup>10</sup> which also

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<sup>9</sup> Bovenkerk and Yeşilgöz, *Türkiye'nin Mafyası*, p.31.

<sup>10</sup> *Kaçakçılık ve Organize Suçlarla Mücadele '99*, at: <http://www.kom.gov.tr/yayinlar/yayin.htm>; *Kaçakçılık ve Organize*

give a profile of the mafia in Turkey. Also, *National Assembly's Susurluk Commission Report*<sup>11</sup> provides testimonies of a wide range of names, some of which counted as 'figures of the underworld'. Regarding the Susurluk Accident, National Intelligence Agency's investigation<sup>12</sup>, President of Prime Minister's Committee of Inspection (*Başbakanlık Teftiş Kurulu*) Kutlu Savaş's Susurluk report<sup>13</sup>, Istanbul State Security Court Attorney General's summary regarding deputies Mehmet Açar and Sedat Bucak's involvement in the Susurluk event, presented to the National Assembly<sup>14</sup> can count as primary data.

Although another possible source of primary data is the fieldworks, none is available except from Yeşilgöz's study of Turkish and Kurdish organized crime rings in Mercatorbourt district of Amsterdam and Spijkerkwartier

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*Suçlarla Mücadele 2000*, at: <http://www.kom.gov.tr/yayinlar/2000/index.htm>. Anti-Smuggling and Organized Crime department issued other activity reports in 1998, 2001 and 2002.

<sup>11</sup> *TBMM Susurluk Komisyonu Raporu*, at: <http://www.siyaset.bilkent.edu.tr/susurluk/tbmm/>

<sup>12</sup> *T.C. Başbakanlık Milli İstihbarat Teşkilatı Müsteşarlığı, İnceleme*, at: <http://www.siyaset.bilkent.edu.tr/susurluk/mit/>

<sup>13</sup> *Başbakanlık Teftiş Kurulu Başkanı Kutlu Savaş'ın Susurluk Raporu*, at: <http://www.siyaset.bilkent.edu.tr/susurluk/kutlu/>

<sup>14</sup> *T.C. İstanbul Devlet Güvenlik Mahkemesi Cumhuriyet Başsavcılığı, Fezleke*, Hazırlık No: 1997/221, Fezleke No: 1997/1, 30.01.1997, at: <http://www.siyaset.bilkent.edu.tr/susurluk/fezleke/>

district of Arnhem which is among the wide range of materials used in their *Türkiye'nin Mafyası*<sup>15</sup>. Also, interviews given by 'figures of the underworld', or state officials, and journalistic narratives, pieces of information, or points of view, in between the lines, in other social scientific studies also constitute a data on its own, open to new readings.

Adding to the distance between criminology and Turkey mentioned above, the basic issue at hand is the absence of a thorough evaluation of mafia, although social scientists and journalists speak of a mafia, or mafias, or organized criminality, or gangs, or corruption networks which can also be called mafia. There seems to be a considerable distance between the concepts, and the complex web of events that can be traced in the relatively rich array of journalistic works. The only exception is criminologists Bovenkerk and Yeşilgöz's *Türkiye'nin Mafyası*<sup>16</sup>, originally written in Dutch and translated into Turkish. Making use of journalistic material, they also show its possibilities. Also, the chapters devoted to the 'idealist' mafia in Tanıl Bora

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<sup>15</sup> The book also contains an interview with and a portrait of famous drug-smuggler Hüseyin Baybaşı (Bovenkerk and Yeşilgöz, *Türkiye'nin Mafyası*, pp.265-303).

<sup>16</sup> Bovenkerk and Yeşilgöz, *Türkiye'nin Mafyası*.

and Kemal Can's two volumes<sup>17</sup> on Nationalist Action Party (*Milliyetçi Hareket Partisi*) can be taken as neat surveys and a nuanced evaluation of the 'idealist' mafia.

### Criminal Law

In search of making sense of mafia in Turkey, one level of meaning is the legal studies. Not only that Articles 313 of the Turkish Criminal Code and Act No.4422 on Combat against Criminal Organizations Aiming at Gain give the definitions of organized criminality, the published Supreme Court of Appeals decisions serve as more or less the only primary data, and part of the few scholarly work on organized criminality is from legal scholarship<sup>18</sup>, but one of the components which shape the public perception on who is mafia and what is a mafia-type activity, what kind of a threat that is, and how it can be fought against come from the legal point of view. The basis of 'combat' against mafia-type organizations is repeatedly underlined to be the judicial power. The

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<sup>17</sup> Tanıl Bora and Kemal Can, *Devlet Ocak Dergah: 12 Eylül'den 1990'lara Ülkücü Hareket* (Istanbul: İletişim, 4<sup>th</sup> ed., 1999), pp.377-406; Tanıl Bora and Kemal Can, *Devlet ve Kuzgun: 1990'lardan 2000'lere MHP* (Istanbul: İletişim, 2004), pp.405-433.

<sup>18</sup> Vesile Sonay Evik, Mustafa Taşkın and Mustafa Ruhan Erdem's works quoted in the following pages are PhD dissertations, Ümit Ceylan's work is a master's thesis prepared in different faculties of law.

public perception on the success in this 'combat' is based on the number of 'organization's caught and sentences approved, especially regarding the cases that catch public attention. In this sense, how the laws define and how legal scholarship sees the matter of organized criminality and/or mafia-type criminality, and what they mean in their analysis deserves attention, and this chapter aims at drawing a silhouette of this not always parallel issues. Yet, the law is a matter of specific definitions<sup>19</sup>, and any further comment on this specific understanding and its power in terms of combat against the mafia phenomenon should at first be understood in these terms.

Regarding Article 313 and Act No. 4422, the legal scholars agree that the offense is a violation of the public order, public order meaning orderly social life and public security and peace.<sup>20</sup> Organized criminals, or mafiosi violate public order not only by committing crimes, but basically by establishing an organization. In the context of mafia-type activity, the organization aims at obtaining unlawful gain.<sup>21</sup> On the one hand, the

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<sup>19</sup> The legal context can be followed in Appendix C.

<sup>20</sup> Vesile Sonay Evik, *Çıkar Amaçlı Örgütlenme Suçu* (Istanbul: Beta, 2004), p.187.



definition of being organized as a separate crime ranks back to the positivist school of criminology, where an organization of criminals is seen as more dangerous for coming together of people inclined towards vice is seen as a starter of diffusion of vice to the society.<sup>22</sup> In the later years, the focus shifted to the plurality of crimes, and it is stated that the union of people to commit more than one crime is perilous as this would constitute a 'school of crime' and it is seen as an independent crime.<sup>23</sup> That is, groups are seen as a threat to the 'public order' -the subject matter are crimes in against property, as theft, fraud and the like.

On the other hand, although incorporating a definition of organized criminality into criminal laws is seen as a major reason why the definitional efforts continue<sup>24</sup>, almost classically the introductions begin with the statement 'there is not an agreed upon

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<sup>21</sup>Although no clear definitions are given in the Turkish Criminal Code on what an organization, a gang, a group or a union is, 'criminal association', 'criminal organization aiming at gain', 'organizing for smuggling', 'organizing for drug trade', 'money laundering', 'armed gangs', 'union', 'organizing for terrorism' are defined as separate crimes in the Turkish Criminal Code and the special Acts (Evik, *Çıkar Amaçlı Örgütlenme Suçu*, pp.201-212).

<sup>22</sup> Cesare Lombroso, *L'uomo Delinquente, I* (Torino, 1889), p.534, cited in: Evik, *Çıkar Amaçlı Örgütlenme Suçu*, p.152, fn.5.

<sup>23</sup> *Majno Ceza Kanunu Şerhi*, Vol. 3 (Ankara: Baylan Matbaası, Yargıtay Yayınları No. 8, 1980), p.10.

<sup>24</sup> Michael D. Maltz, 'Toward Defining Organized Crime', pp.21-22.

definition of organized criminality and organized criminality differ across countries in terms of the specific social, economic and political realities'. Yet, the definitions or the criteria put forth by legal scholars echo the criminal hierarchies / continuing criminal enterprise line of discussions in American scholarship and recent international efforts discussed in the previous chapters. They try to put as much as possible in the same bag. An additional complication is due to translation: choosing a term for organized crime in Turkish, *organize* and *örgütlü* is differentiated, although both mean organized<sup>25</sup>. At most, organization (*örgüt*) can be seen different from association (*teşekkül*), where the former put a heavy emphasis on the organizational characteristics. The scholars see organized criminality, similar to mafia-type criminality, with mafia being an Italian phenomenon. The Turkish synonym is "criminal organization acting for gain"<sup>26</sup>.

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<sup>25</sup> Evik argues that the term *örgütlü* places a heavier emphasis on the organizational qualities than *organize* (Evik, *Çıkar Amaçlı Örgütlenme Suçu*, p.6).

<sup>26</sup> Referring to this term, which gives the relevant article its name, Sulhi Dönmezer openly states that it is the mafia-type crimes the Act addressed, but 'of course', they could not have used the word 'mafia'. Why? He does not say (Sulhi Dönmezer, 'Çetelerle Mücadele Amacıyla 4422 Sayılı Kanunla Kabul Edilen Koruma Tedbirleri', at: [http://www.izmirbarosu.org.tr/yargi\\_reformu\\_2000/sulhi\\_donmezer.htm](http://www.izmirbarosu.org.tr/yargi_reformu_2000/sulhi_donmezer.htm))

Following the neat catalog of Ceylan, the crimes typically committed by organized criminals include everything: illicit trafficking in drugs, illegal trafficking in arms, forgery in negotiable instruments, gold smuggling, illicit trafficking in nuclear substances, illegal trafficking of cultural objects, financial fraud, securities fraud, money laundering, corruption in the awarding of public contracts, and credits, counterfeiture, illegal trade of stolen cars, illegal waste disposal and other environmental crimes, illegal trade in human body parts, illegal technology transfer, trafficking of persons, transfer of means of payment, prostitution and trade in illegal pornographic items, extortion, illegal gambling, bribery and corruption, black marketeering, armed theft, arson, child pornography, threat and blackmailing, assault and murder, loan-sharking, and computer crimes.<sup>27</sup>

Returning to the characteristics of groups, there is almost a consensus<sup>28</sup> around the classical United States

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<sup>27</sup> Ümit Ceylan, *Organize Suçluluk ve Çıkar Amaçlı Suç Örgütü* (4422 Sayılı Kanun m.1) (Ankara: Turhan, 2003), pp.36-41.

<sup>28</sup> See: Ümit Kocasakal, 'Organize Suçluluğun Tanımı, Özellikleri ve Kapsamı', in: *Prof. Dr. Kemal Oğuzman'a Armağan* (Istanbul: Galatasaray Üniversitesi Hukuk Fakültesi, 2000), pp.142-143; Feridun Yenisey, 'Çıkar Amaçlı Suç Örgütleriyle Mücadele', in: *Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanunu (Seminer)* (Ankara: Adalet Bakanlığı, 1999), pp.46-47; Ümit Kocasakal, 'Organize Suçluluğun Tanımı, Özellikleri ve Kapsamı', in: *Prof. Dr. Kemal Oğuzman'a Armağan* (Istanbul: Galatasaray Üniversitesi Hukuk Fakültesi, 2000), pp.142-143; Adem Sözüer, "Organize Suçluluk Kavramı ve Batı Ülkelerinde Bu Suçlulukla Mücadele ile İlgili Gelişmeler", *Marmara Üniversitesi Hukuk Araştırmaları Dergisi*,

definition and its reflection upon the so-called Leipzig criteria<sup>29</sup>:

- i) a hierarchical structure and functional division of labor to obtain unlawful gain,
- ii) an intra-organizational system of enforcement of norms and punishments, the existence of a mutual help mechanism,
- iii) infiltration to the legitimate sector through attempts at money laundering,
- iv) terrorization of public and private officials for vulnerability to corruption,
- v) organizational gain being based on crime, where organization is defined as a union of volition to commit crime,
- vi) continuous or career criminality,
- vii) use of force or violence,
- viii) establishment of front firms to launder money.<sup>30</sup>

Organized criminality or mafia-type crime is defined in Article 313 of the Turkish Criminal Code and Act No.

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Vol.9, No.1-3 (1995), pp.56-59; Mustafa Ruhan Erdem, *Ceza Muhakemesinde, Organize Suçlulukla Mücadelede Gizli Soruşturma Tedbirleri* (Ankara: Seçkin, 2001), pp. 37-38.

<sup>29</sup> Named after the European Union task force meeting on organized criminality, it reflects the European Union's view on the issue.

<sup>30</sup> M. Emin Artuk, Ahmet Gökçen and A. Caner Yenidünya, 'Hukuki Mütalaa', at: [http://www.bav-savunma.org/ml\\_ea.html](http://www.bav-savunma.org/ml_ea.html).

4422 for Fight against Criminal Organizations Acting for Gain (4422 sayılı Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanunu).

#### Article 313 of the Turkish Criminal Code

Article 313 is in the Second Chapter (Those who Establish a Criminal Association) of the Fifth Book (Crimes Against the Public Order)<sup>31</sup> of the Turkish Criminal Code. The first paragraph of the Article states that "those who establish or join a criminal association in whatever manner is sentenced to one year to two years of heavy imprisonment."<sup>32</sup> In the sixth paragraph, the establishing a criminal association is defined as "two or more people joining for the purpose of committing crime together"<sup>33</sup>. The second, third and fourth paragraphs of

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<sup>31</sup> The first chapter of the fifth book is entitled 'Provocation for the Commitment of a Crime, Threat for Creating Fear or Panic'. In other words, regarding the other articles (Articles 311, 312 and 312/A) in this book, crimes against public order also include provocation of crime, praising crime, and threat. (Gürsel Yalvaç, *Ceza ve Yargılama Hukuku Yasaları: T. C. Anayasası, TCK, CMUK, CİK ve İlgili Mevzuat*, (Ankara: Adalet, 3<sup>rd</sup> ed., 2004), pp. 193-195.)

<sup>32</sup> See: Appendix D.

<sup>33</sup> See: Appendix D.

the Article define the matters of aggravation.<sup>34</sup> The fifth paragraph defines the joinder of offenses.<sup>35</sup>

Article 314 is on helping a criminal association and states that "those who purposefully provide shelter, or provide food or arms or ammunition, or help the associations established in the article above are sentenced to six months to one year of imprisonment."<sup>36</sup> The sentence is aggravated if the helping parties are societies, political parties, labor and professional organizations, or if the buildings of all these organizations or educational institutions or their dormitories are used helping the criminal associations.<sup>37</sup> The sentence is mitigated if the helping party is a close relative.<sup>38</sup>

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<sup>34</sup> As it is said in the second paragraph, "If the association is established for the purposes of arising fear, anxiety, or panic among the people, or for an aim stemming from a political or social opinion, or for committing the crimes against public safety, or for the crimes of voluntary manslaughter, or plundering and forestalling and kidnapping, the sentence is one year to three years of heavy imprisonment." The third paragraph states that if the association is armed, the sentences are aggravated. The fourth paragraph indicates that the sentences are aggravated also for the managers of the association. (See: Appendix D)

<sup>35</sup> That is, "When the members of the association commit crime directed towards the aim of the association, the sum of the sentences can not exceed the maximum level of the most heavily punished act." (See: Appendix D)

<sup>36</sup> See: Appendix D.

<sup>37</sup> See: Appendix D.

<sup>38</sup> See: Appendix D.

Organizing for committing a crime was first defined in the Imperial Criminal Code (*Ceza Kanunname-i Hümayunu*) dated 1278 (1858) which was almost a thorough translation of the French Criminal Code dated 1810.<sup>39</sup> In the relevant articles of the French Criminal Code criminal organization against persons or property was accepted as a crime against public peace, and two or more people joining together for using open force or violence for burglary or theft, and the accomplices and those who encourage or support them are punished with a death sentence. Organization denoted an agreement between the leader and the gang on the distribution of the criminal gains. Organization defined as such, even the existence of an association for committing crimes against persons or property was defined as a threat to the public order.<sup>40</sup>

The basis of the same article in the Turkish Criminal Code (1926) was adopted from the Zanardelli Law dated 1889. Zanardelli Law, in contrast with the French Criminal Code, did not rely on a heavy emphasis on organization but defined criminal association -that is, five or more people joining together- for the purpose of

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<sup>39</sup> Evik, *Çıkar Amaçlı Örgütlenme Suçu*, p.136; Sulhi Dönmezer and Sahir Erman, *Nazari ve Tatbiki Ceza Hukuku, Genel Kısım, Cilt I: Giriş, Suç Genel Teorisi, Kanuni Unsur, Maddi Unsur* (Istanbul: Beta, 13<sup>th</sup> ed., 1997), pp. 125-126.

committing crimes against justice, or public safety, or public integrity, or general customs, family order, or against persons, or property as a separate crime, with a prison sentence of one year to five years.<sup>41</sup>

Article 313 of the Turkish Criminal Code went through several changes, the most important of which was the change in 1979, which abolished the citation of the special types of crime and aggravated the punishment; also, reduced the minimum number of participants from five to two, and added the special circumstances for aggravation as in the paragraphs two mentioned above.<sup>42</sup> This change parallels Article 416 of Rocco Law dated 1930, which in comparison with the Zanardelli Law, decreases the minimum number of people joining together to establish a criminal association from five to two, and generalizes the crimes committed by the criminal association to any crime committed. The reason was stated to be the understanding that public order means legal order, and all crimes violate the state authority to

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<sup>40</sup> Evik, *Çıkar Amaçlı Örgütlenme Suçu*, pp.151-152.

<sup>41</sup> Ibid., pp.153-154.

<sup>42</sup> For the preamble and details of the change, see: Hasan Köroğlu, *Örgütlü Suçluluk: Çıkar Amaçlı Suç Örgütleriyle Mücadele (4422 Sayılı Kanun) ve Cürüm İşlemek İçin Teşekkül Oluşturmak* (Ankara: Seçkin, 2001), pp.96-97. Evik, *Çıkar Amaçlı Örgütlenme Suçu*, p.157; Ayhan Önder, *Türk Ceza Hukuku: Özel Hükümler* (Istanbul: Beta, revised 3<sup>rd</sup> ed., 1991), p.285.



establish and enforce a legal system.<sup>43</sup> In the change in 1991 the fifth paragraph was added to the article.<sup>44</sup>

In terms of the general theory of offenses, the material element of the offense defined in Article 313 is "establishing a criminal association for the purpose of committing a crime", including joining and managing the association. Association is said to denote "coming together" of two or more people for a certain purpose, in other words, a union of volition. Here, the purpose is committing a crime, or the union of volition is for committing a crime. In other words, association is defined by its aim, not the form.<sup>45</sup> As the purpose is committing a crime, how the association is established is not of importance. After the union of volition, the crime acquires a continuous characteristic.<sup>46</sup>

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<sup>43</sup> Evik, *Çıkar Amaçlı Örgütlenme Suçu*, pp.154-155.

<sup>44</sup> Ibid., p.157.

<sup>45</sup> In a Supreme Court of Appeals General Criminal Board decision, it is stated that the form of the association is not of importance and the association need not be hierarchical (Yargıtay Ceza Genel Kurulu, 1.2.2000, E.1999/8-299, K.2001/1, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturmak Suçları*, p.93). Yet in the doctrine, it is also argued that an association is not an abstract union and requires a hierarchical structure, a chain of subordination, and a chain of command through which the association gains power over its members. (İçel, 'Hukuki Mütalaa')

<sup>46</sup> Köroğlu, *Örgütlü Suçluluk*, pp. 100-101; Önder, *Türk Ceza Hukuku: Özel Hükümler*, pp.287-289; Kayıhan İçel, 'Hukuki Mütalaa'; M. Emin Artuk, Ahmet Gökçen and A. Caner Yenidünya, 'Hukuki Mütalaa'; Uğur Alacakaptan, 'Hukuki Mütalaa', at: <http://www.bav->

Yet, criminal association is seen as different from a simple union, in the sense that the association is to be continuous and permanent and be established for committing more than one crime. The plurality of crimes to be committed necessitates the establishment of a criminal association and even before the commitment of crimes, the establishment of an organization itself is defined as a crime.<sup>47</sup> That is, criminal association is seen as an offense of peril where the preparatory acts are punished.<sup>48</sup> In other words, the criminal association need not commit a crime; its being established is a crime in itself.<sup>49</sup> The article aims at preventing future crimes. The legal value protected here is public order. And, the article punishes the perilous association with continuity, permanency and which would commit more than

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[savunma.org/ml\\_ua.html](http://www.bav-savunma.org/ml_ua.html); Erol Cihan, 'Hukuki Mütalaa', at: [http://www.bav-savunma.org/ml\\_ec.html](http://www.bav-savunma.org/ml_ec.html); Doğan Soyaslan, 'Hukuki Mütalaa', at: [http://www.bav-savunma.org/ml\\_ds.html](http://www.bav-savunma.org/ml_ds.html); Bahri Öztürk, 'Hukuki Mütalaa', at: [http://www.bav-savunma.org/ml\\_bo.html](http://www.bav-savunma.org/ml_bo.html)

<sup>47</sup> Yargıtay Ceza Genel Kurulu, 11.12.2001, E.2001/8-248, K.288, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturmak Suçları*, p.88; İçel, 'Hukuki Mütalaa'; Artuk et al., 'Hukuki Mütalaa'; Alacakaptan, 'Hukuki Mütalaa'; Cihan, 'Hukuki Mütalaa'; Soyaslan, 'Hukuki Mütalaa'; Öztürk, 'Hukuki Mütalaa'.

<sup>48</sup> Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturmak Suçları*, p.88; İçel, 'Hukuki Mütalaa'; Artuk et al., 'Hukuki Mütalaa'; Alacakaptan, 'Hukuki Mütalaa'; Cihan, 'Hukuki Mütalaa'; Soyaslan, 'Hukuki Mütalaa'; Öztürk, 'Hukuki Mütalaa'.

<sup>49</sup> Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturmak Suçları*, p.22; İçel, 'Hukuki Mütalaa'; Artuk et al., 'Hukuki Mütalaa'; Alacakaptan, 'Hukuki Mütalaa'; Cihan, 'Hukuki Mütalaa'; Soyaslan, 'Hukuki Mütalaa'; Öztürk, 'Hukuki Mütalaa'.

one crime.<sup>50</sup> That is, establishing a criminal association as defined in Article 313 is a continuous crime<sup>51</sup> and establishing an association for one crime does not constitute a "criminal association".<sup>52</sup> Also, it is not necessary that the association be for criminal purposes: the enterprises and/or institutions can also acquire the characteristics of a criminal organization, where the institution and/or enterprise serve as an umbrella for crime.<sup>53</sup> Regarding the 'Susurluk case', the police members' misuse of their authorities in association with casino managers, drug smugglers and murder suspects,

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<sup>50</sup> Yargıtay Ceza Genel Kurulu, 1.2.2000, E.1999/8-299, K.2001/1, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturmak Suçları*, p.93.

<sup>51</sup> İçel, 'Hukuki Mütalaa'; Artuk et al., 'Hukuki Mütalaa'; Alacakaptan, 'Hukuki Mütalaa'; Cihan, 'Hukuki Mütalaa'; Soyaslan, 'Hukuki Mütalaa'.

<sup>52</sup> Yargıtay 8. Ceza Dairesi, 2.7.2001, E2001/7261, K.12457, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturmak Suçları*, pp.126-127; Yargıtay 8. Ceza Dairesi, 20.6.2001, E.2001/9222, K.12098, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturmak Suçları*, p.128; Yargıtay 8. Ceza Dairesi, 11.7.1997, E.1997/9489, K.11420, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturmak Suçları*, pp.155-156. Yet, the commitment of a single crime in a continuous and organized way, and within a disciplined solidarity is seen within the definition of criminal association (Yargıtay 8. Ceza Dairesi, 24.5.2001, E.2001/2199, K.11097, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturmak Suçları*, pp.132-133.

<sup>53</sup> İçel, 'Hukuki Mütalaa'; regarding firms, Yargıtay 8. Ceza Dairesi, 13.5.2002, E.2002/166, K.6026, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturmak Suçları*, pp.97-98; for the administrators of Welfare Party related YUVA Foundation, Yargıtay Ceza Genel Kurulu, 1.2.2000, E.1999/8,

under the name of 'combatting terrorism' is indeed seen as 'criminal association'.<sup>54</sup>

The moral element of offense defined in Article 313 is special intent.<sup>55</sup> Along with knowledge and volition, the volition to establish an organization to commit a crime is necessary.<sup>56</sup> It is also stated that 'criminal association' is not a successive offense; it is an offense with multiple offenders and an offense in convergence.<sup>57</sup>

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K.2001/1, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek İçin Teşekkül Oluşturmak Suçları*, pp.89-95.

<sup>54</sup> Yargıtay 8. Ceza Dairesi, 15.1.2002, E.2001/16176, K.2002/125, Yargıtay 8. Ceza Dairesi, 15.4.2002, E.2001/16172, K.2002.5062, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek İçin Teşekkül Oluşturmak Suçları*, pp.107-108.

<sup>55</sup> Önder argues that the moral element of this crime is general intent. For, the intent, in this article is the volition committing a crime joining together. As this intent is directed towards the result, it is general intent. (Önder, *Türk Ceza Hukuku: Özel Hükümler*, p.289).

<sup>56</sup> Artuk et al., 'Hukuki Mütalaa'; Alacakaptan, 'Hukuki Mütalaa'; Soyaslan, 'Hukuki Mütalaa'; Köroğlu, *Örgütlü Suçluluk*, p.101.

<sup>57</sup> İçel, 'Hukuki Mütalaa', Alacakaptan, 'Hukuki Mütalaa'.

Act No. 4422 for Combating Criminal Organizations Acting  
for Gain

In 1999, a special form of 'criminal association' as defined in article 313<sup>58</sup> is formulated with Act No. 4422 for Combating Criminal Organizations Acting for Gain. In the general preamble of the Act, the necessity for issuing a special act on organized criminality is expressed underlining that "criminal organizations acting for gain" (also called 'mafia-type organization' in Italy), along with terrorism and economic criminality, violate public peace substantially and occupy public authority. These organizations became legal violations such that they force states to form exceptional institutions both in criminal and criminal procedural codes. It was understood from the experiences of the foreign countries that it is impossible to combat these organizations which, using their wealth, try every possible way to prevent seizure, corrupt the police and make use of technology, within the existing organizations of the state. They are such organizations that act for gain, commit crimes (including illegal trade in prostitution and drugs, 'even worse', corrupt public

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<sup>58</sup> For an evaluation of differences between Article 313 and Act No.4422, see: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturma Suçları*, pp.25-29.

officials, generalize bribery, unlawfully collect debts, force the signature of bills of debt, 'even further', they 'dare' to guide politics and work in the appointment of the officials of their choice) that involve force or threat, 'heavily violating the public order', intimidate victims and reach gain. In response, elsewhere in the world, the states reacted either through adding new provisions to the existing criminal codes, especially a definition of 'an organization aiming at gain' as a special crime, and defined special enforcement regimes. Or, adding new and exceptional provisions into the criminal procedural code, especially defining exceptional investigative techniques and endowing the investigators with an exceptional authority in terms of tapping communication, involvement of secret agents, secret observation, witness protection, and examination of records and data. And, they authorized professional and expert special bodies in the investigation and prosecution of organized criminality.<sup>59</sup> The Internal Affairs Commission added that, the legislations elsewhere were based on four basic principles: that they can not be fought against with another set of measures; that the measures should not violate human rights and basic

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<sup>59</sup> 'Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanunu Tasarısı ve İçişleri ve Adalet Komisyonları Raporları (1/487)', at: <http://www.tbmm.gov.tr/sirasayi/donem21/yil01/ss87m.htm>.

principles of law; the punishments should be reciprocal to the crimes; the measures should be enforced within the knowledge of legal authorities. The Commission also underlined that in an urgent matter such like combating with criminal organizations aiming at gain, although similar legislations were passed elsewhere in the world, and despite the prior attempts in Turkey<sup>60</sup>, a regulation was not until then prepared, and this very legislation should be welcomed.<sup>61</sup>

After the changes with Act No. 4723 Article 3, the first paragraph of the first article of Act No. 4422 for Combating Criminal Organizations Acting for Gain states that:

"Those who establish an organization or guide an organization or engage in any act on behalf of the organization, or serve purposefully an organization for the purpose of committing the crimes of taking over the management or control of an institution, establishment, or enterprise directly or indirectly, gaining power or control over public services, media institutions, public bidding, concession or license procedures, creating cartel and trust

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<sup>60</sup>In 1995, a draft was prepared by a commission in the presidency of Sulhi Dönmezer, yet in 1998, because of the early elections, the draft act was shelved before it was discussed in the National Assembly. (Sulhi Dönmezer, 'Çetelerle Mücadele Amacıyla 4422 Sayılı Kanunla Kabul Edilen Koruma Tedbirleri'). The definition of 'criminal organizations acting for gain' in that draft is the same with the first paragraph of Act No.4422, Article 1 (Türkiye Büyük Millet Meclisi Susurluk Komisyonu Raporu, at: <http://www.siyaset.bilkent.edu.tr/susurluk/tbmm/kavram-eski-raporlar.html>).

<sup>61</sup> 'Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanunu Tasarısı ve İçişleri ve Adalet Komisyonları Raporları (1/487)'.

in economic activities, procuring decrease and scarcity in materials and goods, the decrease or increase in prices, reaping unjust profit for themselves or for others, gaining vote in the elections or preventing the elections, using the power of daunting, or frightening, or intimidating by using threat, pressure, force, or violence, are sentenced to three years to six years of heavy imprisonment; the members of the organization are sentenced to two years to four years of heavy imprisonment just for this reason."<sup>62</sup>

The second, third and sixth paragraphs of the first article of the Act define the matters in aggravation<sup>63</sup>; the fourth paragraph states that materials used in crime and criminal incomes are confiscated; the fourth paragraph indicates that the act covers all overt and covert organizations sharing the aims defined in the first paragraph and use the power of daunting, or frightening, or intimidating, regardless of whether or not they are called a 'criminal organization acting for gain'; the seventh paragraph define media propaganda of the organization as a separate article.<sup>64</sup>

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<sup>62</sup> See: Appendix E.

<sup>63</sup> The organization's being armed, the members' being civil servants, and hiding the offenders are matters in aggravation (See: Appendix E).

<sup>64</sup> See: Appendix E.



The second to tenth articles of the act define the special investigative measures<sup>65</sup>: Article 2 is on tapping communication; Article 3 is on secret observation; Article 4 is on the examination of records and data; Article 5 is on involvement of secret agents; Article 6 is on confiscation; Article 7 is on the protection of witnesses and agents; Article 8 is on implementation of procedures; Article 9 is on ban on traveling abroad; Article 10 is on the breach of confidentiality, the responsibility and punishment of authorities; and, Articles 11-19 are on other criminal procedures and execution of sentences.<sup>66</sup>

The basis of the definition as is expressed in Article 1 is adopted from Article 416-*bis* of Italian Criminal Law (added with Article 1 of Act No. 646, also known as 'Rognoni-La Torre Act', accepted in 13 September 1982, published in the Official Gazette No. 253, on 14 September 1982)<sup>67</sup>, and the investigative measures are

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<sup>65</sup> Also, a book of regulations is issued on 26 January 2001 on the implementation of the Articles 2 to 10 ('4422 Sayılı Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanununun Uygulanmasına İlişkin Yönetmelik', in: Yalvaç, *Ceza ve Yargılama Hukuku Yasaları*, pp. 551-574).

<sup>66</sup> See: Appendix E.

<sup>67</sup> For a detailed discussion of the Italian anti-mafia measures, see: Evik, *Çıkar Amaçlı Örgütlenme Suçu*, pp.60-116; Gaetano Nanulla, *La Lotta alla Mafia: Strumenti Giuridici, Strutture di Coordinamento, Legislazione Vigente* (Milan: Giuffrè, 4<sup>th</sup> ed., 1999), pp. 29-227).

adopted from German Law<sup>68</sup>. The third paragraph of Article 416-bis defines a mafia-type organization (formed by three or more persons, as stated in the first paragraph<sup>69</sup>) as such:

"The association is mafia-type when it commits crimes to obtain directly and indirectly the management or control of economic activities, concessions, authorizations, public contracts and services, or to obtain profit and unjust gain for itself or for others, or to obstruct the free exercise of votes, or procure votes for itself or for others during elections, using force of intimidation, associative bonds and the condition of subordination and the code of silence (*omertà*)"<sup>70</sup>.

The definition of the organization is obviously more clear than that of Article 1 of Act No.4422.

Also, in the remarks of opposition presented to the Internal Affairs and Justice Commissions, in discussions in the National Assembly and in the doctrine, the criticisms focused on the ambiguity of the definition in the first paragraph, and the anti-democratic nature of

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<sup>68</sup> Sulhi Dönmezer, 'Çetelerle Mücadele Amacıyla 4422 Sayılı Kanunla Kabul Edilen Koruma Tedbirleri'. In terms of definition, the German Criminal Code parallels Article 313 of Turkish Criminal Code. Yet, "gain oriented criminal organizations" are defined in German Prosecutor's Regulation. The criteria are that the "gain oriented criminal organization" should operate to obtain gain or power; the organized crimes should be committed in a planned manner; the structure of the organization should be such that three or more people be in a long term partnership and have a division of labour; they use force or threat; they attempt at exerting unlawful influence on politics, media, public administration and the judicial system (Evik, *Çıkar Amaçlı Örgütlenme Suçu*, pp.163-167, p.163, fn.56).

<sup>69</sup> See: Appendix F.

the investigative measures as well. In a remark of opposition, Internal Affairs Commission members from Virtue Party (*Fazilet Partisi*)<sup>71</sup> stated that criminal laws can not be prepared for daily needs and in a hurry<sup>72</sup>. Also, especially the terms force, threat, crime and organization's being undefined contradicts the principle of legality. It involves a threat to the innocent. The article intervenes into the basic human rights and freedoms and the articles prepared under different titles are violations of rights written with a longing for a police state.<sup>73</sup> In another remark of opposition presented to the Justice Commission, Çorum deputy Yasin Hatipoğlu stated that the first article of the Act is "abstruse in defining criminal and crime and inadequate in protecting the innocent."<sup>74</sup> In the National

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<sup>70</sup> See: Appendix D.

<sup>71</sup> Namely, Istanbul deputy Abdülkadir Aksu, Istanbul deputy Ali Oğuz, Bursa deputy Faruk Çelik, Diyarbakır deputy Osman Arslan and Diyarbakır deputy Ömer Vehbi Hatipoğlu.

<sup>72</sup> Elsewhere, Turgut Kazan, the former president of Istanbul Bar, told that these are called 'laws of hurry' in the German Law ([http://www.izmirbarosu.org.tr/yargi\\_reformu\\_2000/11\\_oturum\\_tartismlar.htm](http://www.izmirbarosu.org.tr/yargi_reformu_2000/11_oturum_tartismlar.htm)).

<sup>73</sup> Abdülkadir Aksu, Ali Oğuz, Faruk Çelik, Osman Arslan, Ömer Vehbi Hatipoğlu, 'İçişleri Komisyonu Başkanlığına', in: 'Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanunu Tasarısı ve İçişleri ve Adalet Komisyonları Raporları (1/487)'.

<sup>74</sup> He also expressed that the Act's being prepared in the Internal Affairs Commission, rather than the Justice Commission raises the doubts of the existence of a police state (Yasin Hatipoğlu, 'Adalet Komisyonu Başkanlığına', in: 'Çıkar Amaçlı Suç

Assembly discussions especially Virtue Party deputies, with a recent experience of Welfare Party's closure, and the Party related YUVA Foundation administrators' being sentenced to imprisonment from Article 313 of the Turkish Criminal Code, criticized the investigative measures which have the likelihood to being used against the politically defined 'enemies'. The exception of "state secret" in Article 4 on the examination of records and data is specifically criticized.<sup>75</sup>

In the legal scholarship, although almost every component of the measures are seen as contradictory to the Constitution and the legal principles<sup>76</sup>, Sulhi Dönmezer, the legal scholar who actually prepared the Act, underlined the necessity of the rationalization and organization of the laws due to the new forms of organized criminality<sup>77</sup>, and expressed (quoting an

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Örgütleriyle Mücadele Kanunu Tasarısı ve İçişleri ve Adalet Komisyonları Raporları (1/487)').

<sup>75</sup> *Türkiye Büyük Millet Meclisi, Genel Kurul Tutanağı, 21. Dönem, 1. Yasama Yılı, 41. Birleşim, 29.7.1999 Perşembe*, at: [http://www.tbmm.gov.tr/develop/owa/tutanak\\_g\\_sd.birlesim\\_baslangic?P4=1297&P5=B&PAGE1=1&PAGE2=97](http://www.tbmm.gov.tr/develop/owa/tutanak_g_sd.birlesim_baslangic?P4=1297&P5=B&PAGE1=1&PAGE2=97); *Türkiye Büyük Millet Meclisi Genel Kurul Tutanağı, 21. Dönem, 1. Yasama Yılı, 40. Birleşim, 28.7.1999, Çarşamba*, at: [http://www.tbmm.gov.tr/develop/owa/tutanak\\_g\\_sd.birlesim\\_baslangic?P4=1296&P5=B&PAGE1=1&PAGE2=108](http://www.tbmm.gov.tr/develop/owa/tutanak_g_sd.birlesim_baslangic?P4=1296&P5=B&PAGE1=1&PAGE2=108).

<sup>76</sup> See: Mustafa Ruhan Erdem, *Ceza Muhakemesinde, Organize Suçlulukla Mücadelede Gizli Soruşturma Tedbirleri* (Ankara: Seçkin, 2001), especially pp.373-391. As the organization is to commit crimes, the first paragraph of Article 1 is not a violation of the freedom to organize (Evik, *Çıkar Amaçlı Örgütlenme Suçu*, pp.179-182).

Italian legal scholar Francesco Palazzo) the judgment that "on the aftermath of these rationalizations, a tension can emerge with the content of the new laws and general principles of criminal law. Our opinion is that, this tension is a price our post modern civilization has to pay."<sup>78</sup> He also explained that the investigative measures (especially Article 2 on tapping information, but also the rest of the articles) secured six principles in terms of basic rights: a definition of whose communication can be tapped, who can be secretly investigated, property can be confiscated; the measures are conditional upon 'indications'; the decision to apply these investigative measures, especially tapping communication is conditional upon a judicial decision; these measures are measures of last resort (*ultima ratio*); and the prosecutors only have an exceptional power in demanding the application of these measures; and, seen innocent, the records would be destroyed within ten days. Hence, these measures can hardly be seen as a violation of basic rights and liberties.<sup>79</sup>

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<sup>77</sup> The idea that there is such a necessity is also shared by legal scholar Kayıhan İçel (İçel, 'Hukuki Mütalaa') and Supreme Court of Appeals member Muhittin Mıhçak (Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturma Suçları*, p.18).

<sup>78</sup> Sulhi Dönmezer, 'Çetelerle Mücadele Amacıyla 4422 Sayılı Kanunla Kabul Edilen Koruma Tedbirleri'.

<sup>79</sup> Ibid..

With the Act No. 4723 dated 6 December 2001, the expression 'force or threat' is replaced with 'threat, pressure, force or violence'; and the expression "or forcing people to subordination, or cooperating openly or secretly with among members in whatever way" is taken out of the text.<sup>80</sup> The change is formulated first with Act No. 4719<sup>81</sup>, yet the President returned the Act back to the National Assembly. Neither the Justice Commission, nor the National Assembly made any corrections and the same article is accepted as Article No. 4723.<sup>82</sup> In the general preamble of Act No. 4719, the reason for the definitional changes were stated as 'not to cause

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<sup>80</sup> Also, in the sixth article on confiscation, the words "suspects and "suspect" is replaced with "indication"; in the eleventh article not only the first but all State Security Courts are appointed. With the same act, the jurisdiction of 'criminal associations' as defined in articles 313 and 314 are taken from the State Security Courts ('Devlet Güvenlik Mahkemeleri'nin Kuruluş ve Yargılama Usulleri Hakkında Kanun, 18.11.1992 Tarihli ve 3842 Sayılı Kanun ile Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanunu'nda Değişiklik Yapılmasına Dair Kanun, at: <http://www.tbmm.gov.tr/kanunlar/k4723.html>). State Security Courts are abolished with the Act No.5190 (accepted in the National Assembly on 16 June 2004, and published in the Official Gazette, No.25508, on 30 June 2004. Article 294/a of this Act states that from then on, the cases on Articles 313 and 314 and Act No.4422 will be tried, and the ongoing cases will be transformed to the appointed High Criminal Courts ('Ceza Muhakemeleri Usulü Kanununda Değişiklik Yapılmasına ve Devlet Güvenlik Mahkemelerinin Kaldırılmasına Dair Kanun', at: <http://www.tbmm.gov.tr/kanunlar/k5190.html>).

<sup>81</sup> 'Devlet Güvenlik Mahkemeleri'nin Kuruluş ve Yargılama Usulleri Hakkında Kanun, 18.11.1992 Tarihli ve 3842 Sayılı Kanun ile Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanunu'nda Değişiklik Yapılmasına Dair Kanun, at: <http://www.tbmm.gov.tr/kanunlar/k4719.html>.

<sup>82</sup> Published in the Official Gazette No.24612, on 13 December 2001.

hesitation in adjudication', in other words, clarification.<sup>83</sup> The President, in his letter of return, on taking the statement "or forcing people to subordination, or cooperating openly or secretly with among members in whatever way" out of the text, underlined that these organizations do not always operate on force, violence, or threat, but also on agreements on mutual gain, as is shown in the examples of 'drying bank resources'. Taking this statement out of the text, these crimes would be tried without the special investigative powers defined in Article No. 4422. Hence, it is of public benefit to reconsider its being taken out.<sup>84</sup>

Despite the changes, and in comparison to the Article 416-*bis* of the Italian Criminal Code, the criticism that the first paragraph of the Act No.4422 is too vague, such that it violates the principle of legality remained. In terms of the principle of legality, a more clear version of the first paragraph is offered

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<sup>83</sup> 'Devlet Güvenlik Mahkemeleri'nin Kuruluş ve Yargılama Usulleri Hakkında Kanun, 18.11.1992 Tarihli ve 3842 Sayılı Kanun ile Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanunu'nda Değişiklik Yapılmasına Dair Kanun Tasarısı ve Adalet Komisyonu Raporu (1/923), at: <http://www.tbmm.gov.tr/sirasayi/donem21/yil01/ss769m.htm>.

<sup>84</sup> 'Devlet Güvenlik Mahkemeleri'nin Kuruluş ve Yargılama Usulleri Hakkında Kanun, 18.11.1992 Tarihli ve 3842 Sayılı Kanun ile Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanunu'nda Değişiklik Yapılmasına Dair 4719 Sayılı Kanun ve Anayasa'nın 89 uncu Maddesi Gereğince Cumhurbaşkanınca Bir Daha Görüşülmek Üzere Geri Gönderme Tezkeresi ve Adalet Komisyonu Raporu (1/932), at: <http://www.tbmm.gov.tr/sirasayi/donem21/yil01/ss785m.htm>.

as: "Those who establish or manage an organization formed by three or more people, acting together continuously and in a planned manner to commit multiple crimes using the power of fear or intimidation, or corruption, or influence on economics, politics, public administration, justice system and the media, aiming at obtaining direct and indirect material and financial gain are sentenced to three to six years of heavy imprisonment, those who participate into the organization are sentenced to two to four years heavy imprisonment."<sup>85</sup>

In the recent version of the Act No.4422, both in the preambles and in the legal scholarship, the legal value to be protected is stated as public order.<sup>86</sup> Also, defining organized criminality as such, economic order, correct functioning and impartiality of public administration, democratic order is also sought to be protected. In other words, it is argued that organized criminality also violates the economic order (regarding social and economic rights such like property rights and

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<sup>85</sup> Evik, *Çıkar Amaçlı Örgütlenme Suçu*, p.186.

<sup>86</sup> 'Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanunu Tasarısı ve İçişleri ve Adalet Komisyonları Raporları (1/487)'; Evik, *Çıkar Amaçlı Örgütlenme Suçu*, pp.186-189; Ceylan, *Organize Suçluluk ve Çıkar Amaçlı Örgüt Suçu*, p.103; İzzet Özgenç, *Ekonomik Çıkar Amacıyla İşlenen Suçlar* (Ankara: Seçkin, 2002), p.272. Uğur Alacakaptan states that for the Act to apply, the organization should be serious enough to threaten public order (Alacakaptan, 'Hukuki Mütalaa').



freedom of competition); cooperating with civil servants or exerting influence on public biddings, concessions, authorizations, it violates the correct functioning and impartiality of public administration; also, working to obtain votes in the elections, or to obstruct elections, the organized criminal groups violate the democratic order.<sup>87</sup>

In terms of the elements of offense, regarding the first paragraph of Article 1 of Act No.4422, the material element as is organization. The organization means two or more people to commit the indicated crimes using the indicated methods, including those who establish an organization, guide an organization, engage in any act on behalf of the organization, serve purposefully an organization<sup>88</sup>. Parallel to the discussions in Article 313 of the Turkish Criminal Code, the organization does not mean simple union. It has to have continuity and permanence and be established to commit more than one crime. It is seen as a continuous offense<sup>89</sup> and also an offense in convergence as a sub-type of offenses with

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<sup>87</sup> Evik, *Çıkar Amaçlı Örgütlenme Suçu*, pp.189-191.

<sup>88</sup> Evik, *Çıkar Amaçlı Örgütlenme Suçu*, pp.240-264; Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturma Suçları*, pp.35-36.

<sup>89</sup> Evik, *Çıkar Amaçlı Örgütlenme Suçu*, pp.193-197; Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturma Suçları*, p.24.

multiple offenders<sup>90</sup>. The use of the methods of daunting, or frightening, or intimidating by using threat, pressure, force, or violence is seen as a proof of the existence of an organization. Their use is also seen as a proof of the continuity of the organization. Yet, daunting, or frightening, or intimidating by using threat, pressure, force, or violence should be practically used. In terms of the result, parallel to the discussions regarding Article 313 again, it is seen as an offense of peril<sup>91</sup> and the commitment of the mentioned crimes is not sought. That is, the existence of the organization is seen adequate.<sup>92</sup>

The moral element of the offense is special intent. This intent is twofold:

- i) the organization should aim at committing one of the crimes of:

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<sup>90</sup> Evik, *Çıkar Amaçlı Örgütlenme Suçu*, p.199; Ceylan, *Organize Suçluluk ve Çıkar Amaçlı Örgüt Suçu*, p.122.

<sup>91</sup> Evik, *Çıkar Amaçlı Örgütlenme Suçu*, pp.191-193; Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturma Suçları*, pp.22-24.

<sup>92</sup> Evik, *Çıkar Amaçlı Örgütlenme Suçu*, pp.212-229; Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturma Suçları*, pp.30-32; Ceylan, *Organize Suçluluk ve Çıkar Amaçlı Örgüt Suçu*, pp.104-114; Özgenç, *Ekonomik Çıkar Amacıyla İşlenen Suçlar*, pp.273-278; Mustafa Taşkın, *Türk Hukukunda Mafya (Çıkar Amaçlı Suç Örgütleri) ve Karaparayla Mücadele* (Ankara: Yargı, 2004), p.53.

- taking over the management or control of an institution, establishment, or enterprise directly or indirectly,
  - gaining power or control over public services, media institutions, public bidding, concession or license procedures,
  - creating cartel and trust in economic activities,
  - procuring decrease and scarcity in materials and goods, the decrease or increase in prices,
  - reaping unjust profit for themselves or for others,
  - gaining vote in the elections or preventing the elections,
- ii) the organization should use the power of daunting, or frightening, or intimidating by using threat, pressure, force, or violence.<sup>93</sup>

In this line of thought, to be sentenced on Act No.4422, Article 1 paragraph 1, the questions which suspects, which unlawful gain, through which act, when, how, and from whom should be solidly put forth.<sup>94</sup> 8<sup>th</sup>

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<sup>93</sup> 'Çıkar Amaçlı Suç Örgütleriyle Mücadele Kanunu Tasarısı ve İçişleri ve Adalet Komisyonları Raporları (1/487)'; İçel, 'Hukuki Mütalaa', Alacakaptan, 'Hukuki Mütalaa'; Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek için Teşekkül Oluşturma Suçları*, pp.34-35; Ceylan, *Organize Suçluluk ve Çıkar Amaçlı Örgüt Suçu*, pp.114-120; Özgenç, *Ekonomik Çıkar Amacıyla İşlenen Suçlar*, pp.278-281; Taşkın, *Türk Hukukunda Mafya (Çıkar Amaçlı Suç Örgütleri) ve Karaparayla Mücadele*, p.54. For a detailed analysis of the phrases, see: Evik, *Çıkar Amaçlı Örgütlenme Suçu*, pp.265-288.

<sup>94</sup> Alacakaptan, 'Hukuki Mütalaa'.

Criminal Panel of the Supreme Court of Appeals, approved usury<sup>95</sup>, intervening into bread prices<sup>96</sup>, transportation of illegal immigrants<sup>97</sup>, debt collection<sup>98</sup>, extortion<sup>99</sup>, obtaining benefit in public biddings<sup>100</sup> to fall into the scope of Article 1 of Act No.4422.

### Literature Surveys and One Basic Misreading

The existing literature in Turkish is more or less limited to a few surveys: few books and book chapters that aim at being general literature surveys of organized

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<sup>95</sup> Yargıtay 8. Ceza Dairesi, 25.3.2002, E.2001/14526, K.2002.3708, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek İçin Teşekkül Oluşturmak Suçları*, pp.101-102.

<sup>96</sup> Yargıtay 8. Ceza Dairesi, 15.4.2002, E.2001/16172, K.2002.5062, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek İçin Teşekkül Oluşturmak Suçları*, pp.99-101.

<sup>97</sup> Yargıtay 8. Ceza Dairesi, 27.12.2001, E.2001/11628, K17642, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek İçin Teşekkül Oluşturmak Suçları*, p.109.

<sup>98</sup> Yargıtay 8. Ceza Dairesi, 19.12.2001, E.2001/13813, K.17318, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek İçin Teşekkül Oluşturmak Suçları*, pp.113-115.

<sup>99</sup> Yargıtay 8. Ceza Dairesi, 11.10.2001, E.2001/11820, K.14615, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek İçin Teşekkül Oluşturmak Suçları*, p.119.

<sup>100</sup> Yargıtay 8. Ceza Dairesi, 12.7.2001, E.2000/26184, K.2001.12854, reprinted in: Mıhçak, *Çıkar Amaçlı Suç Örgütleri ve Cürüm İşlemek İçin Teşekkül Oluşturmak Suçları*, pp.122-123.

crime<sup>101</sup> are characterized by a translation of the examples available to the authors<sup>102</sup>, or neater criminological surveys as those published by police officers-criminologists<sup>103</sup> from the Police Academy,

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<sup>101</sup> Unreported or underground economy is also seen as synonymous with organized criminality and the mafia for economists. For analyses, see: Ahmet Fazıl Özsoylu, *Yeraltı Ekonomisi* (Ankara: Akçağ, 1999); Osman Altuğ, *Kayıtdışı Ekonomi* (İstanbul: Türkmen, revised 2<sup>nd</sup> ed., 1999). Osman Altuğ provides a 'guesstimate', on the amounts earned over in the 'bullet economy' often taken seriously by other researchers: (according to police figures) mafia employs 23,000 people. If each receives a salary of 300,000,000 liras, this means a monthly expense of 6,900 trillion, yearly expense of 82,800 trillion liras. If this personnel expenditure is 20 percent of mafia's total income -the business world works with 20 percent-, the total income will amount to 414 trillion. If this is a 20 percent of money paid to the mafia, the total amount earned with mafia involvement is 2,70 quadrillion liras (Altuğ, *Kayıtdışı Ekonomi*, p.203; an earlier figure of Osman Altuğ is cited as 200,000 billion liras that accrue to the group or the *babas*, in: Pina Cusano and Piero Innocenti, *Le Organizzazioni Criminali nel Mondo: Da Cosa Nostra alle Triadi dalla Mafia Russa ai Narcos alla Yakuza* (Roma: Riunti, 1996), p.76).

<sup>102</sup> Hasan Dursun's survey of definitions, models and comment on Article 4422 is a neater example of such surveys (Hasan Dursun, *Organize Suça Genel Bir Bakış* (Ankara: Devlet Planlama Teşkilatı, 2001). On the contrary, although Enver Alper Güvel's *Organize Suç Ekonomisi ve Hukuk Uygulaması* (Economics of Organized Crime and Its Legal Application) presents itself to be a literature survey, and a reference book, the author ends up with 'making-up' a frame of analysis over what he has found, rather than a proper survey of the canon. The acceptability of reliance on a few literature surveys previously done by other scholars, and stuffing the other items available to him without caring about relevancy and consistency, often with misreadings and fake referencing is doubtful for a scholarly 'reference book' (Enver Alper Güvel, *Organize Suç Ekonomisi ve Hukuk Uygulaması* (Ankara: Roma, 2004)). Beyond doubt is the further complications or disorientations this book might create -especially given that the 'canon', even in the strictly economic reading of the subject is not translated into Turkish- in the minds of future researchers.

<sup>103</sup> See for example: Ertan Beşe, 'Polis ve Organize Suç: Kapsam ve Genel Nitelikler', in: Hasan Hüseyin Çevik and Turkuş Gökse (ed.s), *Türkiye'de Devlet, Toplum ve Polis* (Ankara: Seçkin, 2002), pp.153-171; Ertan Beşe, 'Sosyoloji Temelli Suç Teorileri ve Organize Suçlar', in: Aytekin Geleri and Hasan Hüseyin Çevik (ed.s), *Organize Suçlarla Mücadele ve Polis* (Ankara: Seçkin, 2003), pp.73-102; Aytekin Geleri, 'Organize Suçların Ortaya Çıkışı ve Gelişimi: İtalyan-Amerikan Mafyası Üzerine Bir Çalışma', in: Geleri and Çevik, pp.19-72.

Ankara, who are at the position to shape the police understanding of organized criminality, or the mafia<sup>104</sup>. Explicit in the surveys of policeman-criminologists is the slippery ground in relating their surveys to Turkey. The intention here is not to criticize these works for the sake of criticism, but to point to the direction, or fault line of the state of research or the shape of understanding in Turkish/on Turkey. I think this is especially significant given the fact that a part of this is likely to be reproduced through policing. With this fault line, I mean these policeman-criminologists' reference<sup>105</sup> to Murat Çulcu in understanding Turkey<sup>106</sup>.

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<sup>104</sup> This group of scholars, tend to use the word 'organized crime' (*organize suç*), as does the police in general. In a police academy lecture note quoted by Fazlı Gökçegöz, it is seen that organized crime (*örgütlü suç*) is seen as an umbrella term for organized crime (*organize suç*) and crimes of terrorism (Özer Özben, "Organize Suçlar", unpublished lecture notes, 2000, cited in: Fazlı Gökçegöz, 'Organize Suç Kavramı, Terör Suçları ile Bağlantısı ve Etkin Mücadele Yöntemleri', in: Aytekin Geleri and Hasan Hüseyin Çevik (ed.s), *Organize Suçlarla Mücadele ve Polis* (Ankara: Seçkin, 2003), p.114). Organized crime (*organize suç*) is also called the mafia, and crimes of terrorism, political mafia (Hüseyin Cinoğlu and İ. Dinçer Güneş, 'Organize Suçla Mücadelede Temel Noktalar ve Polisin Rolü', in: Geleri and Çevik, p.133).

<sup>105</sup> See especially: Beşe, 'Polis ve Organize Suç', pp.160-163; Beşe, 'Sosyoloji Temelli Suç Teorileri ve Organize Suçlar', pp.94-95.

<sup>106</sup> One other policeman writing about Turkey, is former police chief Adil Serdar Saçan (Adil Serdar Saçan, *AK Babalar Örgütü (Türkiye'de Mafia), Vol.1* (Istanbul: Toplumsal Dönüşüm, 2004)). He established the Istanbul Anti-Smuggling and Organized Crime Department in 1988, shortly before his expellation from the police force, by the Justice and Development Party government in 2003, accused of condoning the torturing of suspects under arrest (*Radikal*, 23 September 2003). The alleged reason for his being expelled is told to be his insistence in the corruption operations

Murat Çulcu's analysis is founded on Henner Hess's classical *Mafia and Mafiosi*<sup>107</sup>. He puts forward that Hess defines mafia as 'the resistance of local centers of power to the central authority'.<sup>108</sup> This discrepancy between the local and the central gives rise to a 'double morality-double legality', which shapes 'mafioso behaviour'. Mafia stands for a mafioso organization with a "mafia boss" at the center, also performing a social function, guarding local morality and legality with crude power and economic power. "Mafia boss" he argues, has two organizational relations: the first is the criminal organization of his close circle based on crude power,

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regarding Istanbul 'Municipality Economic Enterprises' and the Albayrak family, known to be close to Prime Minister Recep Tayyip Erdoğan (*Milliyet*, 20 September 2003). Disregarding the obsession with delineating the 'organization' and reliance on Çulcu's understanding, his drawing the lines of mafia-type activity as broad to include bank check-debt certification (*çek-senet*) mafia, public biddings mafia, land mafia, prison mafia, parking-lot mafia, school bus mafia, wholesale food market mafia, intercity bus station and warehouse mafia, minibus transportation mafia, bakers mafia, bazaar mafia, harbor mafia, drugs mafia, arms smuggling mafia, prostitution mafia, and gambling mafia (Saçan, *AK Babalar Örgütü*, pp.106-142) and his allegation that the religious groups (with reference to ruling Justice and Development Party) religious groups likely work in a mafia-like logic, in relation to Municipalities and Municipal Economic Enterprises (Saçan, *AK Babalar Örgütü*, pp. 225-284), is interesting, at least as words from a former Istanbul chief of Organized Crime Department.

<sup>107</sup> Henner Hess, *Mafia and Mafiosi: Origin, Power and Myth* (translated by Edward Osers) (London: C. Hurst & Co., 1998).

<sup>108</sup> See for example: Murat Çulcu, *MAFİA Üzerine Notlar* (Istanbul: Kastaş, 1998), p.13. Having translated the Hess's etymological note, he insists on using the acrostic reading of the mafia, without telling convincingly why (see for example: Çulcu, *MAFİA Üzerine Notlar*, pp.12-13).

called *cosca*<sup>109</sup>; and, the "mafia boss" constitutes relations with the state officials, which is called *partito*.<sup>110</sup> And, it also stands for a 'mafioso social structure'.<sup>111</sup> 'Mafioso social structure' means the institutionalization of 'mafioso values', double morality and double legality. The sharing of these values point to a 'mafioso society'.<sup>112</sup> With double morality he means, both a central and local morality, locality being based on ethnic and family-tribe organizations. Also, a traditional and modern morality, with tradition being synonymous to religious.<sup>113</sup> Hence, family and clans, and/or ethnic groups, where they clash with the central authority and retreat to their 'internal morality and internal legality', exhibit the characteristics of a mafioso society. He states that 'mafioso social structure' is commonly frequented in strategic regions such as Sicily, Southern Italy and Asia Minor<sup>114</sup>, and

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<sup>109</sup> Çulcu, *MAFİA Üzerine Notlar*, p.42; for reference to Hess, see: Murat Çulcu, *Dünyamızı Saran MAFİA*, vol.2 (İstanbul: Kastaş, 1992), pp.395-404.

<sup>110</sup> Çulcu, *MAFİA Üzerine Notlar*, p.42; for reference to Hess, see: Murat Çulcu, *Dünyamızı Saran MAFİA*, vol.2, pp.404-407.

<sup>111</sup> Çulcu, *MAFİA Üzerine Notlar*, pp.17-19.

<sup>112</sup> Murat Çulcu, *Türkiye'de MAFİA'laşmanın Kökenleri - 1: Her Sakaldan Bir Kıl* (İstanbul: E, 2001), pp.32-33.

<sup>113</sup> Çulcu, *Her Sakaldan Bir Kıl*, pp. 34-37.



searching for traces of 'mafioso behavior' or 'mafia boss' in whenever he encounters a tension between the center and the periphery, he attempts to write the history of 'mafioso social structure' in social synthesis of Asia Minor, beginning with the immigration from Central Asia, and continuing with Seljuki period, and the Ottoman Empire.<sup>115</sup>

Although his endeavour and enourmous labor deserves respect, it is apparent that he has misread Hess. Nowhere in the book he claims that "mafia is the resistance of the local centers of power to the central authority". In the preface, Hess explicitly states that:

"... *mafiosi* are not just criminal parasites feeding on the hard work or riches of others, but that they also usurp functions which in modern society are reserved for the state, that they compete with the state in supplying security, enforcing order and mediating conflicts. Most of the time they do this in an alliance with economic and political elites."<sup>116</sup>

It is a coexistence of central power, the nation-state, with the local. Hess, places the understanding of double morality, and mafioso's relations with his cosca and the

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<sup>114</sup> Ibid., p.48.

<sup>115</sup> Çulcu, *Her Sakaldan Bir Kıl*; Murat Çulcu, *Türkiye'de MAFİA'laşmanın Kökenleri -2: Sikkesiz Sultanlar* (Istanbul: E, 2002); Murat Çulcu, *Türkiye'de MAFİA'laşmanın Kökenleri - 3: Düşmüş 'Ocağa' Yanıyor* (Istanbul: E, 2003).

<sup>116</sup> Hess, *Mafia and Mafiosi*, p.xi.

government officials (*partito*), within this coexistence, and mafioso's role of protection and mediation is meaningful within this sets of relations between the society and the state. This does not emerge from a tension between any center and periphery, but is an outcome of a very specific transformation: the collapse of the feudal order and Italian unification.<sup>117</sup> At least, following Charles Tilly<sup>118</sup>, it is known that state-making process is not always unidirectional and a once-and-for-all replacement of the traditional patterns of power with the modern; in Sicily, it is not the resistance of the local centers of power, but Italian central government's choosing to work, although in tension, with the local centers of power that created the mafia.<sup>119</sup> Misreading Henner Hess as such, opens the way for Murat Çulcu, to constitute an anachronical history of the mafia: to speak of the mafia, there has to be a nation-state in the modern sense. At the same time, focusing on resistance of the local to the central, Çulcu loses sight of another transformation also significant in the Sicilian case, and elsewhere: transition to market economy, within which the

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<sup>117</sup> Hess, *Mafia and Mafiosi*.

<sup>118</sup> See for example: Charles Tilly, 'Foreword', in: Blok, *Mafia of a Sicilian Village*, pp. xiii-xxiv.

<sup>119</sup> Blok, *Mafia of a Sicilian Village*.

emphasis on 'double morality' acquires a new meaning. In short, it can be argued that his essentialist vision of the mafia, presents 'mafioso social structure' which is something like a birth defect, and closes the analytical ground for a discussion in terms of transformation, towards the market economy and towards the modern state.

### Turkish Mafia Seen from Europe

Before returning back to the thematic differentiation of journalistic materials, the foreign view of the Turkish mafia deserves a few words. The "Turkish mafia stereotype" in terms of a more orthodox understanding can be followed in Galeotti's "Turkish Organized Crime: Where State, Crime and Rebellion Conspire"<sup>120</sup>. Galeotti's interpretation reflects the idea that Turkish organized crime is a serious and enduring threat: its activities are spread all across Europe, and identified as a serious problem in Denmark, Germany, Greece, Netherlands and the United Kingdom.<sup>121</sup> Its range of activities, along with drug trade, include money-

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<sup>120</sup> Mark Galeotti, "Turkish Organized Crime: Where State, Crime, and Rebellion Conspire", *Transnational Organized Crime*, Vol.4, No.1 (1998), pp.25-41.

<sup>121</sup> Ibid., p. 30.

laundering (especially in Northern Cyprus), smuggling stolen cars, smuggling illegal migrants, counterfeit, kidnapping and arms smuggling.<sup>122</sup> He states the characteristics of Turkish organized crime as: " a traditional concentration in the trade of opiates; a social structure that emphasizes loyalty to the clan and family; a long-running war between the Turkish government and ethnic Kurdish guerillas; and, connections that have developed between criminal groupings and particular political figures and factions."<sup>123</sup> The structure of the groups evolves from an inflexible clan-based hierarchy to a loose cellular network cooperating with domestic gangs.<sup>124</sup> The most important clans he mentions are: Ayanloglu (most probably he means drug smuggler Osman Ayanoğlu and/or his daughter Derya Ayanoğlu), Baybasin (who, he says, has close links with Tansu Çiller), Catli and/or Cakili (most probably, Alaattin Çakıcı; he puts forward that "the sources are confused whether those two, who have a strong influence in Northern Cyprus are the same or different clans"<sup>125</sup>); Heybetli, Karaduman,

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<sup>122</sup> Ibid., pp. 30-35.

<sup>123</sup> Ibid., p. 25.

<sup>124</sup> Ibid., p. 35.

<sup>125</sup> Ibid., p. 27.

Musullulu; Reyhani (a Baluchi clan, close to those trafficking drugs from Iran and Afghanistan); Senoglu and Ulucan.<sup>126</sup> He states that organized crime groups enjoy a considerable protection in Turkey, working with and playing off political figures and factions<sup>127</sup>, who tend to collude with them either for their own interest, or in the 'war against the Kurds'. This, for Galeotti, appears as a reason for endemic administrative corruption and organized crime penetration basically in construction industry and banking.

In an attempt to understand Turkish mafia in Turkey, French magistrate Thierry Cretin, in the twelve pages he devoted to Turkish "maffya" in his *Mafias du Monde*<sup>128</sup>, also underlines a mafia infiltration of the state (citing again Susurluk incident, "Civangate" and Söylemez brothers clan). The businessmen are also targeted by the mafia (as Civan's shooting, and the murders of Kutmangil and Cankurtaran show) which has a certain power, as is implied with Turgut Özal's presence in mafia related

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<sup>126</sup> Ibid., p. 27.

<sup>127</sup> That, along with Susurluk incident, Baybaşı is a confident of Ağar, and İnci Baba is frequently photographed with Süleyman Demirel (Ibid., p. 29).

<sup>128</sup> Thierry Cretin, *Mafias du Monde: Organizations Criminelles Transnationales, Actualité et Perspectives* (Paris: Presses Universitaires de France, 1997).

funerals and wedding ceremonies.<sup>129</sup> Similar to the Turkish journalistic canon, the Turkish mafia, he argues, develops on two channels: from a *kabadayı*<sup>130</sup> origin taxing criminal activities in a definite district, and through a tradition of contraband due to geographical position. Drug smuggling provided a new source of richness in the post-World War II period (as the example of Bekir Çelenk exhibit).<sup>131</sup> He states that there is a partition of territories among groups based on ethnic-regional and political bases, with Kurdish clans, in alliance with PKK, involved in drug trafficking representing one end, and pan-turkist nationalist "grey wolves" in association with Turkish secret services<sup>132</sup> in combatting separatist terrorism.<sup>133</sup> He adds control of parking lots, profiteering from public concessions and privatizations, debt collection and control of usual illegal activities

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<sup>129</sup> Ibid., pp. 38-43.

<sup>130</sup> He defines *kabadayı* as a bandit of honor; a marginal person respected by the people as in the myth of Robin Hood (Ibid., p. 44).

<sup>131</sup> Ibid., pp. 44-47.

<sup>132</sup> He somewhat names Dündar Kılıç too, along with Alaattin Çakıcı (Ibid., p. 43).

<sup>133</sup> Ibid., pp. 43-44.

(prostitution, racketeering, usury), to the above-mentioned series of activities.<sup>134</sup>

### The Journalistic Material

Presenting a complex web of events and names<sup>135</sup>, the journalistic materials which increased in number after the Susurluk Accident (1996) and the corruption operations (2000-2002), circle around three themes: events and people related to corruption; the mafia bosses, and the so-called Susurluk process. Almost never giving a definition, mafia is addressed to either in the name of kabadayıs, or babas, or with entirely a negative connotation, gang-leader. The corruption eruption is held synonymous with Motherland Party (*Anavatan Partisi*) and Mesut Yılmaz, and Susurluk process is synonymous with former True Path Party (*Doğru Yol Partisi*) Tansu Çiller<sup>136</sup> and Mehmet Ağar (the party's current leader, former police chief and Minister of Interior Affairs). By and

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<sup>134</sup> Ibid., pp. 48-49.

<sup>135</sup> For a helpful name index, see: Doğan Yurdakul and Cengiz Erdinç, *Resmi Belgelerle Çete'le: Siyaset-Mafya-Bürokrasi İlişkilerinde Kim Kimdir?* (Ankara: Ümit, 1998).

<sup>136</sup> Yet, for an evaluation of accusations of corruption against Çiller, see: Doğan Akın: *Uçuran Holding: Çiller'in Can Sıkıcı Belgeseli* (Ankara: Bilgi, 1995).

large, the big picture is read to be an outcome of personal failures of the politicians or bureaucrats<sup>137</sup>.

A series of books addresses anti-corruption operations from year 2000 on. A part of it is about corruption issues related to 'syphoning bank resources', both in private and public banks. Although in the indictments, most of the bank owners and managers were initially accused of 'establishing a criminal association', or 'establishing a criminal organization for the purpose of gain', mafia, represented by the crime bosses (notably Alaattin Çakıcı), is seen external to the corruption problem<sup>138</sup>, and are addressed when the bosses routes intersect with the bureaucrats or the businessmen. The general evaluations of 'syphoning bank resources' can be followed in Şaban Arslan's *Hortum ve Cinnet*<sup>139</sup> (Syphon and Madness), Tuncay Mollaveisoğlu's *Güve*<sup>140</sup> (Moth) and

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<sup>137</sup> For a reading based on the state-mafia relations (especially on drug smuggling) with reference to the involvement of secret services, and imperialism, see: Suat Parlar, *Kirli İşler İmparatorluğu: Uyuşturucu Kaçakçılığı-Mafya-Devlet* (Istanbul: Bibliotek, 1998); Süleyman Genç, *Kuşatılan Devlet Türkiye: Uyuşturucu-Mafya-Yerel Egemenler* (Istanbul: Boyut, 1997).

<sup>138</sup> Birol Aydın, for example, attempts to argue the contrary, his definition mafia-wearing-ties, not only corrupt bureaucrats but political parties too. Yet, mentioning this he retreats to the *kabadayı-baba-gang* narrative mentioned below (Birol Aydın, *Kravatlı Mafya* (Istanbul: Selis, 2003)).

<sup>139</sup> Şaban Arslan, *Hortum ve Cinnet* (Istanbul: Om, 2001).

<sup>140</sup> Tuncay Mollaveisoğlu, *Güve: Bir Türkiye Filmi* (Istanbul: Alfa, 2004).



Hakan Tartan's *Hortumun Ucundakiler*<sup>141</sup> (Those at the End of the Syphon). Egebank affair is explicitly discussed in Murat Kelkitlioğlu's *Hortum*<sup>142</sup> (Syphon) and Mustafa Balbay's *Yürüt Ya Kulum*<sup>143</sup> (Steal O Mortal); in Nedim Şener's *Uzanlar*<sup>144</sup> (Uzan Family), Imarbank affair and Uzan Holding is discussed in detail.

The roads of 'bank syphoning' and the mafia is seen to intersect in two events. The first is so-called Civangate affair in 1994-where Selim Edes, the owner of ESKA Construction, demanded the bribe he paid to General Director of Emlak Bank, with Alaattin Çakıcı and Dünder Kılıç; unwilling to pay the money back, Civan was shot. The event is discussed at length in Rıdvan Akar and Jale Özgentürk's *Bir Prens Hisseli Hikayesi*<sup>145</sup> (The Jointly Owned Story of a Prince). The second event is the

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<sup>141</sup> Journalist Hakan Tartan is a former İzmir deputy of Democratic Left Party (*Demokratik Sol Parti*) (1995-2002) and served as the Minister of Labor and Social Security in the 56<sup>th</sup> Government. Hakan Tartan, *Hortumun Ucundakiler: Türkiye'de Batan Bankaların Hikayesi* (Istanbul: Toplumsal Dönüşüm, 2003).

<sup>142</sup> Murat Kelkitlioğlu, *Hortum: Egebank Nasıl Soyuldu?* (Istanbul: Metis, 2001).

<sup>143</sup> Mustafa Balbay, *Yürüt Ya Kulum: Demireller Tarihinde II. Yahya Vakası* (Ankara: Ümit, 2001).

<sup>144</sup> Nedim Şener, *Uzanlar: Bir Korku İmparatorluğunun Çöküşü* (Istanbul: Güncel, 2004).

<sup>145</sup> Rıdvan Akar and Jale Özgentürk, *Bir Prens Hisseli Hikayesi: İşini Bilen Bir Memur, Engin Civan* (Istanbul: İletişim1994).

privatization of Turkish Bank of Commerce in 1998. Alaattin Çakıcı intervened on behalf of businessman Korkmaz Yiğit; yet, the bidding is cancelled after this relation is revealed. Also, Çakıcı's role in privatization of Etibank and Sümerbank, in terms of his relations with Erol Evcil and Nesim Malki is mentioned.<sup>146</sup>

Another part of the books are on other corruption operations intensified in the years 2000-2002. An overall evaluation of the other corruption operations dealing with fictitious exports and awarding of public contracts of the post 2000 period can be followed in Nedim Şener's *Tepeden Tırnağa Yolsuzluk*<sup>147</sup> (Corruption from Head to Toe). One of the major operations, so-called Operation White Energy (2001), concerning interests obtained in the public biddings in electricity producing power plants and transmission lines, by Electricity Administration (TEAŞ) and Ministry<sup>148</sup> of Energy and Natural Resources, is

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<sup>146</sup> Şaban Arslan, *Hortum ve Cinnet*, pp.73-171. For the relations between Çakıcı, Nesim Malki and Erol Evcil, see also: Faruk Mercan, *Niso* (Istanbul: Zaman Kitap, 2001); Nasuhi Güngör, *İpin Ucundakiler: Nesim Malki, Cavit Çağlar, Erol Evcil* (Istanbul: Anka, 2001).

<sup>147</sup> Nedim Şener, *Tepeden Tırnağa Yolsuzluk* (Istanbul: Metis, 2001). Also, it is the only book which cares to address a technical definition of corruption, although with reference to the World Bank framework (Şener, *Tepeden Tırnağa Yolsuzluk*, pp.17-47).

<sup>148</sup> In the indictment, the responsibility of Minister Cumhur Ersümer was stated in the testimonies of the witnesses and the suspects. He was forced to resign in 2001. The indictment is reprinted in: Şener, *Tepeden Tırnağa Yolsuzluk*, pp.248-317.

discussed independently in Aykut Küçükkaya's *Alnından Vururlar*<sup>149</sup> (They Shoot You in the Forehead). The corruption operations in this period are also spelt with the name and endeavor of former police chief Sadettin Tantan, Minister of Interior of the period, forced to resign in 2001, can be read in Ferhat Ünlü's Tantan biography<sup>150</sup>. Corruption in infrastructure biddings is the subject of Seçkin Doğaner's *Soygunun Öteki Adı Devlet İhalesi*<sup>151</sup> (The Other Name of Robbery is State Biddings) and 'plundering' in state-owned real property is the subject of Ali İhsan Saner's *Devletin Rantı Deniz...*<sup>152</sup> (The Rent of the State is Vast). Ferhat Ünlü addresses smuggling issues, including Susurluk incident, and Erol Evcil in *Susurluk Gümrüğü*<sup>153</sup> (Susurluk Customhouse).

The latest example of corruption related to bogus invoicing and fictitious exports is Nedim Şener's *Naylon*

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<sup>149</sup> Aykut Küçükkaya, *Alnından Vururlar: Beyaz Enerji Dosyası* (Istanbul: Alan, 2002).

<sup>150</sup> Ferhat Ünlü, *Sadettin Tantan: Bir Savaş Öyküsü* (Istanbul: Metis, 2001).

<sup>151</sup> Seçkin Doğaner, *Soygunun Öteki Adı Devlet İhalesi* (Istanbul: İletişim, 1999).

<sup>152</sup> Ali İhsan Saner, *Devletin Rantı Deniz* (Istanbul: İletişim, 2000).

<sup>153</sup> Ferhat Ünlü, *Susurluk Gümrüğü: Kaçakçılık, Çete, Devlet* (Istanbul: Birey, 2000).

*Holding*<sup>154</sup> (Bogus Holding) on the relations around Orhan Aslıtürk's ASCOR company specialized in bogus invoicing and fictitious exporting.

Although the number of books on corruption seems to explode by 2000, corruption discussions regarding bogus invoicing/fictitious exporting-importing dates back to 1975, Uğur Mumcu and Altan Öymen's *Mobilya Dosyası*<sup>155</sup> (The Furniture File), about Prime Minister of the day Süleyman Demirel's nephew Yahya Demirel and his receiving unjust tax return from exporting furniture -the furniture is of lower quality and the receiving firms, bogus. So-called fictitious exports returned to the agenda in the from 1983 on, with the emphasis on the export-led growth. Bilal Çetin's *Soygun*<sup>156</sup> (Robbery) and Reşat Yazıcı's *Büyük Skandallar Konusunda Meclisin Reyî: Ret*<sup>157</sup> (Motions on Big Scandals: Denied in The National Assembly) has valuable material on this period.

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<sup>154</sup> Nedim Şener, *Naylon Holding* (Istanbul: Om, 2002).

<sup>155</sup> Uğur Mumcu and Altan Öymen, *Mobilya Dosyası* (Ankara: um:ag, 2<sup>nd</sup> ed., 1997). Not to mention, respectable investigative journalist Uğur Mumcu's almost every book includes invaluable information on corruption and mafia issues.

<sup>156</sup> Bilal Çetin, *Soygun: Hayali İhracatın Boyutları* (Ankara: Bilgi, 1988).

<sup>157</sup> Reşat Yazıcı, *Büyük Skandallar Konusunda Meclisin Reyî: Ret* (Istanbul: Tekin, 1992).

Another bulk of the books deal with the mafia *babas*<sup>158</sup>: the classical theme is an evolution from *kabadayı* to mafia *babas* and/or gang leaders. A proper definition is not given, or *mafia* is reported to be a "secret organization", a Sicilian issue in the attempted overall evaluations<sup>159</sup> which reproduce the classical evolution from *kabadayı*<sup>160</sup> to *babas* (with popular profiles of Dünder Kılıç, Mehmet Nabi İnciler, also known as İnci Baba, and/or Nihat Akgün) to gang leaders (with names Abdullah Çatlı and Alaattin Çakıcı commonly mentioned). Also, there is a mythical attribute to mafioso code of behaviour (*racon*) which has a strong emphasis on just behavior, and a specific jargon. Drug smugglers such like Behçet Cantürk or Urfi Çetinkaya or Baybaşı or Ayanoğlu are also mentioned as *babas*, but smuggling is beyond the scope of this dissertation. Yet, in neater evaluations, like journalist Mahmut Övür's article, "Türkiye'de Mafya"

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<sup>158</sup> Engin Bilginer states that these 'figures of the underworld' were presented as boss (patron) or agha (ağa), until the movie The Godfather (Engin Bilginer, *Babalar Senfonisi* (Istanbul: Cep, 1990, p.53, cited in: Bovenkerk and Yeşilgöz, *Türkiye'nin Mafyası*, p.29). Unfortunately, I have not been able to see Bilginer's book.

<sup>159</sup> For recent books see: Hasan Cem, *Türkiye'de Babalar ve Mafya* (Ankara: Geçit, 2004) where the author also includes Yılmaz Güney, as a *kabadayı*, to the book; Ecevit Kılıç, *Konuşan Mafya* (Istanbul: Bilge Karınca, 2004).

<sup>160</sup> The classical references being: Refi' Cevad Ulunay, *Sayıllı Fırtınalar: Eski İstanbul Kabadayıları* (Istanbul: Arba, 1995); Reşad Ekrem Koçu, *Patrona Halil* (Istanbul: Doğan, 2<sup>nd</sup> ed., 1997).

(Mafia in Turkey), which reads this path parallel to economic change, the beginning of the mafia issue is said to be the 1950s with to the increase in illegal profit opportunities following the liberal economic policies of Democrat Party; the mafia (the criminal families or gangs) gained strength in the late 1960s and 1970s with arms and drug smuggling; on the aftermath of 1980 coup d'état, an "idealist" mafia, dealing with debt collection, but which exhibit a potential to be used in covert state operations emerged, also a former generation of *babas* also sustained relations with those involved in fictitious exporting. For him, mafia is a mutual creation of a clumsy state and the businessmen seeking for advantages, or maintaining their advantageous position.<sup>161</sup> In the same line of evolution<sup>162</sup>, the transformation of *kabadayı* to a *baba* and businessmen is explored in a well-written profile of Dündar Kılıç<sup>163</sup>, in Doğan Yurdakul's

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<sup>161</sup> Mahmut Övür, "Türkiye'de Mafya", *Cumhuriyet Dönemi Türkiye Ansiklopedisi*, Vol.15 (Istanbul: İletişim, 1995), pp.1472-1480.

<sup>162</sup> For a different version of this transformation, this time narrated by a mafia lawyer, see: Ekrem Marakoğlu, *Kırmızı Kadife* (Istanbul: Karakutu, 2002).

<sup>163</sup> Dündar Kılıç seems to be the most popularly explored figure. His interviews and letters are also separately published. For interviews, see: Halit Çapın, *Bir Kabadayının Anatomisi*, *Ejderhayı Kovalayan Kız* (Istanbul: Parantez, 1995); Yeşim Soydan, *İmparator ve Kızı* (Istanbul: An, 2003). See also: Mustafa Demir, *Sayın: Dündar Kılıç: Dündar Kılıç'a Yazılan Mektuplar* (Istanbul: Ozan, 2003); Mustafa Demir, *Son Kabadayı'nın Ateşle İmtihani: Dündar Kılıç'ın Emniyet İfadeleri* (Istanbul: Ozan, 2003).

two volume biography<sup>164</sup>. As a "recent example", almost the self-repeating interviews with Sedat Peker finds itself a place in this narrative.<sup>165</sup>

Another major theme in journalistic books is the infamous Susurluk accident (3 November 1996). A Mercedes was hit by a truck; police chief Hüseyn Kocadağ, former Grey-Wolf youth leader and massacre suspect, Abdullah Çatlı (on Interpol's wanted list and officially a fugitive since 1978), True Path Party Şanlıurfa deputy Sedat Bucak (also an tribal (*aşiret*) leader known for his anti-PKK attitude), and a female companion Gonca Us were travelling in the same car. All were killed, except Sedat Bucak. Abdullah Çatlı was carrying a false identity card, and a specialist General Directorate of Security document, bearing the signature of the Minister of Interior, of the time, Mehmet Ağar. As for the relations behind so-called Susurluk incident, National Assembly Investigation Commission, and in the following journalistic literature, the accident is narrated together with the murder of former drug smuggler and

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<sup>164</sup> Doğan Yurdakul, *Abi I: Dünder Kılıç ve Kabadayılık Efsanesi* (Ankara: Ümit, 2001); Doğan Yurdakul, *Abi II: Raconun Son Nefesi ve "Mafya"* (Ankara: Ümit, 2002).

<sup>165</sup> See for example: Aydın, *Kravatlı Mafya*, pp.107-137; Ecevit Kılıç, *Kirli Kramponlar: Futbol, Mafya, Para, Siyaset* (İstanbul: Toplumsal Dönüşüm, 2001), pp.192-214.

casino boss Ömer Lütfi Topal<sup>166</sup>, the disappearance of National Intelligence Agency informant Tarık Ümit, Söylemez brothers gang, Yüksekova gang, Kocaeli gang, kidnapping of businessman Mehmet Ali Yaprak, murder of Kurdish drug smugglers Behçet Cantürk and Savaş Buldan, death of General Eşref Bitlis were commonly mentioned. The names tried in the Susurluk case, also the names of tangency in between the abovementioned events were police officers from Special Forces Unit (*Özel Harekat Timi*) specially educated for employment in the southeastern regions in the war against PKK. Another point of tangency was Abdullah Çatlı himself, heroized as a nationalist, serving to the benefits of the state, or a symbol of criminalization of the state, or *the* gang-leader acting for his own benefit<sup>167</sup>. Not only the classically mentioned triangle between politics-the police-the gang(s), but using former criminals or mafia bosses in covert operations and/or creating gangs from them, the criminalization of the state at the face of intensified

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<sup>166</sup> In Kutlu Savaş's report, he is presented as the first mafia boss in classical American sense, on the way to gain thorough political immunity incorporating into the state and legitimizing himself as a businessman (*Başbakanlık Teftiş Kurulu Başkanı Kutlu Savaş'ın Susurluk Raporu*, at: <http://www.bilkent.edu.tr/susurluk/kutlu/p5.html>).

<sup>167</sup> Comparatively, see: Soner Yalçın and Doğan Yurdakul, *Reis: Gladio'nun Türk Tetikçisi* (Ankara: Su, 15<sup>th</sup> ed., 2000); Gökçen Çatlı, *Babam Çatlı* (İstanbul: Timaş, 2000); Uğur Mumcu, *Saklı Devletin Güncesi: "Çatlı" vs...* (Ankara: um:ag, 2001); Lütfi Yıldız, *Bizim Çatlı* (Kayseri: Karaca, 1997).



war in the southeastern regions, both in terms of an alleged interference into the drug traffic and the politicians' alleged benefitting from the existing criminal structure are opened into discussion<sup>168</sup>. The common judgement is that the authority vacuum of the state is filled with gangs, which took over the control of politics. Overall evaluations are basically Enis Berberoğlu's *Susurluk: 20 Yıllık Domino Oyunu*<sup>169</sup> (Susurluk: Dominoes Game that Lasted 20 Years) and *Kod Adı Yüksekova*<sup>170</sup> (Code Name: Yüksekova); Fikri Sağlar and Emin Özgül, *Kod Adı Susurluk*<sup>171</sup> (Code Name Susurluk), and Faruk Mercan's *Susurluk Prensleri*<sup>172</sup> (The Princes of Susurluk) can be mentioned<sup>173</sup>. Also, part way between the mafia narrative and Susurluk books, Çatlı's close company Haluk Kircı's memoirs and novels based on a victimization of himself and Çatlı within the disintegration of

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<sup>168</sup> Also, the tension between the cleavages within National Intelligence Agency and the tension between National Intelligence Agency and General Directorate of Security can be mentioned.

<sup>169</sup> Enis Berberoğlu, *Susurluk: 20 Yıllık Domino Oyunu* (Istanbul: İletişim, 4<sup>th</sup> ed., 1998).

<sup>170</sup> Enis Berberoğlu, *Kod Adı Yüksekova: Susurluk*, Ankara, Bodrum, Yüksekova Fay Hattı (Istanbul: Milliyet, 3<sup>rd</sup> ed., 1999).

<sup>171</sup> Fikri Sağlar and Emin Özgönül, *Kod Adı Susurluk: "Derin" İlişkiler* (Istanbul: Boyut, 14<sup>th</sup> ed., 1999).

<sup>172</sup> Faruk Mercan, *Susurluk Prensleri: Bir Gizli Savaşın Perde Arkası* (Istanbul: Milliyet, 2<sup>nd</sup> ed., 1999).

"idealist" youth movement and National Action Party (*Milliyetçi Hareket Partisi*) with 1980 coup d'état, and exaltation of fighting for the nationalist cause no matter what, can be placed as a view 'from-within'.<sup>174</sup>

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<sup>173</sup> For a more critical reading, see also: Erbil Tuşalp, *Vatan Millet Sakarya Çete Parti Mafya* (Istanbul: Günizi, 2002).

<sup>174</sup> See: Haluk Kırcı, *Bırak Eşkiya Bellesinler* (Istanbul: Burak, 2000); Haluk Kırcı, *Zamanı Süzerken* (Istanbul: Burak, 1998); Haluk Kırcı, *Donmuş Zaman Manzaraları* (Istanbul: Burak, 1999); Haluk Kırcı, *Zor Zamanda Kurt Duruşu* (Istanbul: Burak, 2002); Haluk Kırcı, *Çapraz Biçildi İsyanlarım* (Istanbul: Burak, 2003).

## CHAPTER VI

### MAKING SENSE OF MAFIA IN TURKEY II: THE MAFIA METAPHOR AND MAFIA IN NUMBERS

In the introduction, the discussion is opened from the point that organized criminality has a specific definition in the criminological literature. Basic criticisms directed at this definition are that it constitutes a basis of creating a threat and bringing measures as for combat; and that the definition turns a blind eye to white-collar or corporate criminality. With all its fault lines, the reflection of this conceptualization is elaborated in the previous chapter, especially in the writings of legal scholars and policeman-criminologists. In a parallel fashion, the journalistic material repeats the division between mafiosi and white-collar criminal, seeing mafiosi, or 'the prominent figures of the underworld' as an entity external to the state-business relations.

It was also underlined in the introduction that analyses of organized criminality depart from a given 'market economy'. With respect to periods of economic transformation, the criminogenic qualities of the market have to be underlined. In terms of criminogenesis, emphasis on gain without the necessary back-up is criminogenic and transformation paves the way for pushing the reciprocity relations of the past to the negative extreme, and reproducing this already existing basis of legitimacy for informality towards material gain, unless restrained by formal regulatory and redistributive schemes. To this frame the mafiosi adopts and within this swing towards the negative, state-business relations are placed, as a mafia metaphor. In this sense corruption is not secondary to organized crime.

As shown in the fourth chapter, the indications of post-1980 neoliberal economic transformation in Turkey parallel this argument:

- i) the state did not retreat from the economy,
- ii) the Turkish economy has become a crisis prone economy, roots of the crisis being at the public debts beginning from Özal period, with a significant poverty, and reliance informal labor,
- iii) an absence of formalized and generalized redistributive schemes, with wage increases dependent on the boom periods; the absence of

formalized regulatory schemes, with a low degree of respect to the rule of law and increased impartiality in terms of state-business relations.

In the introduction, organized criminality is said to cover both racketeering and white-collar criminality. As the journalistic materials of the previous chapter suggest, the activity of racketeering is undertaken by the 'prominent figures of the underworld', with "kabadayı" backgrounds. In this line of transformation, "kabadayı" has turned into a mafia-boss, extending its activities beyond the urban underground.

Also, in the introduction it is argued that in periods of transformation, mafia metaphorically stands for reciprocity relations aiming at illicit gain at the borders of the legal economy, covering corruption, racketeering and white-collar crime. The triggering effect comes from the state's administration of economic transformation. In this chapter, in contribution to providing a preliminary reading of the mafia in Turkey, this metaphorical part is explored through instances of intersection between businessmen, 'figures of the underworld' and the bureaucrats and politicians. Returning to numbers though, despite the complexity of exemplified relations and the criminogenic dynamics of the economic transformation process, and also despite the fact that legal discussions occupy a significant place

both in the conceptualization of the subject and as a response to the criminogenesis of market economy, the number 'organized criminals' reflected to the criminal justice statistics are low. So are the numbers in the police reports. Of course a reason for this lays in the difficulty to implement the acts, as discussed in the previous chapter. At the same time, this also shows that the organized crime problem can not solely be responded through passing a new legislation.

"Kabadayı" represents a model of self-help institution, similar to the Sicilian mafiosi. The most important difference is that, it is not a part of the clientelistic network as in Sicily, and its scope of existence and influence, until the 1980s, is by and large limited to an urban underground. Its adoption to the transformation came with the widening economic opportunities, especially with respect to banking issues. It can be symbolized in the turn from Dünder Kılıç to Alaattin Çakıcı -the latter is known to extort the legitimate businesses, on the road to becoming a mediator between the market and the state, as the example of Türkbank bidding suggest. Corruption-white-collar crime coexistence is reproduced in the post-1980 period triggered by greater resources coupled with lesser regulation, and lesser respect for the rule of law on the part of the state. The white-collar criminality

shows an interesting bend as well: Selim Edes is the new white-collar criminal, relying extensively on state tolerance and back-up. Korkmaz Yiğit, whose former business experience as a contractor does not extend to the public projects. His experience with Turkbank is based on a history of granting banking permits, the sale of banks on state credit to businessmen showing signs of draining bank resources, resulting in 'syphoning' of bank resources, either for personal ends or for transfers to the home companies<sup>1</sup>. What is novel to the Turkbank case, is Erol Evcil, as a businessman who deliberately makes use of criminal relationships in debt settlement.

The second line of analysis can be run from the figures. I tried to provide an inventory of the available numerical data on mafia type activity. It departs from the law enforcement and legal construction of the subject discussed in the previous chapter at length.

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<sup>1</sup> A documentation of bank 'syphoning' can be followed in Arslan (Arslan, *Hortum ve Cinnet*).

## Mafia as a Metaphor

### Picture 0: "Kabadayı"

Classically, in its nineteenth century examples, "kabadayı"<sup>2</sup>, is known as an "urban chevalier" that is distinguished in its success and braveness in fighting, behaves within a certain moral code, dresses in a certain way and fulfils a social function that legitimizes his existence. He assures the security of the neighborhood, and the chastity of women therein, undertakes the dispute settlements, and protects the poor and the needy.<sup>3</sup> In protecting the poor and the needy, he is attributed a "Robin Hood" like role. Yet, taking from the riches means 'protection racket' directed mostly at gambling,

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<sup>2</sup> Regarding both the recent examples, like Dündar Kılıç's accounts, and the writing, "kabadayı" is different from "külhanbeyi", where the latter is looked down on, seen as disorderly and predatory -the name "külhanbeyi" indicates "homelessness", as "külhanbeyi"s live in the boiler-rooms (*külhan*) of the baths (*hamam*). Yet, it is put forth in several resources that in the eighteenth century, "külhanbeylik" is a sect with a special rite of initiation, way of dressing and language. It may also be seen as a social-help institution, as the boys entering the "külhan"s have to be orphans (Reşat Ekrem Koçu, *Patrona Halil* (Istanbul: Doğan, 2<sup>nd</sup> ed., 2001), pp.99-110; Ebuzziya Tevfik, *Yeni Osmanlılar Tarihi* (Istanbul: Kervan, 1974), pp.196-232; Server Tanilli, 'Geçen Yüzyılda İstanbul'da Kabadayılar ve Külhanbeyleri', in: François Georgeon and Paul Dumont (ed.s), *Osmanlı İmparatorluğu'nda Yaşamak: Toplumsal Biçimleri ve Cemaatler Arası İlişkiler* (18.-20. Yüzyıllar) (translated by Maide Selen) (Istanbul: İletişim, 2000), pp. 137-146.

<sup>3</sup> Ulunay, *Sayıllı Fırtınalar*.



prostitution, night life and usury.<sup>4</sup> Extorting from gambling, and taking the money of unexperienced gamblers were considered as 'normal' practices for "kabadayı"s.<sup>5</sup> Collecting money, Yet, lives in accommodation with the police: he is given a certain autonomy in providing law and order in the neighborhood and the night life, yet he works for the police in instances of serious crimes or political unrest.<sup>6</sup>

This pattern of reflects nineteenth and early twentieth century examples, and is said to lay dormant - either ceased to exist, or unmentioned until the 1950s. Bovenkerk and Yeşilgöz put forward that, parallel to the Fascist Italy's repression of the mafia in Sicily, the authoritarian rule of the single party period (or, following Zürcher -as they refer to- from 1908 to 1950s), did not enable the "kabadayı" to come into public attention.<sup>7</sup> Yet there is hardly any evidence to suggest that early Republican governments have been in systematic fight with the neighborhood "kabadayı" existence, mainly involved in extorting what may be called the 'urban

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<sup>4</sup> Ibid..

<sup>5</sup> Ibid., p.167.

<sup>6</sup> Bovenkerk and Yeşilgöz, *Türkiye'nin Mafyası*, p.113.

<sup>7</sup> Ibid., pp. 128-129.

underground'. After all, the commonly referred sources like Ulunay or Ahmet Rasim, wrote about "kabadayılık" within this period<sup>8</sup>. It is more secure to think that their stories went untold, and at least they continued their regulatory role in the 'urban underground'.

It is commonly accepted that "kabadayılık" gained visibility in the 1950s. Mahmut Övür mentions that Democrat Party's liberal economic policies increased the domain of illicit gains in the market, and especially the foreign exchange and luxury goods consumption in the hands of non-moslem minorities was a fertile domain of illicit gains.<sup>9</sup> But, there are not any examples to understand how this took place. Bovenkerk and Yeşilgöz underline that the erosion of the control of police in the city and gendarmerie in the rural areas, created a domain for the transformation of "kabadayı"s to 'organized criminality'.<sup>10</sup> Yet, in the examples, the "kabadayı" existence is limited again to illegal gambling, extortion from the night life<sup>11</sup>, in

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<sup>8</sup> See the bibliography in: Uğur Gökteş, "Kabadayılık", Dünden Bugüne İstanbul Ansiklopedisi, vol. 4 (İstanbul: Kültür Bakanlığı and Tarih Vakfı, 1993), p.323.

<sup>9</sup> Övür, "Türkiye'de Mafya", p.1473.

<sup>10</sup> Bovenkerk and Yeşilgöz, Türkiye'nin Mafyası, p.130.

<sup>11</sup> Also from the legitimate businesses, as Bovenkerk and Yeşilgöz mention with the example of Hüseyin Heybetli (Bovenkerk and

accommodation with the police. Migration also appears to be a common factor -all the "kabadayı"s are known with their ethnic or territorial affinities, but it can not be said that the migrants became "kabadayı"s in the city. Yet, as symbolized in the example of Dünder Kılıç<sup>12</sup>, self-provision of justice is the dominant theme -both as a redistributive justice as in distributing the bread from his father's bakery in World War II conditions, to the poor<sup>13</sup>, and a criminal justice, countering the wrongs he faces with crude violence<sup>14</sup>. With an inescapable prison experience<sup>15</sup>, the boldness, courage and often the cruelty becomes an asset to be invested in illegitimate businesses -most prominently in illegal gambling, whether in a small backstreet coffee house (*kahvehane*) or in night clubs and extortion from similar businesses. The

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Yeşilgöz, Türkiye'nin Mafyası). Yet, thought in terms of a "neighbourhood" basis of classical "kabadayılık", translated into a 'territorial control' in the 1950s, at least in terms of illegal gambling, prostitution and night life, it is not very clear whether the "kabadayı"s in charge of the district were naturally called in for 'dispute settlements' or 'debt collection' in legitimate businesses, or whether they are systematically paid for, for protection is an open question.

<sup>12</sup> His family migrated to Ankara from Sürmene, Trabzon, escaping a vendetta, in 1942, and settled in the peripheral districts (Hacettepe) (Ibid., pp.35-36).

<sup>13</sup> Ibid., p.36.

<sup>14</sup> Typical example is his killing 'Boksör' Erci in 1952, seven years after he had stolen the bread he would be distributing to the poor (for two different versions of the event, see: Ibid., pp. 58-61).

criminal events then on arise from competition -through this competition, Dünder Kılıç emerges as a powerful figure in the 1970s.

With gambling, prostitution and night life being the center and the horizon of activities -from the 1960s and 1970s onwards, smuggling of various goods, from cigarettes and alcoholic beverages to guns and drugs would enter the scene- the competition said to be founded on territorial grounds.<sup>16</sup> Yet it is an open question whether this has its roots in the classical neighborhood orientation of the "kabadayı", or conscientiously constructed. And, it is also an open question in terms of territorial control, whether the "kabadayı"s collect protection money from legitimate businesses, or they are consulted upon, and paid for in times of dispute resolution, as they are known to be the 'protector' of the district.

What also reads from Dünder Kılıç's story is that "kabadayı"s coexist with the police. It is said to include a certain amount of bribery<sup>17</sup>, but "kabadayı" is known to be pro-state. As Kılıç puts it: "when necessary,

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<sup>15</sup> Where he meets other "kabadayı"s (Ibid., pp.68-69).

<sup>16</sup> Ibid., pp. 120-121.

<sup>17</sup> Ibid., pp. 156-159.

we are of greatest help to the police.”<sup>18</sup> Being arrested often for “violation of the firearms law”, sounds to be a part of a silent deal. When police wishes to reclaim authority, he is arrested for carrying an unlicensed gun. As Kılıç puts it, “in every police search, I am obliged to be in possession of a gun. Then I can receive its prison sentence. The day I was not caught with a gun, I would be in trouble.”<sup>19</sup>

Dündar Kılıç, in the 1970s extends his domain of activity to the legal businesses: film making, construction, advertising, and coal mining. Yet, this can hardly be seen as ‘business infiltration’. Yurdakul argues that by the 1970s, Kılıç has accumulated enough, despite his expenses, to be invested into businesses other than gambling.<sup>20</sup> The companies, run by family members or close friends, were far away from formalization, for both the revenues and expenses were shared.<sup>21</sup> And, it also should be remembered that, the position of “kabadayı” is legitimized with social help, and this required in the case of Dündar Kılıç, responding

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<sup>18</sup> Ibid., p. 197.

<sup>19</sup> Ibid., p. 248.

<sup>20</sup> Ibid., pp. 253-260.

<sup>21</sup> Ibid., p. 310.

to every uttered or implicit demand for help, which might mean spending as much as he earns. One interesting aspect, regarding 'peacemaking' (dispute-settlement) is that Kılıç consults to his lawyers when he is confused about the subject.<sup>22</sup>

The field of operation for "kabadayı" is seen as gambling, prostitution -not in the case of Kılıç though- and night clubs. Also, there appears to be a differentiation with the "kabadayı" and smuggler. Yet, Dünder Kılıç seems to be involved a bit in everything. Following Yurdakul, although not explicitly known to be smuggler, he contributed to "revenue sharing", that is, to the pooling of funds collected for smuggling.<sup>23</sup> Although 'using influence on public biddings' is seen to be the specialization of Mehmet Nabi İnciler (also known as İnci Baba), there are instances that Dünder Kılıç also 'requested' other parties to withdraw from the public biddings. Yet, this, according to Yurdakul, is an investment of his power for the benefit of a close friend -Mehmet Ali Yılmaz.<sup>24</sup>

Kılıç would spend the years between 1984 and 1989 in prison -as a result of the so-called 'Babalar Operasyonu'

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<sup>22</sup> Ibid., p. 254.

<sup>23</sup> Ibid., pp. 319-320.

(Fathers Operation), which is said to be a reflection of National Intelligence Agency's smuggling department (headed by Mehmet Eymür) and a division of Istanbul police, over the rents accrued from smuggling in Istanbul. The arrest of Dünder Kılıç was for curbing his power in Istanbul.<sup>25</sup>

When he gets out, he will meet a new set of actors: the so-called 'idealist (ülkücü) mafia'<sup>26</sup>, specialized in debt-recollection. The emergence of 'idealist mafia' is owed the blow of the coup d'état on the extreme-right Nationalist Action Party and its youth organizations, releasing a manpower, especially in the cities, whose livelihood is increasingly dependent on their experience in using arms. They were either recruited by the established 'underground', or employed by their former chiefs who became 'businessmen'. The major development that had opened their field of operation is the banker's crisis in 1982, which has left huge amounts of uncollected bank checks and debt certificates, the legal

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<sup>24</sup> Ibid., pp. 318-319.

<sup>25</sup> Yurdakul, *Abi*, Vol.I; Yurdakul, *Abi*, Vol.II.

<sup>26</sup> In one of his novels, Haluk Kırcı legitimizes the emergence of an 'idealist mafia' operating on debt recollection and using force in biddings, on the dedication of the youth to raise the funds to revive the organization, in a time of 'wild capitalism'. The men start with working at a lawyer's office, then an acquaintance from National Intelligence Agency, encourage them to work on their own and offering his help. One of the disputes they settle is between

collection of which is takes a long time or impossible through the legal system.<sup>27</sup> Alaattin Çakıcı, is one of the figures that has established his authority through this development. This constitutes a major break. For it openly indicates extortion from the legal economy and collection of legal debts. Çakıcı is said to be involved in extortion from "fictitious exporters"<sup>28</sup> and later in the 1990s, from the illicit business world in general and from the bank privatizations. In extorting usurer Nesim Malki, he expressed that he 'bills' 10-20 businessman, and twice a year Malki pays his part.<sup>29</sup>

Picture 1: 'Civangate' (1994)

His most deciphered encounter with the businessworld is so-called 'Civangate'. As it is reflected to the news on 19 September 1994: the shooting of former 'prince' of Turgut Özal, and former General Director of Emlak Bank

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"fictitious export" partners (Haluk Kırcı, *Çapraz Biçildi İsyanlarım* (Istanbul: Burak, 2003), 73-157).

<sup>27</sup> Bora and Can, *Devlet, Ocak, Dergah*, pp. 380-397.

<sup>28</sup> He says, he was involved in collecting the debts of those who swindle the state with tax evasion, or rob the treasury with fictitious exportation (Nedim Şener, *Kod Adı: Atilla* (Istanbul: Güncel, 2004), p.60).

<sup>29</sup> Ibid., p.33.



Engin Civan, related to the bankrupt constructor Selim Edes who demanded five million dollars from Civan. The gunman Davut Yıldız admitted that he had shot Engin Civan on Alaattin Çakıcı's order. Allegedly, the business is handled to Çakıcı and Dünder Kılıç on Ahmet Özal's request.<sup>30</sup>

In retrospect, it was made open in the following days that the subject of the controversy is five million dollars of bribe that Selim Edes paid for speeding up the payments of Adatepe land that he had sold to the Emlak Bank. He did not receive the full payment, so he wanted his bribe money back. From one channel, Zeynep Özal, asked Uğur Kılıç (Alaattin Çakıcı's wife and Dünder Kılıç's daughter) to mediate in the recollection of the money -with a part of which Ahmet Özal's tax debts would be cleaned. In the meantime, Semra Özal asked Dünder Kılıç to resolve the problem. The parties met in Kılıç's summer house, realizing that "it is impossible to mediate between thieves", Kılıç calls the meeting off. Later that day, Engin Civan was shot on Alaattin Çakıcı's order.<sup>31</sup> Uğur Çakıcı was killed in Uludağ by Çakıcı's men, on the

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<sup>30</sup>Yurdakul, *Abi II*, p.206.

<sup>31</sup> Yurdakul, *Abi II*; Şener, *Kod Adı: Atilla*, pp. 75-83; Akar and Özgentürk, *Bir Prens'in Hisseli Hikayesi*. Çakıcı's share would be 2 million dollars, following his right-arm man Tevfik Ağansoy's testimony in Susurluk Commission (Şener, *Kod Adı: Atilla*, p.82).

eve of testifying against the Özal family.<sup>32</sup> The court sentenced Engin Civan to 7 years 6 months on taking bribes, Selim Edes to 1 year 8 months from solicitation and 111 billion liras on giving bribes.<sup>33</sup>

It is interesting to underline Dünder Kılıç's attitude, which marks the incompatibility of "kabadayı"s role in dispute settlement with the new disputes of the era. He did not want to be a part of it, and he did not refrain from telling who requested the settlement.<sup>34</sup>

The part that moves the incident away from a public manifestation of 'contract enforcement' is the backgrounds of Selim Edes and Engin Civan. On the one hand, Engin Civan, General Director of Emlak Bank -one of the two institutions responsible for undertaking mass housing construction, along with Mass Housing Administration- between 1989-1992, at the time of his shooting, was already at the target of investigations regarding the financial losses of the bank. Based on the the reports of Board of Sworn Bank Auditors, the losses cumulated through extending high risk commercial credits and non-performing loans, extending credits to

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<sup>32</sup> Ibid., p.81.

<sup>33</sup> Ibid., p.83.

<sup>34</sup>Yurdakul, *Abi II*, p.218; 223. See also: Soydan, *İmparator ve Kızı*, pp.104-114.

participatory firms and the state economic enterprises, and through the masking of real losses. The three year (1989-1991) cumulative loss amounted to 1,5 trillion liras (around 295,624,754 US dollars).<sup>35</sup> Akar and Özgentürk put forward that the allocation of the credits exhibit an immensely personalized character, mostly on Semra Özal's request.<sup>36</sup>

On the part of Selim Edes, returning 5 million dollars of bribe was only a small part of the picture. Selim Edes, was one of ANAP's favoured businessmen, to whom massive infrastructural and building projects were given through the central governments and municipalities. One massive project was the construction of 26 thousand houses at Anakent, beginning from 1987. Edes's company, ESKA, was both a landholder, and taken on the 65 percent of the construction. Although the construction permit was granted in 1988, the company was paid 2 billion liras for non-existing equipment. His hard times began with ANAP's fall from government. He decided on the one hand, to sell the land to Mass Housing Administration and sell the responsible construction company of his group (Eksan) to another firm (MANG). The transfer agreement, to be approved by Emlak Bank, required that the bank would

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<sup>35</sup> Akar and Özgentürk, *Bir Prens Hisseli Hikayesi*, pp.65-58.

extend 19,5 million German marks (27 billion liras) of advance payment.<sup>37</sup> In a Prime Minister's Board of Investigation report, it was underlined that MANG was a post-box firm, and the names that appear to be major shareholders are administrators in ESKA companies.<sup>38</sup> In the reports of Board of Sworn Bank Auditors, these 27 million liras were shared between Engin Civan, ESKA, Necdet Öz, and allegedly Ahmet Özal.<sup>39</sup> Edes would apply for another project (Ukrainian housing) credit of 35 million German marks, which would be approved in six days, regardless of his credibility. This credit would prove unreturned, and despite the pressures, unprosecuted.<sup>40</sup> Also, in another non-beginning project (construction of International Commerce Center at Zeytinburnu), ESKA appropriated 111 billion liras and 10,5 million US dollar advance payment, in 1989-1991.<sup>41</sup>

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<sup>36</sup> Ibid., p.52.

<sup>37</sup> Ibid., pp. 71-74.

<sup>38</sup> Ibid., p.75.

<sup>39</sup> Ibid.. MANG would request another advance payment in 1992, after Civan's resignation. The contract between MANG and Emlak Bank would finally be cancelled, on the payment of 3 million US dollar penalty (Ibid., p.77).

<sup>40</sup> Ibid., pp.78-80.

<sup>41</sup> The Prime Minister's Board of Investigation states that, this project was undertaken by the board of administration of the Bank, totally based on a personalized organization, and to the aim of transferring funds (Ibid., pp.81-82).

## Picture 2: Turkbank Privatization (1998)

Transferred to the Treasury on 4 August 1997, due to its financial weakness, Turkbank's privatization was announced on 3 April 1998. Five firms<sup>42</sup> made official offers.<sup>43</sup> Two firms bidded on the final tour<sup>44</sup>, Zorlu and Yiğit, and 84,52 percent shares of the bank is sold to Yiğit, on 4 August 1998 for 600 million US dollars. The sale is approved by the Treasury on 9 September 1998.

Informing Yılmaz on 8 October, on 13 October 1998, CHP (*Cumhuriyet Halk Partisi* - Republican People's Party) Mersin Deputy Fikri Sağlar announced a tape-recording (anonymously sent to him) of Korkmaz Yiğit and Alaattin Çakıcı, pointing out to Çakıcı's involvement in the bidding -threatening other parties to withdraw from the bidding. The sale to Türkbank is cancelled on the same

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<sup>42</sup> İpeks İplik Tekstil Sanayi A. Ş. (Hayyam Gariboğlu), Avrupa ve Amerika Holding A. Ş. (Erol Aksoy), As Yapı Endüstrisi A. Ş. (Ali Balkaner), Zorlu Holding (Ali Nazif Zorlu) and Korkmaz Yiğit İnşaat Taahhüt A. Ş. (Korkmaz Yiğit) (Şener, *Kod Adı: Atilla*, pp. 180-181).

<sup>43</sup> All five were owners of banks. Except from Zorlu and his Denizbank, the other banks were transferred to Saving Deposits Security Fund between 1998-2001 (Arslan, pp. *Hortum ve Cinnet*, 526-527).

<sup>44</sup> The temporary letter of guarantee for the bidding is provided as letters of guarantee from one another's banks, with the exception of Zorlu group again (Şener, *Kod Adı: Atilla*, p. 201).

day.<sup>45</sup> Korkmaz Yiğit is arrested by the İstanbul Organized Crime and Anti-Smuggling Department. The ANAP-DSP (*Demokratik Sol Parti* - Democratic Left Party) under the prime ministry of Mesut Yılmaz resigned on a vote of unconfidence in the National Assembly on 25 November 1998.<sup>46</sup> The sensational part of the Türkbank case is seen to be Alaattin Çakıcı's involvement in the bidding - making the question 'is mafia buying a bank?' be asked. Yet, Alaattin Çakıcı is allegedly taken 5 percent of the sale amount from Yiğit. But the logic of illicit gains is not restricted to Çakıcı. Yiğit's debts were promised to be financed through credits, in return<sup>47</sup> the newspapers and TV channels that Yiğit has bought would follow a pro-Mesut Yılmaz line.

In the National Assembly's Turkbank Investigation Commission Report (2004), paving their way to High Tribunal (*Yüce Divan*) in 2004<sup>48</sup>, the basic allegation

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<sup>45</sup> By 2 September 1998, the Coalition partner Ecevit was already informed about Çakıcı's involvement in the bidding (Ibid., p.252).

<sup>46</sup> Aslan, *Hortum ve Cinnet*, pp. 116-117, 145-146.

<sup>47</sup> If there are any bribes paid, it is yet unknown and unspoken of.

<sup>48</sup> Attempts at sending Yılmaz to High Tribunal were made before. The first on November 1998, was evened out with not sending Tansu Çiller to High Tribunal (on the increases in her estates). In 1999-2000 the Commission Report towards sending Yılmaz to High Tribunal was once again denied in the National Assembly, in the

against former Prime Minister Mesut Yılmaz and former Deputy Prime Minister Güneş Taner is communicating with mafia-related businessmen and exerting unlawful influence on their behalf in a public bidding<sup>49</sup>, to the aim of gaining media power for the forthcoming elections, resulting in a public loss of 953,3 million US dollars (based on the resources transferred to Turkbank from the Saving Deposits Insurance Fund).<sup>50</sup> Governor of the period Gazi Erçel, Saving Deposits Insurance Fund Board of Directors, and Undersecretary of Treasury on the period was also held responsible of their contribution to the process.<sup>51</sup>

As cited Commission Report, General Directorate of Security and National Intelligence Agency, wire-tapping Çakıcı's telephone calls, identified his involvement in the bidding process on behalf of Yiğit, and informed the Prime Minister on the subject, prior to the bidding.<sup>52</sup>

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meantime, ANAP was the partner of the Coalition government (Şener, *Kod Adı: Atilla*, pp. 271-273).

<sup>49</sup> In the commission report, Yılmaz is also accused of pre-bargaining the sale price (Ibid., p.366-367). He pre-announced the desired price to Yiğit and Zorlu by Kamuran Çörtük and said that they would provide the necessary back-up if Yiğit could not pay that 505 million US dollars (Ibid., pp.206).

<sup>50</sup> Ibid., p.394.

<sup>51</sup> Ibid., p.394.

Korkmaz Yiğit's testimony to the National Assembly Corruption Investigation Commission, and in the tape recording that he prepared on the aftermath of the cancellation of the sale, transmitted on television on 10 November<sup>53</sup> enlightens another aspect of the bidding: he was interested in buying a bank for selling houses on a long-term credit, and Governor Gazi Erçel, Deputy Prime Minister Güneş Taner and Prime Minister Mesut Yılmaz encouraged him on buying Türkbank, despite he had expressed his suspicions regarding Çakıcı's interest in the bank.<sup>54</sup> In the time between his offer and the cancellation of the sale, Yiğit has bought three television channels (Kanal 6, Kanal E and Genç TV) for 178 million US dollars, and three newspapers (Yeni Yüzyıl, Ateş, and Milliyet) for 353 million dollars, on Yılmaz's request.<sup>55</sup> As Yiğit expressed in his testimony to the police, Genç TV was sold on paper to Kamuran Çörtük, a businessman close to Mesut Yılmaz, for his mediation between him and Yılmaz on the bidding process

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<sup>52</sup> Ibid., p.361. For the notes of correspondence between General Directorate of Secutiry and the National Intelligence Agency, Ibid., pp.173-174; 178-180.

<sup>53</sup> Aslan, *Hortum ve Cinnet*, p.139.

<sup>54</sup> The response he received is that 'Çakıcı is under our control.' (Şener, *Kod Adı: Atilla*, pp.166-167).

<sup>55</sup> Ibid., p.248.



on 22 July 1998.<sup>56</sup> He was forced to buy Kanal 6, for there was a file in the channel, about Minister of Energy, Cumhur Ersümer<sup>57</sup>, on pre-bargaining a bidding. Yiğit put forward that the file is immediately taken by Çörtük.<sup>58</sup>

Getting under a debt beyond his finances, Yiğit was first guaranteed to be given credits from Yapı Kredi and a German bank, and 414 million US dollars letter of guaranty from Emlakbank, by Güneş Taner.<sup>59</sup> At the face of unfulfilled credit promises, Yiğit's media operation was financed from his Bank Ekspres. The bank is transferred to Saving Deposits Security Fund on 25 November 1998.<sup>60</sup> As Yiğit puts it on his television speech: "The events in the media, those with the politicians in Ankara, collectively took me to a point where I can not explain. ... I see myself as deprived of my honor and esteem."<sup>61</sup>

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<sup>56</sup> Ibid., p.202.

<sup>57</sup> Ersümer is sent to the High Tribunal for misusing his office, causing a public loss in energy biddings and obtaining illicit gains from public biddings. He argued that he is politically executed (*Sabah*, 22 December 2004).

<sup>58</sup> Şener, *Kod Adı: Atilla*, pp. 213-214.

<sup>59</sup> Ibid., pp.249-251.

<sup>60</sup> Aslan, p.138. His 'syphoning' of Bankekspres has turned into a criminal lawsuit with the so-called Kasırga 4 Operation on January 2001 (Şener, *Tepeden Tırnağa Yolsuzluk*, p.146).

Strangely enough, Yiğit is found guilty of participating in an armed criminal organization headed by Çakıcı, to conspire in the Türkbank bidding, and sentenced to 3 years 9 months.<sup>62</sup>

Yiğit states that he had met Çakıcı four months prior to Nesim Malki's murder, on the occasion that he had taken Malki, to Governor of Istanbul Kozakçioğlu, to announce that Malki was being extorted by Çakıcı.<sup>63</sup> Whereas, Çakıcı responded with threatening Yiğit. Under threat, in the Türkbank case, he could not deny his involvement.<sup>64</sup> Çakıcı would receive a 5 percent of the sales price<sup>65</sup>, for deterring other companies from bidding up<sup>66</sup>.

Çakıcı's interest on Türkbank<sup>67</sup> is on behalf of Erol Evcil -a Bursa-based 'businessman' who has built a

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<sup>61</sup> Şener, *Kod Adı: Atilla*, p.268.

<sup>62</sup> *Radikal*, 13 September 2004.

<sup>63</sup> The amount is 1 million dollars (Şener, *Kod Adı: Atilla*, p.32).

<sup>64</sup> *Ibid.*, pp.268-269.

<sup>65</sup> *Ibid.*, pp. 213-214. The amount Yiğit paid, is paid to Evcil (*Ibid.*, pp. 236-237).

<sup>66</sup> For the list of businessmen he has threatened, see: *Ibid.*, pp. 191-192.

<sup>67</sup> He is said to collect money from Etibank and Egebank as well (Arslan, *Hortum ve Cinnet*, pp.94-99)

fortune as an insurance agency, and yarn trade.<sup>68</sup> Evcil's investment in olive factories, triggered the mounting of his debts.

His debt to Malki amounted to hundreds of million dollars.<sup>69</sup> Aside from 40-50 million dollars to Türkbank, his debts to İş Bankası amounted to 104 million dollars, to Egebank, Demirbank and İnterbank, 88 million dollars.<sup>70</sup> In as a debt-repayment strategy, he would choose to order the murder of Malki<sup>71</sup> (1995); try to buy Türkbank<sup>72</sup>; and settle his debts with Demirbank by a threat of murder through Alaattin Çakıcı<sup>73</sup>.

A criminal lawsuit from Article 4422 is filed against Alaattin Çakıcı on the Turkbank investigation, from which he is sentenced to five years.<sup>74</sup> With respect to the bank 'syphoning' cases, it was widely discussed

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<sup>68</sup> Şener, *Kod Adı: Atilla*, pp. 30-32.

<sup>69</sup> Ibid., p.39.

<sup>70</sup> Ibid., p. 44.

<sup>71</sup> His testimony to the police can be seen in: Nasuhi Güngör, *İpin Ucundakiler*, pp. 243-280.

<sup>72</sup> Şener, *Kod Adı: Atilla*, pp. 53-55. Çakıcı in one of his famous phone-calls, put forward that the reason for Evcil's not buying Turkbank is the 20 million dollars bribe asked by Özer Çiller (Ibid., pp. 88-91).

<sup>73</sup> Ibid., pp. 115-120.

whether it falls into the scope of Art. No. 4422, but as 'threat' can not be proven, the Turkbank case constituted the sole exception.<sup>75</sup>

### Mafia in Turkey in Numbers

Contrary to these examples, the data supplied below, hence, does not include the mafia metaphor. It is based on the strict, organization-threat logic, as it is already discussed. The Anti-Smuggling and Organized Crime department's profiling point to the low-levels of mafia-type crime. As Adil Serdar Saçan underlines in an interview, in terms of the recent Sedat Peker operation and Acar Operation undertaken in the same days, that small groups, like Acar, constitute a more typical target for the police.<sup>76</sup> Perhaps, what is mentioned in the profile, can be read as the trend for new-comers. The European numbers are based on the reports from the Turkish police, so reflect a similar trend. Yet, the justice statistics, with reference of the vast domain of

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<sup>74</sup> Ibid., p.341.

<sup>75</sup> Arslan, *Hortum ve Cinnet*, pp. 48-50.

<sup>76</sup> "İstanbul Yeniden Kürt Mafyasının Eline Geçiyor", *Yeni Aktüel*, 21 October-28 October (2004), at: [www.yeniaktuel.com.tr/hft-10514-101.html](http://www.yeniaktuel.com.tr/hft-10514-101.html).

mafia-type crime is surprisingly low.<sup>77</sup> One reason for this may be that, as it is discussed above, with in the example of Dündar Kılıç, 'the prominent figures of the underworld' are more likely to be tried for violating the fire-arms law, or threat, or assault, rather than for criminal association. One other reason is, despite the tendency in terms of legislative recreation, as discussed in chapter five, to include commercial crimes into criminal association, the law offers a very limited and specific ground for trial, despite the vast domain of crimes committed for the purpose of illicit economic gain.

### The Police Reports

Anti-Smuggling and Organized Crime Department's activity reports dated 1999 and 2000 supply a valuable primary data reflecting the official enforcement view. In

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<sup>77</sup> In comparison, the racketeering and extortion suspects in the United States, are 3percent of the total number of suspects in 1998, 2,7percent in 2000 and 2,4 percent in 2001 (Bureau of Justice Statistics, *Compendium of Federal Justice Statistics, 1998* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, 1998), p.27; Bureau of Justice Statistics, *Compendium of Federal Justice Statistics, 2000* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, 2000), p.27; Bureau of Justice Statistics, *Compendium of Federal Justice Statistics, 2001* (Washington, DC: U.S. Department of Justice, Office of Justice Programs, 2001), p.27).

the 1999 report<sup>78</sup>, classical characteristics of Turkish organized crime are stated; the 2000 report<sup>79</sup> provides the sociological outlines of organized crime suspects.

Between 1998 and 2000, the typical organized crime suspect is barely educated working person between ages 21-40: out of 2201 suspects, 45 percent has only a primary school diploma, 19 percent has secondary school and 23 percent has high school degrees; 12 percent has attended university, and 1 percent is illiterate. Out of 2363 suspects, 12 percent is unemployed, 3 percent retired, and the remaining 85 percent is currently employed, 68 percent working free-lance.<sup>80</sup> Also, out of 6318 suspects, 71 percent is between ages 21-40; 12 percent between 18-20, 16 percent between 41-60, and only 1 percent is older than 60.<sup>81</sup>

As for typical characteristics:

- 1) the group structure resembles a firm, a holding company; they buy real estate, establish business partnerships, participate into public biddings, to

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<sup>78</sup> *Kaçakçılık ve Organize Suçlarla Mücadele '99*, at: [http://www.kom.gov.tr/yayinlar/99kitaptr-3.htm#\\_toc511031453](http://www.kom.gov.tr/yayinlar/99kitaptr-3.htm#_toc511031453).

<sup>79</sup> *Kaçakçılık ve Organize Suçlarla Mücadele 2000*, at: <http://www.kom.gov.tr/yayinlar/2000/bolum3.htm>.

<sup>80</sup> In the report it is stated this shows organized crime groups recruit those employed in low incomes jobs, the retired and the unemployed, seeking for easy money (*Kaçakçılık ve Organize Suçlarla Mücadele 2000*).

<sup>81</sup> *Kaçakçılık ve Organize Suçlarla Mücadele 2000*.

appear as a businessman. They also seek for opportunities of rent and try to keep them, and mediate in business disagreements, and guide illegal commerce, and control local businesses. They establish charitable foundations to forcefully collect money. They establish companies registered on 'clean' names and launder money. Their property is registered on others. The immediate source of income is extorting prostitution,

- 2) the groups are interrelated,
- 3) they do not act against the forces of security; but, use or mediate for elements in the state; at the first stages of organization, the guns and the influence of former security force members is used,
- 4) the leaders try to look as if they follow the socially accepted codes of behavior, act according to the common sense; they reciprocate presents and look after his immediate environment; to find recruits, they try to look as if they live in luxury; yet they do not enjoy public appearance unless they feel powerful and safe,
- 5) having a criminal record and being in prison is seen as a requisition of the hierarchy; the imprisoned members' families are looked after, as a duty of the leader,

- 6) taking on a crime is an important factor in remaining in a criminal organization; also, absolute obedience to the leader, and following the specific unwritten rules of the organization is seen necessary;
- 7) being from the same region is an important denominator in the expansion of the group; those who know the details of the working of the organization can hardly leave,
- 8) usually the a bogus suspect is given to the law enforcement and those on the run use fake passports bearing 'clean' names, they use rented cars, with bogus plate numbers in action.<sup>82</sup>

#### Mafia of Turkey, Seen from Europe

In the European Union documents, departing from survey data, the characteristics of the Turkish organized crime groups<sup>83</sup> appear to be:

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<sup>82</sup> *Kaçakçılık ve Organize Suçlarla Mücadele '99.*

<sup>83</sup> For member states, in defining organized crime four mandatory and seven optional criteria are established. In the reports cited below, all mandatory and at least two of the optional criteria has to be fulfilled. The mandatory criteria are: "1. Collaboration of three or more people; 2. For a prolonged or indefinite period of time; 3. Suspected or convicted of committing serious offenses; 4. With the objective of pursuing profit and/or power". The optional criteria are: "Having a specific task or role for each participant; 6. Using some form of internal discipline and control; 7. Using violence or other means suitable for intimidation;



- i) a hierarchical structure with absolute obedience to the leader and a division of tasks (also, cellular structures are found)<sup>84</sup>,
- ii) they use inter-group and intra-group violence<sup>85</sup>,
- iii) they mostly are from the Black Sea region, although some groups have members from other regions<sup>86</sup>,
- iv) they are typically family organizations, where regional and family background is of central importance<sup>87</sup>,

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8. Exerting influence on politics, the media, public administration, law enforcement, the administration of justice or the economy by corruption or any other means; 9. Using commercial or business-like structures; 10. Engaged in money-laundering; 11. Operating on an international level". These criteria can be applied to traditional criminal groups but to forms of serious white-collar and organizational crime (Council of Europe, *Organized Crime Situation Report 2001* (Strasbourg, 2002), p.7).

<sup>84</sup> Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1998* (Strasbourg, 1999), p.8; Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1999* (Strasbourg, 2000), p.18; Council of Europe, *Organized Crime Situation Report 2000* (Strasbourg, 2001), p.26; Council of Europe, *Organized Crime Situation Report 2001*, p.95.

<sup>85</sup> Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1996* (Strasbourg, 1997), p.23.

<sup>86</sup> Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1999*, p.18; Council of Europe, *Organized Crime Situation Report 2000*, p.26; Council of Europe, *Organized Crime Situation Report 2001*, p.95.

<sup>87</sup> Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1998*, p.8; Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1999*, p.18.

- v) there is cooperation among groups<sup>88</sup>,
- vi) the international cooperation is not beyond personal relationships<sup>89</sup>,
- vii) they (including Kurdish groups) are likely to be involved in drug related crimes<sup>90</sup>; they also are involved in fraud, counterfeiting/forgery, kidnapping, vehicle theft, illegal fire-arms trading, traffic in human beings (including illegal immigration)<sup>91</sup>,

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<sup>88</sup> Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1999*, p.18; Council of Europe, *Organized Crime Situation Report 2000*, p.26; Council of Europe, *Organized Crime Situation Report 2001*, p.95.

<sup>89</sup> Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1999*, pp.19-20; Council of Europe, *Organized Crime Situation Report 2000*, p.26; Council of Europe, *Organized Crime Situation Report 2001*, p.95. Earlier, Turkish organized crime groups is said to have links with 'Ndrangheta (Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1996*, p.18).

<sup>90</sup> Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1998*, p.11; Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1996*, p.12.

<sup>91</sup> Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1996*, p.12.

- viii) their activities sometimes extend to neighboring countries (Bulgaria, Romania, Ukraine) and Western Europe (Germany and France)<sup>92</sup>,
- ix) the estimated number of groups are stated to be less than 25 in 1996 and 1997; between 25 and 100 in 1998; 20 major groups, 100 if smaller groups are considered in 1999; 47 groups with 11 to 50 members in 2000<sup>93</sup>;
- x) the estimated number of members are stated to be between 500 and 2500 in 1996; between 2500 and 5000 in 1997 and 1998; 2500 in 1999 and 2000<sup>94</sup>.

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<sup>92</sup> Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1996*, p.9; Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1998*, p.11; Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1999*, p.19.

<sup>93</sup> Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1996*, p.10; Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1998*, p.13; Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1999*, p.19; Council of Europe, *Organized Crime Situation Report 2000*, p.26; Council of Europe, *Organized Crime Situation Report 2001*, p.95.

<sup>94</sup> Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1996*, p.11; Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1998*, p.14; Group of Specialists on Criminal Law and Criminological Aspects of Organized Crime, *Report on the Organized Crime Situation in Council of Europe Member States - 1999*, p.19; Council of Europe, *Organized Crime Situation Report 2000*, p.26; Council of Europe, *Organized Crime Situation Report 2001*, p.95.

## Criminal Justice Statistics

To cite once again, the Art. 4422 was approved in the heydays of corruption and mafia discussions as is narrated in the previous pages, but the law reads from a different perspective, based on different considerations, which is unlikely to correspond to the dimensions of the mafia metaphor. The surprising, or not so surprising point is that, despite the abundant mafia talk, the figures are surprisingly low. With this I want to underline once again that focusing only on the organizational-legalistic perspective is quite restrictive in the combat with the mafia and in terms of transformation, mafia metaphor should also be addressed.

The available criminal justice statistics are tabulated in Appendix G. One major difficulty is that, it is impossible to form a series from earlier than 1986<sup>95</sup>,

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<sup>95</sup> As exceptions, from justice statistics, it is known that in 1940, 1 man, in 1942, 2 women, in 1943, 5 men, in 1946, 1 man, in 1948 1 man were sentenced to imprisonment from Article 313 of the Turkish Criminal Code (T. C. Başvekalet İstatistik Umum Müdürlüğü, *Hükümlüler İstatistiği, 1938-1954* (Ankara: Ege Matbaası, 1956), p.43). Also, in 1964, 2, in 1965, 1 person, and in 1966, 3 people were serving prison sentences in Turkish prisons from article 313 of

even from 1979 onwards (as Article 313 reached its modern sense then), and analyze the impact of transformation on the legal definition of mafia. Also, it is impossible to know what other crimes are committed by the suspects or convicts, for criminal gain.

As it is shown in Table 1, between 1986 and 2003, 3882 lawsuits are filed from Art. 313 of the Turkish Criminal Law. It represents a 0.044 percent of the total criminal lawsuits filed. There are two breaking points, between 1996 to 1998, lawsuits filed from Art. 313 increased from a 0.017 percent to 0.046 percent; in 2002, it reaches 0.209 percent of the total criminal lawsuits. The first dates mark the Susurluk process, and the second is the immediate aftermath of Corruption Operations of 2000-2001. The average of lawsuits filed from Act No. 4422 is 0.024 percent of the total number of lawsuits filed from special acts.

Number of defendants (Table 2) shows a similar trend. The seventeen year total is 22438 people -which maybe the official figure of mafia. On the average, this constitutes a 0.155 percent of the total number of defendants. The number of defendants in criminal lawsuits amount to 8848 (since 2000), which is a 0.155 percent of the total number of defendants from criminal acts.

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the Turkish Criminal Code (*Adalet İstatistikleri, 1960-1967* (Ankara: Devlet İstatistik Enstitüsü, 1967)).

As it is shown in Table 3, between 1994 and 2001, 1681 court decisions were given at the courts, from Art. 313 -on the average, only 21.5 percent ended in convictions; 33.9 percent of the decisions are towards acquittals. There is 'other' decisions which constitute a 45 percent on the average -although it is not explained in the yearbooks, it must have covered joinder of offenses, lack of jurisdiction and rejection of venue. In terms of Act No. 4422 as well, only 16.5 percent of the total of 264 court decisions given in 2000-2001 are convictions. 26.5 percent are acquittals and 57 percent are 'other'. The highness of 'other' might be due to the procedural changes that have taken place throughout the period.

## CHAPTER VII

### CONCLUSION

The aim of the dissertation is to make sense of the mafia, and make sense of the mafia in Turkey. Mafia is understood as the racketeering activities aiming at illicit gain and a metaphor of informal modes of doing business based on reciprocity relations at the legal borders of the economy. In this latter sense, it is a metaphor, including corruption and white-collar criminality, in the periods of transformation. The argument is that, making sense of the mafia in periods of transformation, the metaphoric part of the mafia should not be ignored. The metaphor owes its existence to the process of economic transformation.

Making sense of the mafia, and trying to understand mafia in Turkey, excluding smuggling, the point of departure is the criminological definitions, and the political economy of neoliberal transformation. This is in itself was a difficult task, along with definitional

and data problems, because the main body of literature is about organized criminality in established market economies. What is tried to be underlined here is the criminogenesis of neoliberal transformation.

The first argument arising from a heterodox part of American literature on organized crime is that, mafia should not be understood strictly on "organizational" terms resulting in the formulation of 'fictitious' threats, mainly in terms of 'infiltration' of the legal economy and the state. As a response, the legislations include measures that restrict the basic rights and liberties. This also means restricting the criminality to street level and turning a blind eye to white-collar crime, which also belongs to mafia-type crime, in terms of accruing illicit gain. Regarding the American literature, corruption is a secondary crime.

The second argument is on the 'criminogenic' quality of the market economy: the emphasis on material gain, unless backed up by a public support mechanism, is criminogenic. It is criminogenic, both in terms of economic crimes, and crimes in general. Of course, with public support, the formal and general quality of it is assumed.

Transformation discussions regarding organized crime were followed in Italian and Russian definitions. The Italian case suggested that a part of the traditional



society, mafiosi, at the face of changing economic relations and centralization efforts of the Italian state, play, in accordance with the state, a protective role in the society, and accrue gains. This pattern is likely to adapt to changing market conditions. With the flow of funds to Sicily on the aftermath of World War II, they have established themselves as businessmen. Russian example suggest that at the face of transformation, the relations in the second economy go through a split: the organized criminals establish themselves as businessmen, the bureaucrats use public office to the aim of accruing illicit gain, and new criminal groups involved in racketeering appear.

To understand the logic of this dynamic, I returned to the Polanyian formulation of 'the place of economy in society' and 'market economy'. The market economy is a special construct put into life by a double movement: as the markets expanded, to counter the disrupting effects of solely gain oriented behavior, the state regulated the economy and guaranteed the livelihood of the individuals. In other words, in the Western European setting, it was the liberal democratic state with infrastructural power, the rule of law state and a formal and impartial redistributive state in the form of a welfare state.

Yet, countries like Turkey, to which the neoliberal transformation package -so-called Washington Consensus-

is assigned, is characterized with the dominance of reciprocity relations. This means, both the regulatory and the redistributive role of the state is particularistic, and often despotic. Yet, contrary to the logic of constituting the market economy, the package required that the state pulls off from the economy, without any motion towards formalization and legalization of the regulatory and redistributive schemes. Endowing the state with more decisions to make and more resources to distribute, with particularism, shifted it to the point of corruption -read, plundering its own resources. Without an urge for formalization, reciprocity relations manifested in the informal economy, shifted to the point of taking without giving. And shaped within the place of the economy in society, so is the behavior of the businessman. Not to forget that the macroeconomic crises widened the domain of informal modes of sustaining a living.

Looking at Turkey, the administration of transformation is characterized with a low degree of respect, or conscious negligence of the rule of law, and increasing particularism. This tendency is reproduced until today. Not to mention that the place state occupied in the economy did not diminish, and based mainly on the debt burden, the country is stuck in a crisis cycle. Without an urge for formal and general regulation and

redistribution, 'the place of economy in society' is criminalized. It has manifested itself mainly in the rise in the public debt.

Since 1980:

- i) the "kabadayı"s of the pre-transformation world, legitimizing their roles on the provision of redistributive and criminal justice, and in the meantime, keeping the gates of an urban 'underworld', established themselves as an interface in the formal economy, as the avenues of illicit gain began to materialize in the formal. This is the path that follows from 'debt-collection' on the aftermath of 1982 Banker's Crisis, to mediation in Bank privatizations. The turn from Dündar Kılıç to Alaattin Çakıcı signifies this. On their conflicting perspectives on 'Civangate', I tried to underline this.
- ii) Stemming from particularism and lack of a sense of rule of law, corruption evolved from favouritism to giving license-to-plunder. The persistence of the bureaucrats or the governments in allowing for accruing illegal gains is surprising. The typical example was the government's insistence in blocking the measures against 'fictitious exports'. The same line is followed in the plundering of state and

private banks -both in 'Civangate' and in Turkbank affair.

iii) The modes of doing business were shaped within this process, and turned to illicit gains: there developed a line of favoured businessmen of each government (Selim Edes is the example I gave, Cavit Çağlar, Kamuran Çörtük, Erol Aksoy etc. can be read along the same lines), giving way to criminal businessmen -Erol Evcil, in my example- positioning themselves both to the governments, and the mafiosi. Also, there are in-betweens, like Korkmaz Yiğit.

Along these lines, I tried to assert that, if mafia is a symbol of accruing illicit gains, the bureaucrats and the governments, the emerging business-world is not external to it. To repeat once again, the triggering effect in terms of transformation, is the state inclination towards particularism and disregard for the rule of law, at a period when it is supposed to regulate the economy and provide redistributive schemes in a generalized and formalized way.

It is interesting to notice that, with a victimization-legitimation discourse, a part of this argument is adopted in the 'underworld' per se. The recent examples from the "kabadayı" tradition express a hatred towards those that 'syphoned' the banks and take

them to be the real 'mafia bosses'.<sup>1</sup> In Çakıcı's right-arm man's words: "Between 1984 and 2004, 75 billion dollars is stolen from the state. Including this government, only five hundred thousand dollars were taken back. Where to look for mafia is hidden in the 75,5 billion dollars. Mafia is where that money is."<sup>2</sup> And, within the shortcomings of the socioeconomic system, as he sees it, the uneducated youngsters after earning a living, become gunmen.<sup>3</sup> Yet, in this line of thinking, the position of Alaattin Çakıcı is victimized, with the assertion that it is the state that has created Çakıcı, and that putting the blame on Çakıcı, the real criminals should not be lost from sight.<sup>4</sup>

In reflection to the society, although not explicitly discussed in this dissertation, is the erosion of a public trust (which characterizes the rule of law state), and retreat in the private trust, the avenues of private trust being more open to power relations and predation -what I may call the "mafia-ization of daily

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<sup>1</sup> Can Dünder, 'İskender Çolak: Devrimci Kabadayı', in: Can Dünder, *Yıldızlar* (Ankara: İmge, 2004), pp. 252-269.

<sup>2</sup> Mehmet Duru, "Ünlü Kabadayı Alaattin Çakıcı'nın Sağ Kolu Mücahit Gözen Hayvan'a Konuştu: Öldürdüğüm Hiç Kimse Öteki Dünyada Benden Hesap Soramaz", *Hayvan*, Vol. 7, No. 26, July (2004), p.11.

<sup>3</sup> Ibid., pp. 9-11.

<sup>4</sup> Serkan Seymen, "68 Hareketinin Ünlü Devrimci Önderlerinden Bozkurt Nuhoğlu: "Çakıcı'nın Avukatı Olmak Beni Onurlandırır", *Haftalık*, No. 86, 1-7 December (2004), pp. 30-33.

life". Furthermore, with the crisis, the disruption of the lives of larger segments of the society, create a basis, especially under this legitimization discourse, for a pool of criminal manpower. It is likely that these dynamics would constitute, or already started to constitute a challenge. Maybe, 'double morality' discussed for the Sicilian case would be more relevant to understanding these dynamics, than a Dündar Kılıç comparison.

My examples were chosen from the 1990s, the dark decade of Turkish transformation. Turkey is going through partial, political and inflammatory cleansing since then. Although it is unlikely to find another massive corruption-white-collar crime scandal, due to the drain of the public finances, the motion towards a rule of law state and a formal redistributive state is questionable. As I have touched upon in chapter three, the rule of law has an economistic emphasis, which might, given the fiscal conservatism of the Post-Washington Consensus, at most serve not to the end of establishing a democratic control of the administration of the economy, but to render the legal system intelligible, for the forthcoming transnational capital<sup>5</sup> and less problematic for their

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<sup>5</sup> Huricihan İslamoğlu, "Yeni Düzenlemeler ve Ekonomi Politik: IMF Kaynaklı Kurumsal Reformlar ve Tütün Yasası", *Birikim*, No. 158, June (2002), pp. 20-27.

national allies<sup>6</sup>. It does not mention equality and justice. Democratization is not a must. Hence, whether the deficiencies inherent to the 'criminalized place of economy in society' would be transformed, or just the leakages, or potential sites of leakages would be authoritatively plugged is an open question. I guess the latter is the likely outcome.

At this point surfaces the paradox and the dangers of the legal definition. In the heydays of scandals, the Act No. 4422 was introduced to empower the state with an up to date weapon of combat with the mafia. The essence of the law is to criminalize illicit gain, no matter how ambiguously it is written; and the Supreme Court decisions tend to recreate the Act, to include white-collar criminality and maybe corruption. Yet, two points are of critical importance. The first is that it exhibits the "organizational", and threat based obsession of the American definitions. Hence, the logic of criminalizing illicit gain is lost in between defining the organization and proving the existence of threat or violence. It creates an illusion of a mafia threat, where the

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<sup>6</sup> In the same line, in the Turkish setting, the major advocates of this agenda, and actors of anti-corruption and anti-mafia are Turkish Association of Industrialists and Businessmen (TUSIAD) and Turkish Economic and Social Studies Foundation (TESEV), the TUSIAD think-tank.

metaphoric components are lost from sight. It is hardly the case that the mafia takes over the licit economy and politics. Quite the contrary, these components behave mafia-like.

I would have wished to say the threat-organization obsession be removed from the Act, but there is one other point of critical importance. As with the RICO discussions, the chief novelty of the Act was empowering legislation with a series of extraordinary measures, from wire-tapping to secret agent use. The question is, 'to which state do we delegate that much power?' One that is known to be weak in terms of infrastructural, but strong in terms of despotic power.<sup>7</sup> It might constitute, then a good pretext of 'plugging the leakages' with force.

Although it might be smaller in scope, I guess the above-mentioned lines of criminalization might endure. With respect to the authoritarian use of Act No. 4422, I think the mafia-type activity per se would be smaller in scope, more restricted to the street level, and lost from the sight of the public at large. This does not mean that the logic of "criminalized place of economy in society" is challenged, but only painted white. Despite the latest operation, I still ask whether Sedat Peker, as a new

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<sup>7</sup> Çağlar Keyder, 'Cumhuriyet Devleti Ne Kadar Güçlüydü?', in: Çağlar Keyder, *Memalik-i Osmaniye'den Avrupa Birliği'ne* (Istanbul: İletişim, 2003), pp. 181-203.



mafioso model can meet the challenge of the state's authoritarian move. His novelty, I think, is in how he consciously embodies the traditional justice conception of "kabadayı" but unlike the previous figures, establishes himself as a 'businessman' -more precisely, he claims, he is 'doing business', the way it is done in the businessworld.<sup>8</sup>

I would insist that unless the formal, general, equitable rule of law state and formal redistributive state is established, I do not think the mafia metaphor and mafia per se would come to an end.

This dissertation, fortunately or unfortunately a first attempt to make sense of the mafia, as a criminological concept, in a political economic framework of transformation, on a practically unwritten country has too many 'to be seen's and 'to be studied's. It only attempts to provide a macro framework, the details of which are to be written at length.

For example, I referred to the Western examples as a point of reference. A comparison with the East Asian cases can be illuminating. Also, both mapping one instant of economic crime and trace its background would be refreshing. Case by case comparisons, might be

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enlightening. The media reproduction of mafia imagery is another promising field of study, especially in its contribution to the mafia-ization of daily life and romanticization of criminality. It is also crucial to undertake fieldwork, or interviews, to see how things really are on the street.

Three main issues are left untouched within this dissertation: smuggling, state-crime (as in the Susurluk Process), the concept 'working for the National Intelligence Agency', and money-laundering. These, among almost everything else on the subject, would be the subjects of future research.

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<sup>8</sup> See his interview in: Birol Aydın, *Kravatlı Mafya*, pp. 106-137.

## APPENDIX A

### THE CONCEPT OF CORRUPTION

The "first wave of corruption studies", following the classical book Heidenheimer had edited in 1970<sup>1</sup> (and in its sequel<sup>2</sup>), evolved around three kinds of conceptualization about political corruption<sup>3</sup>:

1. Public-office-centered definitions, which focus on the concept of public-office and deviations from the norms guiding it -corruption, as the misuse of public office for private gain, in this sense, covers practices like bribery, nepotism and misappropriation.<sup>4</sup>
2. Market-centered definitions, in which corruption is defined with reference to the theory of the market,

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<sup>1</sup> Arnold J. Heidenheimer (ed.), *Political Corruption: Readings in Comparative Analysis*, (New York: Holt, Rinehart and Winston Inc., 1970).

<sup>2</sup> Arnold J. Heidenheimer, Michael Johnston and Victor T. Le Vine (ed.s), *Political Corruption: A Handbook*, (New Brunswick and Oxford: Transaction Publishers, 1989).

<sup>3</sup> 'Terms, Concepts and Definitions: An Introduction', in: Heidenheimer et al.: pp.8-11.

<sup>4</sup> J. S. Nye, 'Corruption and Political Development: A Cost-Benefit Analysis', in: Heidenheimer, p. 564.

with little or no emphasis on the norms governing the holders of the public-offices.<sup>5</sup> For Tilman, corruption occurs as the centralized allocative mechanism takes on the characteristics of a free-market, leaving its mandatory pricing, in the face of a serious disequilibrium between supply and demand.<sup>6</sup> Or, for Leff, corruption is: "... an extra-legal institution used by individuals or groups to gain influence over the actions of the bureaucracy. As such, the existence of corruption per se indicates only that these groups participate in the decision-making process to a greater extent than would otherwise be the case."<sup>7</sup>

3. Public-interest-centered definitions, which claim to make up for the broadness of the first group, the narrowness of the second group of definitions, and underline the concept of 'public interest' which is said to be seen as a necessary component to understand the essence of corruption. For example, Rogow and Lasswell state that "a corrupt act violates

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<sup>5</sup> Yet, Williams would argue that "Leff' s suggestion that corruption is an 'extra-legal institution' actually depends on a prior notion of public office and of principles of official conduct." (Robert Williams, "New Concepts for Old?", *Third World Quarterly*, vol.20, no.3 (1999): p.506.)

<sup>6</sup> Robert O. Tilman, "Black-Market Bureaucracy", in: Heidenheimer, p.62.

<sup>7</sup> Nathaniel Leff, 'Economic Development through Bureaucratic Corruption', in: Heidenheimer, p. 510.

responsibility toward at least one system of public or civic order and is in fact incompatible with (destructive of) any such system. A system of public or civic order exalts the common interests over special interests; violations of the common interest for special advantage are corrupt.”<sup>8</sup>

The norms to define non-corrupt actions in public-office, or the point of reference with respect to public-interest were seen as problematic, in terms of comparative analysis (especially when the legal framework is used) and with regard to the ‘developing non-Western societies’.<sup>9</sup> Nonetheless, depending on the arguments developed by the authors, in the discussions, corrupt actions covered a vast array of practices ranking from public officials accepting gifts, graft, sale of office, misappropriation of funds, bribery (either for extending due processes or for tolerating criminal actions), to favouritism, nepotism, patronage and the like. It was seen, basically, as a form of illegal/immoral/illicit transaction between the public and private sectors, mostly at the high level, where collective goods were

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<sup>8</sup> Arnold A. Rogow and H. D. Lasswell, ‘The Definition of Corruption’, in: Heidenheimer, p.54.

<sup>9</sup> Heidenheimer et al., pp.11-13.

exchanged for 'private-regarding payoffs'<sup>10</sup> whether be it administrative or electoral.

Indeed, any definition of corruption<sup>11</sup> was and is actually made with reference to an ideal situation, and for the Western democracies, the ideal was set basically in reference to a 'social contract', a well functioning market economy, and splitting the public and 'market' spheres. In the same line of argument, it was stated that the value of public services and officials incomes can not be determined via the market mechanism, and that "the establishment of government is an act of the whole society to further the common good; thus, government is not an end in itself but only a means, and officials are only the servants of the community, trustees of the common good."<sup>12</sup>

Predominantly, until the 1990s, 'corruption' was seen as 'the problem' of the developing societies, whereas in the West, it was an 'aberrant deviation from the norm'<sup>13</sup> (but a challenge to the legitimacy and

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<sup>10</sup> Heidenheimer et al., p.6.

<sup>11</sup> "It is rooted in the sense of a thing being changed from its naturally sound condition, into something unsolved, impure, debased, infected, tainted, adulterated, depraved, perverted, etcetera." (Mark Philp, 'Defining Political Corruption', in: Paul Heywood (ed.), *Political Corruption*, (Oxford and Malden MA: Blackwell, 1997), p. 29).

<sup>12</sup> Jacob van Klaveren, 'The Concept of Corruption' in Heidenheimer et al., p.26.

stability of the system). In the developing countries, corruption was often seen as a variant of 'patronage', especially in the 1970s.

Following Gellner, patronage is an unsymmetrical power relation, which tends "... to form an extended system; to be long term, or at least not restricted to a single isolated transaction; to possess a distinctive ethos; and whilst not always illegal or immoral, to stand outside the officially proclaimed formal morality of the society in question."<sup>14</sup> It is founded between "a powerful person or group of persons and their clients, who seek protection, favours, and rewards from the patrons."<sup>15</sup> Patron's power in bargaining for the scarce resources is dependent upon the size and nature of his clientele; and this process overlaps with corruption if the patron occupies a public position or extracts favours from the public officials.<sup>16</sup> As Gellner put it, "segmentary societies with their wide dispersal of power, or

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<sup>13</sup> Paul Heywood, 'Political Corruption: Problems and Perspectives', in: Heywood, p.1.

<sup>14</sup> Ernest Gellner, 'Patrons and Clients', in: Ernest Gellner and John Waterbury (ed.s), *Patrons and Clients in Mediterranean Societies*, (Liverpool: Duckworth, 1977), p.4.

<sup>15</sup> John Waterbury, 'Endemic and Planned Corruption in a Monarchical Regime', in: Heidenheimer et al., p.432.

<sup>16</sup> John Waterbury, 'Endemic and Planned Corruption in a Monarchical Regime', in: Heidenheimer et al., p.432.

effective centralized bureaucracies, or market economies with a restrained liberal state are unpromised seedbeds of patronage."<sup>17</sup>

As patronage is discriminatory in terms of access to desired goods<sup>18</sup> and resources, it was discussed whether this, as a variant of corruption, is harmful or 'functional' in the context of developing countries, which are characterized by a more pronounced scarcity, a defective market and bureaucracy and an incompletely centralized state. With a few exceptions<sup>19</sup>, although it was a matter of costs and benefits,<sup>20</sup> it was mostly accepted that political corruption has negative consequences on economic development, creates inefficiency and the misallocation of resources. Yet, it was also underlined that the modernizing élite in the

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<sup>17</sup> Gellner, 'Patrons and Clients', in: Gellner, p.4.

<sup>18</sup> John Waterbury, 'An Attempt to Put Patrons and Clients in Their Place', in: Gellner, p.332.

<sup>19</sup> For example, Huntington argues that corruption (which is encouraged by modernization) might be functional in modernizing societies to the maintenance of a political system, by giving "immediate, specific and concrete benefits to the groups, which might otherwise be thoroughly alienated from the society." (Samuel Huntington, 'Modernization and Corruption', in: Heidenheimer et al., pp.377-388.) Also, Leff states that corruption may increase investment by reducing uncertainty, it may contribute to capital formation, and may promote economic growth, as it may give a way for the business groups in articulating their interests to the government. (Leff, in: Heidenheimer, pp. 510-520.)

<sup>20</sup> See, for example: Nye ('Corruption and Political Development: A Cost-Benefit Analysis') and Bayley (David H. Bayley,



non-Western countries are fully aware of a Western definition of corruption,<sup>21</sup> and patronage, and hence corruption, would be marginalized by establishing democracies with well-functioning political and economic systems, through economic development and modernization - the non-Western countries could always, and would better profit from the experiences of the West.<sup>22</sup>

From the late 1970s, especially from the 1980s on, market-centered definitions of corruption re-entered the scene, mostly in the form of principal-agent models, and became increasingly dominant in the 1990s shaping the policy responses of international development organizations and the 'second wave of corruption studies'. Accepting the liberal democratic notions of public office and the constraints on official conduct, the focus was shifted to joining neo-classical theory and political science<sup>23</sup>, and modeling<sup>24</sup> which economic

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'The Effects of Corruption in a Developing Nation', in: Heidenheimer et al., pp.938-939.)

<sup>21</sup> David H. Bayley, 'The Effects of Corruption in a Developing Nation', in: Heidenheimer et al., pp.938-939.

<sup>22</sup> For an early discussion of this view, see: Colin Leys, 'What is the Problem about Corruption', in: Heidenheimer et al., pp.51-66. For a more recent discussion in the same vein, see: Robin Theobald, 'So What Really is the Problem about Corruption', *Third World Quarterly*, vol. 20, no.3 (1999), pp.491-502.

<sup>23</sup> Referring to one of the earliest examples -the frequently quoted reference is Banfield, whose statement about corruption inspired its formulation as a cost/benefit analysis based on an agency model- "corruption becomes possible when there exists three types of economic actor: an agent, a principal, and a third party

imperatives and political circumstances encourage violations of the rules and norms of public office in a representative democracy.

The existence of corruption is to blame on the monopoly power of the officials, the high degree of discretion they are permitted to exercise, and the low level of monitoring and accountability in an institution.<sup>25</sup> In other words, it is dependent upon three

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who stands to gain or lose by the action of the agent. An agent is corruptible insofar as he can *a priori* conceal his corruption from his principal. An agent becomes corrupt if he sacrifices his principal's to his own interest and thereby violates law." (E. C. Banfield, "Corruption as a Feature of Governmental Organization", *Journal of Law and Economics*, 18 (3), (1975), pp.587-606; quoted in: Jean Cartier-Bresson, 'The Economics of Corruption', in: Donatella della Porta and Yves Mény (ed.s), *Democracy and Corruption in Europe*, (London and Washington: Pinter, 1997), p.150). Rose-Ackermann would extend 'being corrupt' to any payments to the agents that are not passed on to the superiors, which are not necessarily illegal. (Susan Rose-Ackermann, *Corruption: A Study in Political Economy*, (New York: Academic Press, 1978)).

<sup>24</sup> Bureaucrats, implementing these policies, try to maximize their own wealth and the budgets of their agency (which is determined by the legislators). In the case of high level corruption in the political process -political corruption- the agents are legislature and the principals are the voters, whereas in the case of low level bureaucratic corruption in the administration of laws, the agents are the bureaucrats and the principals are the legislature ('the clients' are the voters themselves). Assuming that the principals and agents have diverging interests, that there is an informational asymmetry to the advantage of the agent, but that the principal can set the penalties. The decision of 'being corrupt' is seen as a trade-off between the gains, and the inspection costs, prevention costs and failure costs on the part of the principal, and moral costs, concealment costs and diversion costs on the part of the agent (Rose-Ackermann, *Corruption*; Robert Klitgaard, *Controlling Corruption*, (Berkeley and Los Angeles: University of California Press, 1988); Nico Groenendijk, "A Principal-Agent Model of Corruption", *Crime, Law & Social Change*, 27 (1997), pp. 207-229). For reviews of the literature, see: Arvind K. Jain, "Corruption: A Review", *Journal of Economic Surveys*, vol.13, no.1 (2001), pp.71-120; A. W. Goudie and David Stasavage, "A Framework for the Analysis of Corruption", *Crime, Law and Social Change*, 29 (1998), pp. 113-159.

factors: "First, someone has a monopolistic power over a process -the process being design of some regulation or delivery of some government services. Second, this individual is willing and able to misuse that power. Third, there is economic incentive for the misuse of power."<sup>26</sup>

It is no longer argued that corruption may be tolerable to a certain extent, but its negative effects on the efficiency, incentive structure, resource allocation and political climate are underlined: corruption is said to waste resources, distorts the implementation of development policies; distorts energies of the officials and citizens toward socially unproductive activities of rent-seeking, and distorts investments from areas of high-corruption, reallocates resources to the economically or politically powerful; gives way to regime instability, and popular alienation which would end up with higher levels of corruption.<sup>27</sup>

As for measures to control corruption, the focus was mostly on the agents: it was advised to select agents for

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<sup>25</sup> Klitgaard, *Controlling Corruption*; Rose-Ackermann, *Corruption*.

<sup>26</sup> Arvind K. Jain, 'Models of Corruption', in: Arvind K. Jain (ed.), *Economics of Corruption*, (Boston, Dordrecht, London: Kluwer Academic Publishers, 1998), p.18.

<sup>27</sup> Klitgaard, *Controlling Corruption*; Rose-Ackermann, *Corruption*; Goudie and Stasavage, "A Framework for the Analysis of Corruption".

'honesty' and 'capability', to raise the salaries, or introduce non-monetary rewards, as well as to raise the penalties for corrupt behavior, and the principal's authority to punish; to improve control systems and the flow of information; to decrease the monopoly power and the discretionary powers.<sup>28</sup> Although measures such like inducing competition in the provision of services; introducing 'code of ethics' for government organizations; and re-shaping the organizational culture; establishing and sustaining 'the rule of law' through improving the effectiveness and the predictability of the judiciary and enforceability of contracts; removing regulatory burden, through removing excessive regulation in foreign trade and business development was mentioned, they came to play a more important role in the policy recommendations in the recent years, as organizations such like the World Bank turned their foci to the problem of corruption. The World Bank addressed the issue in its 'Governance'<sup>29</sup> Agenda', with its attention turning to the

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<sup>28</sup> Klitgaard, *Controlling Corruption*; Rose-Ackermann, *Corruption*.

<sup>29</sup> Governance is defined as: "the traditions and institutions by which authority in a country is exercised. This includes: (1) the process by which governments are selected, monitored and replaced, (2) the capacity of the government to effectively formulate and implement sound policies, and (3) the respect of citizens and the state for the institutions that govern economic and social interactions among them." (Daniel Kaufmann, Aart Kraay, Pablo Zoido-Lobaton, "Governance Matters", *World Bank Policy Research Working Paper*, no. 2196 (1999), p.1.

'firm' side of (bureaucratic) corruption recently. Based on the Business Environment and Enterprise Performance Survey carried out for the transition economies, it was put forward, under the term 'state capture', that firms engage in high level corruption as a choice strategy and collude with state officials and politicians for their mutual benefit.<sup>30</sup>

The reasons for the revitalized interest in corruption were the 'eruption' of corruption, whether be it perceived or real, and the globalization of it. The 'eruption' was marked by the end of the Cold War, which gave a way to bring down 'political untouchables' as it did in Italy.<sup>31</sup> Indeed, since the 1980s, with the 'crisis of the welfare state' and ascendancy of the neo-liberal regimes, state was already taken as the problem (especially regarding poor economic performance) rather than the solution. The solution was shown in monetaristic policies with deregulation, privatization, reductions in the civil service, introduction of 'managerialism' in the

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<sup>30</sup> Joel S. Hellman, Geraint Jones, and Daniel Kaufmann, "Seize the State, Seize the Day: State Capture, Corruption and Influence in Transition", *World Bank Policy Research Working Paper*, no. 2444, (September 2000).

<sup>31</sup> Patrick Glynn, Stephen J. Kobrin and Moises Naim, 'The Globalization of Corruption', in: Kimberly Ann Elliott (ed.), *Corruption and the Global Economy*, (Washington, DC: Institute for International Economics, 1997), p.9.

public sector, 'minimizing' the state.<sup>32</sup> In the post-communist world, the process of economic transition not only unmasked the corruption, but created a fertile ground for its being more systemic. So were the results in the developing world, 'despite' the structural adjustment efforts in the 1980s. Also, deepening and broadening of global economic interdependence, emergence of an electronically networked financial markets, and the increase in the number of cooperative strategic alliances within and across countries was likely to increase the probability that the effects of corruption in one country would have a spill-over effect in the world economy.<sup>33</sup>

Along with the theoretical framework outlined above, and the consequent empirical literature, agencies such like Organization for Economic Co-operation and Development<sup>34</sup>, World Trade Organization, International Chamber of Commerce, Organization for American States have approved anti-corruption conventions to prohibit the practice of bribery by member nations; non-governmental

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<sup>32</sup> Jon Pierre, 'Introduction: Understanding Governance', in: Jon Pierre (ed.), *Debating Governance*, (Oxford: Oxford University Press, 2000), p.1.

<sup>33</sup> Glynn, Kobrin and Naim, 'The Globalization of Corruption', in: Elliott, pp.12-13.

<sup>34</sup> For the effect of US Government on OECD's enforcing an Anti-Bribery Convention (1999), similar to the Foreign Corrupt Practices Act (1977), see: Glynn, Kobrin and Naim, 'The Globalization of Corruption', in: Elliott, pp. 17-24.

organizations such like the Transparency International was formed for the monitoring of corruption and the transparency in business and financial transactions; implementation of macroeconomic and anti-corruption reforms have been included into the conditionalities of the World Bank and the IMF in their lendings.<sup>35</sup>

Although nobody claims that corruption is not harmful, or the measures are totally irrelevant, or argues that theory is inconsistent, the criticisms underline three issues, mainly concerning the universalism of the liberal model and the methodological choice<sup>36</sup>:

1. what can be seen as corruption with reference to the Western standards may have a 'moral economic' meaning<sup>37</sup>;
2. that, even for the Western democracies, corruption is a network embedded in social structures, rather than a hierarchical relationship between several actors<sup>38</sup>;

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<sup>35</sup> Glynn, Kobrin and Naim, 'The Globalization of Corruption', in: Elliott, pp.15-17; James W. Williamson and Margaret E. Beare, "The Business of Bribery: Globalization, Economic Liberalization, and the "Problem" of Corruption", *Crime, Law and Social Change*, vol. 32 (1999), p.116.

<sup>36</sup> Cartier-Bresson, 'Economics of Corruption', in: Della Porta and Mény, p.154.

<sup>37</sup> J. P. Olivier de Sardan, "A Moral Economy of Corruption in Africa?", *The Journal of Modern African Studies*, vol. 37, no. 1 (1999), pp. 25-52.

3. the norms guiding ideal office is not very clear cut,  
and is not a once-and-for-all achievement<sup>39</sup>.

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<sup>38</sup> As Cartier-Bresson puts it, "a corruption network is structured in a clandestine manner by mobilizing multiple 'resources' such as financial interests, obedience to hierarchy, solidarity, family, friends (ethnic, or tribal, religious, political, regional, sectorial, corporative ...), violence. Its objectives, which are no less multiple, range from covering up illegal activities -small or large- to the re-routing of competition practiced in a legal market." ( Jean Cartier-Bresson, 'Corruption Networks, Transaction Security and Illegal Social Exchange', in: Heywood, p.53).

<sup>39</sup> As Philp puts it: "the kind of benefits generated by a political system -security, the rule of law, citizenship and so on- are not easily quantified or weighed against other types of good, and they are invariably long-term in character. When these benefits are threatened by political chaos or social or economic disruption, there comes a point at which it is irrational not to seek other gains or more partial, less general forms of political goods -for example, by seeking profit that can be turned into hard currency, by building a following (or seeking a patron) so as to provide some of the benefits of a stable political system, albeit in a less general form, or falling back on kinship or other types of communal relations for the delivery of goods and services." (Philp, 'Defining Political Corruption', in: Heywood: p.35).



## APPENDIX B

### BASIC MACROECONOMIC INDICATORS

Table 1: Basic Macroeconomic Indicators

	1977-80	1981-82	1983-87	1988
(Real Rate of Growth. %)				
GNP	0.2	4.0	6.4	1.5
Fixed Investments				
Private Sector	-7.3	-1	14.1	29.2
Public Sector	-1.7	4.8	12	-2.3
Private Consumption		-2.6	4.4	1.2
As % Share of GNP:				
Current Account Balance	-3.4	-2.1	-2.0	1.8
PSBR	6.9	3.7	4.7	4.8
Budget Balance		-1.50	-3.02	-3.00
Outstanding Domestic Debt		12.5	21.4	22.0
Exports	3.4	7.8	11.0	12.9
Imports	8.6	13.2	16.3	15.8
Stock of Foreign Debt	14.5	27.2	37.8	44.8
Import Coverage of Exports (%)			67.5	81.4
Inflation Rate (CPI)	59.8	31.2	39.6	73.7
Annual Rate of Change in				
Exchange Rate (TL/\$)	48	45	39.7	66
Unemployment (%)				8.4
Underemployment (%)				6.6

Table 1 (cont.)

1989-93	1994	1995-97	1998	1999	2000	2001	2002
5.16	-6.1	7.8	3.9	6.1	6.3	-9.4	7.8
11.9	-9.6	9.5	-4.2	-17.8	15.9	-34.8	-4.9
5.2	-39.5	15.8	4.6	-8.7	19.6	-22	11.5
5.3	-5.4	7.2	0.6	-2.6	6.2	-9	1.8
-1.0	2.0	-1.4	1.3	-0.7	-4.8	2.4	-1.0
9.1	7.9	7.2	9.2	15.3	12.5	16.4	12.6
-4.58	-3.90	-6.64	-6.90	-11.9	-10.6	-16.2	-14.3
16.7	20.6	19.9	21.7	29.3	29.0	69.2	54.8
9.3	13.7	13.0	13.1	14.2	13.8	21.7	19.8
14.9	17.6	23.3	22.2	27.1	27.1	27.9	27.6
35.1	49.6	45.6	50.9	55.3	58.9	79.03	71.68
62.6	77.8	56	58.7	65.4	51	75.7	69.9
65.1	106.3	86.0	84.6	64.9	54.9	54.4	45
50.4	170	72	71.7	58.2	49.4	96.1	-0.6
9	8	8	7	7	8	6.5	8.4
7.20	8.0	6.67	8.7	9.0	6.9	6.0	5.4

Sources: SPO Main Economic Indicators; State Institute of  
Statistics Economic Indicators; Undersecretariat of  
Treasury Economic Indicators

## APPENDIX C

### THE LEGAL GROUND

In the legal definition, crime refers to the acts prohibited, prosecuted and punished by the criminal law.<sup>1</sup> Punishment is the state's response to the violation of the legal value which is sought to be protected.<sup>2</sup> Punishments are said to aim both at correcting and resocializing the offender and protecting the society from crime and deter potential offenders.<sup>3</sup>

Criminal law rests on the principle of legality, the principle that an act is not criminal unless openly defined as such by law (*nullum crimen sine lege*), and a crime can not be punished unless the punishment is openly defined by law, nor a penalty could be decided upon other

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<sup>1</sup> Stuart Henry and Mark Lanier, "The Prism of Crime: Arguments for an Integrated Definition of Crime", *Justice Quarterly*, Vol.15, No.4 (December 1998), p. 661.

<sup>2</sup> Sulhi Dönmezer and Sahir Erman, *Nazari ve Tatbiki Ceza Hukuku, Genel Kısım, Cilt II: Hukuka Aykırılık Unsuru, Manevi Unsur, Suçu Etkileyen Haller, Suçluların Çokluğu, Müeyyide, Cezaların İnfazı Hakkında Kanun* (Istanbul: Beta, revised 12<sup>th</sup> ed., 1999), p. 518.

<sup>3</sup> Ibid., p.522.

than those written in the law (*nulla poena sine lege*). The crimes and the punishments should be firmly, openly and specifically defined and also be objective, general and anonymous.<sup>4</sup> Also, the principle of humanism -that punishments should aim at correction of the criminals and gaining them as a society, the conditions of the prisons should not harm human dignity, that physical punishments can be given<sup>5</sup>- and the principle of culpability -that a person can be punished for the acts for which he/she is not culpable, that the punishment should be proportional to the culpability of the person, and that the punishment can not be lower or higher than the culpability of the person<sup>6</sup>- are also cited as the main principles of criminal law.<sup>7</sup>

The basic sources of the criminal law are the Constitution, laws and agreements.<sup>8</sup> The Constitution defines the basic rights and liberties and that the basic rights and liberties can only be limited with laws. Laws

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<sup>4</sup> Sulhi Dönmezer and Sahir Erman, *Nazari ve Tatbiki Ceza Hukuku, Genel Kısım, Cilt I: Giriş, Suç Genel Teorisi, Kanuni Unsur, Maddi Unsur* (Istanbul: Beta, 13<sup>th</sup> ed., 1997), pp. 17-18, 132; Nur Centel, *Türk Ceza Hukukuna Giriş* (Istanbul: Beta, revised 2<sup>nd</sup> ed., 2002), pp. 14-15.

<sup>5</sup> Centel, p. 13.

<sup>6</sup> Ibid., pp. 13-14.

<sup>7</sup> Ibid., p. 12.

<sup>8</sup> Dönmezer and Erman, *I*, p. 132; Centel, p. 41.

can not contradict the principles cited in the Constitution.<sup>9</sup> Turkish Criminal Code is the main source of criminal law, yet special criminal laws also define and criminalize certain acts. If and when these special laws do not bring special requirements, the general requirements of the Turkish Criminal Code hold.<sup>10</sup> Also, the international agreements have a constraining power on the criminal laws.<sup>11</sup>

The complementary sources of criminal law are traditions, moral codes, opinions of the courts as expressed in judicial decisions (*içtihat*) and the doctrine as expressed in the works of the legal scholars.<sup>12</sup> In the Turkish Law, the court of appeal is the Supreme Court of Appeals (*Yargıtay*)<sup>13</sup>. The decisions of the Supreme Court is binding when the decision of the trial court is reversed by the Supreme Court of Appeals for the second time: when the decision of the trial court is reversed by the concerning panel of the Supreme Court of Appeals, the trial court can give a 'decision of

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<sup>9</sup> Dönmezer and Erman, *I*, p. 132; Centel, pp. 41-42.

<sup>10</sup> Dönmezer and Erman, *I*, p. 137; Centel, pp.46-47; 48-49.

<sup>11</sup> Dönmezer and Erman, *I*, p. 138; Centel, pp. 47-48.

<sup>12</sup> Dönmezer and Erman, *I*, pp. 152-159; Centel, p.49.

persistences'; yet, if appealed again, the court has to accept the decision given by the General Criminal Board of the Supreme Court of Appeals.<sup>14</sup> The Supreme Court of Appeals can issue decisions for reconciliation of the contradicting opinions expressed in the decisions of the various panels, or different decisions of the same panel on the same question (*içtihadı birleştirme kararı*). These decisions have a binding power on the panels and general boards of the Supreme Court of Appeals and on the court decisions.<sup>15</sup> In practice, the decisions (not necessarily those for the reconciliation of contradicting decisions) of the Supreme Court play a binding role on the decisions of the judges.<sup>16</sup>

It is also underlined that the abstract judgments expressed in the criminal law may be needed to be interpreted by the judges when applied to concrete events. Interpretation is "the act of revealing the meaning and content of the legal rule."<sup>17</sup> The interpretation rests on logic (especially the rules of

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<sup>13</sup> The appeals from Articles 313 and 314 and Act No.4422 are held in the 8<sup>th</sup> Criminal Panel of the Supreme Court of Appeals.

<sup>14</sup> Centel, p.51.

<sup>15</sup> Dönmezer and Erman, *I*, pp.156-157; Centel, pp. 51-52.

<sup>16</sup> This is due to the fact that the Supreme Court's acceptance and reversal of the decisions is practically a promotional criterion for the judges. Dönmezer and Erman, *I*, p. 156; Centel, pp. 52-53.

priority (*a fortiori*) and inferring meaning from the antonym (*a contrario*))<sup>18</sup>, the reason for issuing the law (*occasio legis*)<sup>19</sup>, the aim of the law -that is, the legal value the law seeks to protect- (*ratio legis*)<sup>20</sup>, the history of the previous institutions of the criminal law<sup>21</sup>, general principles of law (including the presumption of innocence, the individuality of punishments, and that a person can be punished only once for a crime)<sup>22</sup>, and comparative law -for most of the articles are translations from foreign criminal codes.<sup>23</sup>

In the doctrine, analysing crime and the articles of the criminal code, legal scholars, focus on the general theory of offenses: the elements of crime and the special forms of crime. The elements of offense stand for, by and large, the legal element, the material elements and the

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<sup>17</sup> Dönmezer and Erman, *I*, p. 171; Centel, p. 53.

<sup>18</sup> Dönmezer and Erman, *I*, p. 188; Centel, pp. 53-54.

<sup>19</sup> Dönmezer and Erman, *I*, p. 189; Centel, p. 54.

<sup>20</sup> Dönmezer and Erman, *I*, p. 189; Centel, p. 54.

<sup>21</sup> Dönmezer and Erman, *I*, p. 190; but, not necessarily the preambles of the law, the commission reports, and discussions concerning the law in the National Assembly, for they may reflect the subjective volition of the legislative power (Centel, p. 56.)

<sup>22</sup> Dönmezer and Erman, *I*, p. 190; Centel, pp. 56-57.

<sup>23</sup> Dönmezer and Erman, *I*, p. 121; Centel, p. 57.

moral elements of offense.<sup>24</sup> The legal element covers both the fact that a certain act is defined as a crime in the criminal code, and the way it is defined as a crime, or how the article is written. The legal definition should be clear, should not contain flexible or indefinite concepts. It should also define the offender, the act, the subject-matter, and the subjective elements of the crime.<sup>25</sup> The material element of offense stands for the act, the result and the causality in between the act and the result. The act is seen as the crucial component of crime.<sup>26</sup> The moral element of offense is the element of intent, or imputability and culpability -that the person is legally capable to commit a crime, and that the person voluntarily and intentionally committed a crime.<sup>27</sup>

The special forms of offense include attempt in an offense, joinder of offenses and complicity. Attempt stands for unfinished act or unaccomplished criminal result.<sup>28</sup> The conditions of attempt in an offense are

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<sup>24</sup> For different taxonomies, see: Centel, pp. 162-166.

<sup>25</sup> Dönmezer and Erman, *I*, p. 361; Centel, pp. 187-189.

<sup>26</sup> Dönmezer and Erman, *I*, p. 366; Centel, p. 190.

<sup>27</sup> Dönmezer and Erman, *II*, p.143; Centel, p. 304, 341.

<sup>28</sup> Centel, p.405.



criminal intention and the start of action. Criminal intention stands for a voluntary and intentional act towards committing a crime.<sup>29</sup> The start of action includes the stages of thought, preparation, action and the realization of crime. A person is not punished for thinking of committing a crime; to be punished, this thought must be put into action which is defined as a crime in the criminal code.<sup>30</sup> In the same vein, preparatory actions are not punished either, unless they are considered as a peril to the legal value sought to be protected and defined as an independent crime.<sup>31</sup> Indeed, attempt in an offense is punished only when attempt is defined as a peril to the legal value sought to be protected.<sup>32</sup> Joinder of offenses is stands for the merger of multiple crimes.<sup>33</sup> If more than one crime is committed with one action, the offender is punished with the highest sentence (formal joinder)<sup>34</sup> Also, the same article of the criminal code can be violated several

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<sup>29</sup> Ibid., p.408.

<sup>30</sup> Ibid., p.409.

<sup>31</sup> Ibid., p.410.

<sup>32</sup> Ibid., p.407.

<sup>33</sup> Dönmezer and Erman, *II*, p. 374; Centel, p.442.

times but the offender is sentenced only once from the same article (successive offense)<sup>35</sup>, or the offense can exhibit a composite character -in a multiplicity of crimes committed, one of the crimes can be an element or the aggravating matter of another.<sup>36</sup> Complicity is the commitment of a crime with the participation of more than one person in crimes defined without the requirement of participation.<sup>37</sup> When the law requires the participation of more than one person, it becomes an offense with multiple offenders.<sup>38</sup> In an offense with multiple offenders, the offenders either act in the same direction and aim at the realization of the same goal (offense in convergence), or the offenders pursue the same goal, but act in different directions and contribute to the commitment of crime in different ways (offense in encounter).<sup>39</sup>

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<sup>34</sup> Dönmezer and Erman, *II*, pp. 375-376, 384-388; Centel, p.442.

<sup>35</sup> Centel, p.451.

<sup>36</sup> Ibid., p.461.

<sup>37</sup> Dönmezer and Erman, *II*, p.446; Centel, p.464.

<sup>38</sup> Dönmezer and Erman, *II*, p.437; Centel, p.464.

<sup>39</sup> Dönmezer and Erman, *II*, p.442; Kayıhan İçel, Füsün Sokullu-Akıncı, İzzet Özgenç, Adem Sözüer, Fatih S. Mahmutoğlu, Yener Ünver, İçel Suç Teorisi, 2. Kitap: Suç Kavramına ilişkin Genel Bilgiler, Suçun Yapısal Unsurları, Suçun Özel Oluşum Biçimleri (İstanbul: Beta, revised 2<sup>nd</sup> ed., 2000), p. 368.

In terms of act, legal scholars differentiate between commissive offense and negligent offense<sup>40</sup> and also between, independent offenses (where types of criminal act are not included in the definition of the crime), connected offenses (where the types of criminal act are also defined, and it is necessary to realize all the defined acts), and alternatively connected offenses (where the alternatives of criminal act are defined, and the realization of one of the acts is sufficient).<sup>41</sup>

In terms of results, the differentiation is between formal offense (where the result is embodied in the act and the result is reached with action) and material offense (where the result is distinguishable from the act in terms of time and place or time and causality)<sup>42</sup>; offense of harm (where the object or subject of crime should be harmed with a definite action) and offense of peril (where the result reached with the action embodies a peril of harm in terms of the legal value sought to be protected)<sup>43</sup>; instantaneous offense (a crime committed and completed with a single act) and continuous offense

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<sup>40</sup> İçel et al., 2, p. 61; Dönmezer and Erman, *I*, pp.376-378.

<sup>41</sup> İçel et al., 2, pp.64-65; Dönmezer and Erman, *I*, pp.373-375.

<sup>42</sup> İçel et al., 2, pp.67-68.

<sup>43</sup> İçel et al., 2, p.68.

(where the result caused by action is continuous and hence the crime is continuous).<sup>44</sup>

In terms of intent, the differentiation between general intent and special intent seems relevant to the discussion of the legal definitions on organized criminality. Committing a crime purposefully and voluntarily is seen as general intent, and special intent is observed where the offender commits a crime with a motive other than those seen as general intent.<sup>45</sup>

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<sup>44</sup> İçel et al., 2, p.69.

<sup>45</sup> Dönmezer and Erman, *II*, p.231.

APPENDIX D

ARTICLES 313 AND 314 OF THE TURKISH CRIMINAL CODE

**TÜRK CEZA KANUNU**

BEŞİNCİ BAP

**Ammenin Nizamı Aleyhine İşlenen Cürümler**

İKİNCİ FASIL

**Cürüm İşlemek için Teşekkül Meydana Getirenler<sup>1</sup>**

**MADDE 313 (3758 s. K. ile değişiklik)** Her ne suretle olursa olsun cürüm işlemek için teşekkül oluşturanlara veya bu teşekküle katılanlara bir yıldan iki yıla kadar ağır hapis cezası verilir.

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<sup>1</sup> Gürsel Yalvaç, *Ceza ve Yargılama Hukuku Yasaları: T. C. Anayasası, TCK, CMUK, CİK ve İlgili Mevzuat*, (Ankara: Adalet, 3<sup>rd</sup> ed., 2004), pp. 195-196.

Bu teşekkül halk arasında korku, endişe veya panik yaratmak veya siyasi veya sosyal bir görüşten kaynaklanan amaçla veya ammenin selameti aleyhine cürümlerle kasten adam öldürmek veya yağma ve yol kesmek ve adam kaldırmak cürümlerini işlemek için meydana getirilmişse, verilecek ceza bir yıldan üç yıla kadar ağır haptir.

Teşekkül mensupları dağlarda ve kırlarda veya genel yollarda veya meskun yerlerde içlerinden iki veya daha fazlası silahlı olarak dolaşır veya buluşma yerlerinde veya emin bir yerde silah saklarsa; birinci fıkradaki halde bir yıldan üç yıla, ikinci fıkradaki halde iki yıldan dört yıla kadar ağır hapis cezası verilir.

Teşekkülün yöneticileri hakkında yukarıda fıkralar uyarınca hükmedilecek ceza üçte birden yarıya kadar artırılır.

Teşekkül mensuplarının teşekkülün amacına yönelik cürüm işlemleri halinde, verilecek cezaların toplamı en ağır cezayı gerektiren fiilin cezasının azami haddini geçemez.

Bu maddede yazılı teşekkül, iki veya daha fazla kimsenin birlikte cürüm işlemek amacı etrafında birleşmesi ile oluşur.

Bu Kanun ve diğ er kanunlarda yer alan  zel h k mler saklıdır.

**MADDE 314 (2245 S.K. ile deėiřiklik) (3756 S.K. ile deėiřiklik 1. fıkrası)** Yukarıdaki madde uyarınca oluřturulan teřekk llerin mensuplarına bilerek ve isteyerek barınacak yer g steren veya erzak yahut silah ve cephane tedarik veya yardım edenlere altı aydan bir yıla kadar hapis cezası verilir. Bu yardım; dernek, siyasi parti, iř i ve meslek kuruluřlarına veya bunların yan kuruluşlarına ait bina, lokal, b ro veya eklentilerinde veya  ğretim kurumlarında veya  ğrenci yurtlarında veya bunların eklentilerinde yapılırsa bu fıkradaki ceza bir kat artırılır.

Bu suretle usul ve f ruundan olan hısımlarından veya karı veya kocadan veya kardeřinden birine barınacak yer g steren veya yiyecek veya i ecek saėlayan kiři hakkında cezalar yarısından   te ikisine kadar azaltılır.

## APPENDIX E

THE RECENT VERSION OF ACT NO. 4422 FOR COMBATING CRIMINAL  
ORGANIZATIONS ACTING FOR GAIN

### **ÇIKAR AMAÇLI SUÇ ÖRGÜTLERİYLE MÜCADELE KANUNU<sup>1</sup>**

Kanun Numarası : 4422 Kabul Tarihi : 30.07.1999  
Yayımlandığı R.G. Tarih : 01.08.1999 Sayı : 23773

#### **Çıkar amaçlı suç örgütü**

#### **MADDE 1 - (Değişiklik 1. fıkra: 6.12.2001 4723/3 s.**

**K.)** Doğrudan veya dolaylı biçimde bir kurumun, kuruluşun veya teşebbüsün yönetim ve denetimini ele geçirmek, kamu hizmetlerinde, basın ve yayın kuruluşları üzerinde, ihale, imtiyaz ve ruhsat işlemlerinde nüfuz ve denetim elde etmek, ekonomik faaliyetlerde kartel ve tröst yaratmak, madde ve eşyanın azalmasını ve darlığını, fiyatların düşmesini veya artmasını temin etmek,

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<sup>1</sup> Gürsel Yalvaç, *Ceza ve Yargılama Hukuku Yasaları: T. C. Anayasası, TCK, CMUK, CİK ve İlgili Mevzuat*, (Ankara: Adalet, 3<sup>rd</sup> ed., 2004), pp. 543-550.



kendilerine veya başkalarına haksız çıkar sağlamak, seçimlerde oy elde etmek veya seçimleri engellemek maksadıyla tehdit, baskı, cebir veya şiddet uygulamak (...) \* suretiyle yıldırma veya korkutma veya sindirme gücünü kullanarak suç işlemek için örgüt kuranlara veya örgütü yönetenlere veya örgüt adına faaliyette bulunanlara veya bilerek hizmet yüklenenlere sadece bu nedenle üç yıldan altı yıla kadar; örgüte üye olanlara iki yıldan dört yıla kadar ağır hapis cezası verilir.

Örgüt silahlı ise, yukarıda yazılı hallerde verilecek ceza üçte birden yarıya kadar artırılır. Henüz hiç bir silahlı eyleme teşebbüs edilmemiş olsa bile, silahlar veya patlayıcı maddeler örgütün amaçları doğrultusunda hazırlanmış veya elde bulundurulmuş ise, örgüt silahlı sayılır.

Suç faili, memur veya kamu hizmetiyle görevli kimse ise yukarıdaki fıkralara göre verilecek ceza, yarıdan bir katına kadar artırılır.

Suçun işlenmesine ayrılan veya suçun işlenmesinde kullanılan veya suçtan doğan değer veya ürünlerin veya bunlar yerine geçen şeylerin ve müsaderesi gereken her

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\* 6.12.2001 gün ve 4723/3 s. K. ile 1. Fıkradaki "zor veya tehdit" ibaresi, "tehdit, baskı, cebir veya şiddet" şeklinde değiştirilmiş, aynı fıkradaki (veya kişileri kendilerine tabi kılmaya zorlamak veya mensupları arasında her ne suretle olursa olsun açık veya gizli işbirliği yapmak) ibaresi metinden çıkartılmıştır.

türlü eşyanın gelirlerinin veya suçtan doğan her türlü yararın Devlete intikaline hükmolunur.

Bu madde hükümleri, nasıl adlandırılırsa adlandırılısın, amaçları yukarıda tanımlanan örgütle aynı olan ve yıldırma veya korkutma veya sindirme gücünü kullanan açık veya gizli örgütlere de uygulanır.

Örgüt mensuplarınca veya örgüt adına örgüt üyesi olmayanlar tarafından birinci fıkrada gösterilen amaçları gerçekleştirmek üzere işlenen suçların ve 1.3.1926 tarihli ve 765 sayılı Türk Ceza Kanununun 296 ncı maddesinde öngörülen cürmün cezaları üçte birden yarıya kadar artırılır.

Bu Kanunda öngörülen suçları işleyen veya örgütlerin eylemlerini, amaçlarını, hedeflerini, bu kişi veya örgütlere haksız çıkar sağlamak veya örgütün korkutma, sindirme, yıldırma gücünü artırmak amacıyla yazılı, sesli veya görsel yayın araçlarıyla yayımlayan veya her ne suretle olursa olsun propagandasını yapan hakkında iki yıldan dört yıla kadar ağır hapis ve birmilyar liradan beşmilyar liraya kadar ağır para cezasına hükmolunur. Ayrıca yayın organının faaliyetlerinin bir günden üç güne kadar durdurulmasına karar verilir.

### **İletişimin dinlenmesi veya tespiti**

**MADDE 2** - Bu Kanunda öngörülen suçları işleme veya bunlara iştirak yahut işlendikten sonra faillere her ne suretle olursa olsun yardım veya aracılık veya yataklık etme kuşkusu altında bulunan kimselerin kullandıkları telefon, faks ve bilgisayar gibi kablolu, kablosuz veya diğer elektromanyetik sistemlerle veya tek yönlü sistemlerle alınan veya iletilen sinyalleri, yazıları, resimleri, görüntü veya sesleri ve diğer nitelikteki bilgileri dinlenebilir veya tespit edilebilir. Tespit edilenler mühürlenerek yetkililerce zapta bağlanır.

İletişimin dinlenmesine veya tespitine ilişkin kararlar, ancak kuvvetli belirtilerin varlığı halinde verilebilir.

Başka bir tedbir ile failin belirlenmesi, ele geçirilmesi veya suç delillerinin elde edilmesi mümkün ise, iletişimin dinlenmesine veya tespitine karar verilemez.

Resmî veya özel her türlü iletişim kuruluşlarının tuttukları, iletişimin içeriği dışında kalan kayıtlar hakkında da yukarıdaki hükümler uygulanır.

Dinleme veya tespiti veya kayıtların incelenmesine hâkim karar verir. Gecikmesinde sakınca bulunan hallerde Cumhuriyet savcısı da bu hususlarda yetkilidir. Hâkim kararı olmaksızın yapılan bu gibi işlemlerin yirmidört

saat içinde hâkim kararına bağlanması şarttır. Sürenin dolması veya hâkim tarafından aksine karar verilmesi halinde tedbir Cumhuriyet savcısı tarafından derhal kaldırılır.

Dinleme ve tespit kararları en çok üç ay için verilebilir, bu süre en çok iki defa üçer aydan fazla olmamak üzere uzatılabilir.

İletişimin dinlenmesi ve tespiti sırasında bu Kanunda öngörülen suçların işlendiğine ilişkin şüphe ortadan kalkarsa, tedbir Cumhuriyet savcısı tarafından kaldırılır. Bu gibi hallerde tedbir uygulaması sonucu elde edilen veriler, Cumhuriyet savcısının denetimi altında derhal ve nihayet on gün içinde yok edilir ve durum bir tutanakla belirlenir.

Cumhuriyet savcısı veya görevlendireceği kolluk mensubu, iletişim kurum ve kuruluşlarında görevli veya böyle bir hizmeti vermeye yetkili olanlardan, dinleme ve kayda alma işlemlerinin yapılmasını ve bu amaçla cihazların kurulmasını istediğinde, bu istem derhal yerine getirilir ve işlemin başladığı ve bitirildiği tarih ve saat bir tutanakla saptanır.

### **Gizli izleme**

**MADDE 3** – Bu Kanunda öngörülen suçları işlediklerinden kuşku duyulanların mesken, ikametgâh,

işyeri veya kamuya açık yerlerdeki her türlü faaliyetleri, teknik araçlarla gizli olarak gözetlenebilir, izlenebilir, ses ve görüntü kaydına alınabilir.

#### **Kayıt ve verilerin incelenmesi**

**MADDE 4** - Bu Kanunda öngörülen suçların veya delillerinin ortaya çıkarılması için, suçların işleniş biçimlerine benzer tutum ve davranışlarda bulunan kişilere ilişkin yer, kuruluş, çevre ve kurumdaki, Devletin ulusal güvenliği bakımından gizli kalması zorunlu olanlar hariç her türlü resmî ve özel kayıtlarla bilgisayar verileri incelenebilir.

#### **Gizli görevli kullanılması**

**MADDE 5** - Bu Kanunun kapsamına giren suçların soruşturulmasında, diğer tedbirlerin yeterli olmadığının anlaşılması halinde, kamu görevlileri gizli görevli olarak kullanılabilir.

Gizli görevli gerektiğinde örgüt içine de sızarak, gözetlemek, izlemek, örgüte ilişkin her türlü araştırmada bulunmak ve suçlarla ilgili diğer delil, iz, eser ve emareleri toplamakla yükümlüdür.

Gizli görevli, 1 inci maddede yazılı suçları işlediğinden şüphe edilen bir veya birden çok kişinin gözetlenmesi ile görevlendirildiğinde, bu kişilerin

evvelce suç işlemiş olması veya bu Kanunda öngörülen suçları işlemesi tehlikesinin varlığını gösteren somut belirtilerin bulunması veya suç işlemeyi meslek veya alışkanlık haline getirmiş olmaları gereklidir.

Gizli görevli, görevlendirildiği örgütün işlemekte olduğu suçlardan sorumlu tutulamaz. Gizli görevli görevini yerine getirirken suç işleyemez.

Gizli görevlinin kimliği saklı tutulur.

Bu maddenin uygulanması, gizli görevlinin kendisinin ve aile bireylerinin güvenlikleri yönünden benzeri bir göreve atanması için gerekli hususlar, İçişleri Bakanlığınca çıkarılacak bir yönetmelikle belirlenir.

#### **Hak ve alacaklara ilişkin tedbirler**

#### **MADDE 6 - (Değişiklik 1. Fıkra: 6.12.2001 4723/4 s.**

**K.)** 13.11.1996 tarihli ve 4208 sayılı Kanun hükümleri saklı kalmak üzere; bu Kanunun 1 inci maddesinde yazılı suçları işlediğine dair kuvvetli belirtiler\* bulunan kişilerin bu Kanun kapsamındaki fiillerinden elde ettikleri hususunda kuvvetli belirtiler bulunan her türlü menkul ve gayrimenkullerine soruşturma sırasında el konulmasına; bankalar ve banka dışı malî kurumlar ile diğer gerçek ve tüzel kişiler nezdindeki, kiralık kasa

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\* Fıkradaki "şüpheler" ve "şüphe" kelimeleri 6.12.2001 gün ve 4723 s.K. ile "belirtiler" şeklinde değiştirilmiştir.

mevcutları da dahil olmak üzere hak ve alacakları üzerindeki tasarruf yetkisinin tamamen veya kısmen kaldırılmasına, bir tevdi mahalline yatırılmasına, hak ve alacaklar ile mal, kıymetli evrak, nakit ve sair değerlerin idaresi için diğer tedbirlerin alınmasına karar verilebilir.

Yukarıdaki fıkroda belirtilen mal varlığının yurt içinde ve yurt dışında araştırılması, incelenmesi, tespiti ve değerlerinin takdiri, ilgili Cumhuriyet savcılığınca istendiğinde, Maliye Bakanlığı Malî Suçları Araştırma Kurulu Başkanlığı tarafından yerine getirilir.

Birinci fıkroda belirtilen mal varlığının meşruluğu anlaşıldığında el koyma tedbirine karar verilmez veya verilmiş olan karar kaldırılır.

Sanık mahkûm edildiğinde söz konusu mal varlığı Devlete intikal eder.

### **Tanığın ve görevlilerin korunması**

**MADDE 7 -** Tanığın kimliğinin veya meskeninin veya ikametgâhının veya işyerinin bilinmesi, kendisi veya başkaları için ciddî bir tehlike ihtimalini ortaya çıkarırsa;

a) Tanık için her türlü tebligatın yapılacağı ayrı bir adres tespit edilebilir ve tanığın kimliği soruşturmanın her aşamasında gizli tutulabilir.

b) Tanığın verdiği bilgilerden hareketle diğer delillerin tespitinin mümkün olması halinde, kimliği soruşturmanın hiç bir aşamasında açıklanmaz.

Tanığın dinlenmek suretiyle kimliğinin açıklanması gerektiğinde, tanık hakkında 12.4.1991 tarihli ve 3713 sayılı Terörle Mücadele Kanununun 20 nci maddesindeki hükümlerin uygulanmasına karar verilebilir.

Yukarıdaki fıkralarda yer alan hükümler, muhbirler ve bu Kanunun kapsamına giren suçlara ait istihbaratta veya soruşturulmasında görev alan kolluk amir ve memurları hakkında da uygulanır, kimlik bilgileri ile görevine ve özel hayatına ilişkin bilgiler hiçbir şekilde açıklanamaz.

Kimlik, görev ve özel hayata ilişkin bilgileri açıklayanlara veya açıklanmasına yardımcı olanlara bir yıldan iki yıla kadar hapis cezası verilir.

### **İşlemlerin uygulanması**

**MADDE 8** - 3, 4, 5, 6 ve 7 nci maddelerde öngörülen tedbir ve işlemlere ait kararların alınmasında ve uygulanmasında 2 nci maddedeki usul ve esaslara uyulur.

### **Yurtdışına çıkma yasağı**

**MADDE 9** - Bu Kanunun kapsamına giren suçlarda, şüpheli veya sanıkların yurt dışına çıkmalarının geçici



olarak yasaklanmasına, hazırlık soruşturmasında hâkim, son soruşturma safhasında ise mahkemece karar verilebilir. Ancak, gecikmesinde sakınca varsa Cumhuriyet savcısı da şüphelilerin yurt dışına çıkmalarının geçici olarak yasaklanmasına karar verebilir. Bu karar derhal ve nihayet yirmidört saat içinde hâkimin onayına sunulur. Hâkim kararını yirmidört saat içinde açıklar; aksi halde Cumhuriyet savcısının kararı kendiliğinden yürürlükten kalkar.

#### **Gizliliğin ihlali, yetkililerin sorumluluğu ve cezalandırılması**

**MADDE 10** - Bu Kanun gereğince yürütülen işlemler ve hazırlık soruşturması sırasında alınan kararlar gizlidir. Gizliliği ihlal edenler hakkında iki yıldan üç yıla kadar hapis cezasına hükmolunur.

Bu Kanunun 2 nci maddesinin yedinci fıkrasına göre imha edilmesi gereken verileri imha etmeyenler veya bu verileri açıklayanlar veya her ne suretle olursa olsun kullananlar hakkında da aynı cezaya hükmolunur.

Bu Kanunun uygulanması ile ilgili yetkilerin suiistimal edilerek başka kanun hükümleri ihlal edilirse, o kanunlarda yazılı cezalar yarıdan bir katına kadar artırılır ve bu Kanunun 12 nci maddesi hükümleri uygulanır.

## **Yargılama usulü**

**MADDE 11** - Bu Kanunun kapsamına giren suçlardan dolayı yargılama görevi yetkili Devlet Güvenlik Mahkemesince yerine getirilir. O yerde Devlet Güvenlik Mahkemesinin birden fazla dairesi varsa, bu görev 1 numaralı Devlet Güvenlik Mahkemesine aittir. **(İkinci cümle: 6.12.2001 4723/5 s. K. ile yürürlükten kaldırılmıştır.)**

Bu Kanunda geçen hâkim, yetkili Devlet Güvenlik Mahkemesi yedek üyesidir. Cumhuriyet savcısı ise yetkili Devlet Güvenlik Mahkemesi Cumhuriyet Başsavcılığıdır.

Bu Kanunda öngörülen suçların yargılanmasında, bu Kanun hükümleri ve 16.6.1983 tarihli ve 2845 sayılı Devlet Güvenlik Mahkemelerinin Kuruluş ve Yargılama Usulleri Hakkında Kanun hükümleri uygulanır.

## **Tedbire dönüştürme ve erteleme yasağı**

**MADDE 12** - Bu Kanunda öngörülen suçlardan dolayı verilen cezalara 13.7.1965 tarihli ve 647 sayılı Cezaların İnfazı Hakkında Kanunun 4 ve 6 ncı maddeleri uygulanmaz.

**Tutukluların muhafazası, cezaların infazı ve şartla salıverme**

**MADDE 13** - Bu Kanun kapsamına giren suçlardan tutuklananlar ile mahkûm olanlar hakkında Terörle Mücadele Kanununun 16 ve 17 nci maddesi hükümleri uygulanır.

**Pişmanlık**

**MADDE 14** - Terörle Mücadele Kanununun kapsamına giren suçlar hariç, bu Kanunun öngördüğü suçlarda;

a) Ferden örgütle ilgili bir suç işlememiş olup da, örgüt tarafından herhangi bir suç işlenmeden önce,

b) Hazırlık soruşturmasına başlandıktan sonra, ferden örgütle ilgili bir suç işlememiş olanlardan örgüt ve fiilleri ve mensupları hakkında bilgi vererek,

Örgütten çekilenler hakkında kovuşturma yapılmaz.

c) Suçların icrasından sonra soruşturmaya başlanmadan önce yetkili mercilere başvurup bilgi vererek suçluların yakalanması hususunda yardımda bulunanların cezaları sekizde bire kadar,

Suçların icrasından sonra hazırlık soruşturması sırasında yetkili mercilere başvurup bilgi vererek suçluların yakalanması hususunda yardımda bulunanların cezaları altıda bire kadar,

İndirilir.

d) Son tahkikat sırasında başvurusu bilgi vererek suçluların yakalanması hususunda yardımda bulunanların cezaları dörtte bire kadar indirilir.

e) Örgütün yöneticileri hariç olmak kaydıyla, hüküm kesinleştikten sonra başvurusu bilgi vererek suçluların yakalanması hususunda yardımda bulunanların cezaları yarıya kadar indirilir.

### **Örgütlere yardım**

**MADDE 15** - Türk Ceza Kanununun 314 üncü maddesi hükümleri bu Kanunun kapsamına giren suçlar hakkında da uygulanır.

### **Araştırma ve tedbire ilişkin hükümlerin uygulanacağı diğer haller**

**MADDE 16** - Bu Kanunun 2 ila 10 uncu maddeleri, Terörle Mücadele Kanunu kapsamına giren suçlarla, 21.7.1983 tarihli ve 2863 sayılı Kültür ve Tabiat Varlıklarını Koruma Kanunu, 10.7.1953 tarihli ve 6136 sayılı Ateşli Silahlar ve Bıçaklar ile Diğer Aletler Hakkında Kanun ve Türk Ceza Kanununun 403, 404 ve 406 ncı maddelerinde yer alan suçlar teşekkül halinde işlendiğinde de uygulanır.

### **Saklı hükümler**

**MADDE 17** - Türk Ceza Kanununda ve diğ er  zel kanunlarda tanımlanmış olan  rg tl  su lar hakkındaki h k mler saklıdır.

#### **Y r rl k**

**MADDE 18** - Bu Kanun yayımı tarihinde y r rl ğ  girer.

#### **Y r tme**

**MADDE 19** - Bu Kanun h k mlerini Bakanlar Kurulu y r t r.

APPENDIX F

ARTICLE 416-*bis* (MAFIA-TYPE ASSOCIATION) OF THE ITALIAN  
CRIMINAL CODE

CODICE PENALE

Art. 416-*bis* (a)

(*Associazione di tipo mafioso*)<sup>1</sup>

1. Chiunque fa parte di un'associazione di tipo mafioso formata da tre o più persone, è punito con la reclusione da tre a sei anni.

2. Coloro che promuovono, dirigono o organizzano l'associazione sono puniti, per ciò solo, con la reclusione da quattro a nove anni.

3. L'associazione è tipo mafioso quando coloro che ne fanno parte si avvalgano della forza di intimidazione del vincolo associativo e della condizione di assoggettamento e di omertà che ne deriva per commettere

delitti, per acquisire in modo diretto o indiretto la gestione o comunque il controllo di attività economiche, di concessioni, di autorizzazioni, appalti e servizi pubblici o per realizzare profitti o vantaggi ingiusti per sé o per altri ovvero al fine di impedire od ostacolare di consultazioni elettorali (a).

4. Se l'associazione è armata si applica la pena della reclusione da quattro a dieci anni nei casi previsti dal primo comma e da cinque a quindici anni nei casi previsti dal secondo comma.

5. L'associazione è considerata armata quando i partecipanti hanno la disponibilità, per il conseguimento della finalità dell'associazione, di armi o materie esplosive, anche se occultate o tenute in luogo di deposito.

6. Se le attività economiche di cui gli associati intendono assumere o mantenere il controllo sono finanziate in tutto o in parte con il prezzo, il prodotto, o il profitto di delitti, le pene stabilite nei commi precedenti sono aumentate da un terzo alla metà.

7. Nei confronti del condannato è sempre obbligatoria la confisca delle cose che servirono o furono destinate a commettere il reato e delle cose che

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<sup>1</sup> Gaetano Nanulla, *La Lotta alla Mafia: Strumenti Giuridici, Strutture di Coordinamento, Legislazione Vigente* (Milan: Giuffrè, 4<sup>th</sup> ed., 1999), pp. 337-338.

ne sono il prezzo, il prodotto, il profitto o che ne costituiscono l'impiego (a).

8. Le disposizioni del presente articolo si applicano anche alla camorra e alle altre associazioni, comunque localmente denominate, che valendosi della forza intimidatrice del vincolo associativo perseguono scopi corrispondenti a quelli delle associazioni di tipo mafioso.

(a) Articolo aggiunto dall'art. 1 della legge 13 settembre 1982, n. 646 e modificato, al terzo comma, dall'art. 11-*bis* del D.L. 8 giugno 1992, n. 306 e al settimo comma, dall'art. 36, comma 2, della legge 19 marzo 1990, n.55.



## APPENDIX G

### CRIMINAL JUSTICE STATISTICS

Table 1: Number of Criminal Lawsuits Filed  
from Article 313 of The Turkish  
Criminal Law and Act No.4422  
(1986-2003)

Years	Art. 313	Total Number of Criminal Lawsuits	%
1986	15	355836	0.004
1987	21	360445	0.006
1988	70	56659	0.124
1989	16	396128	0.004
1990	29	380493	0.008
1991	7	380203	0.002
1992	27	387959	0.007
1993	26	392403	0.007
1994	6	443102	0.001
1995	25	441391	0.006
1996	79	453339	0.017
1997	132	455897	0.029
1998	218	475722	0.046
1999	390	484512	0.080
2000	269	512091	0.053
2001	619	606510	0.102
2002	1300	622030	0.209
2003	633	674110	0.094
Total	3882	7878830	0.049
Average	215.667	437712.778	0.044

Source: Justice Statistics

Table 1 (cont.)

		Total Number of Criminal Lawsuits	
Act No.	4422	Filed from Special Acts	%
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
-	-	-	-
194		1237762	0.016
306		1673250	0.018
318		1242278	0.026
338		954017	0.035
1156		5107307	0.023
289		1276827	0.024

Table 2: Number of Defendants in the Criminal Lawsuits Filed from Article 313 of the Turkish Criminal Law and Act No. 4422 (1986-2003)

a) Number of Defendants in the Criminal Lawsuits Filed from Article 313

Years	Art. 313	Criminal Law-General	%
1986	17	500302	0.003
1987	78	499226	0.016
1988	177	71618	0.247
1989	51	562444	0.009
1990	97	573587	0.017
1991	30	586089	0.005
1992	132	570311	0.023
1993	67	577223	0.012
1994	53	661535	0.008
1995	163	675679	0.024
1996	532	689834	0.077
1997	683	693874	0.098
1998	1032	728678	0.142
1999	2024	744935	0.272
2000	1600	772560	0.207
2001	4011	933507	0.430
2002	8457	953534	0.887
2003	3234	1023301	0.316
Total	22438	11818237	0.190
Average	1246.5556	656568.722	0.155

Source: Justice Statistics

b) Number of Defendants in the Criminal Lawsuits Filed from Act No. 4422

Years	Act No. 4422	Special Acts -General	%
2000	1318	1423347	0.093
2001	2919	1896982	0.154
2002	2194	1432843	0.153
2003	2417	1102054	0.219
Total	8848	5855226	0.151
Average	2212	1463806.5	0.155

Source: Justice Statistics

Table 3: Court Decisions (Art. 313 and Act No. 4422)  
(1994-2001)

a) Art. 313 (1994-2001)

Years	Convictions			Acquittals		
	313	Total	%	313	Total	%
1994	1	245713	0	1	100215	0.001
1995	3	241357	0.001	6	103708	0.006
1996	12	237349	0.005	19	105999	0.018
1997	21	239991	0.009	51	107903	0.047
1998	32	243471	0.013	41	107129	0.038
1999	69	248180	0.028	152	109193	0.139
2000	79	283743	0.028	101	114439	0.088
2001	104	269454	0.039	116	125865	0.092
Total	321	2009258		487	874451	
Average	40.125	251157	0.015	60.875	109306	0.054

Source: Justice Statistics

b) Act No. 4422 (2000-2001)

Years	Convictions			Acquittals		
	4422	Total	%	4422	Total	%
2000	13	592356	0.002	14	109507	0.013
2001	23	585552	0.004	60	147264	0.041
Total	36	1177908		74	256771	
Average	18	588954	0.003	37	128386	0.027

Source: Justice Statistics

Table 3a (Cont.)

Dismissals			Other Decisions			
313	Total	%	313	Total	%	
0	25404	0	4	43555	0.009	
0	26249	0	7	44563	0.016	
0	25678	0	18	47784	0.038	
0	25095	0	53	61539	0.086	
1	23247	0.004	50	56062	0.089	
0	24198	0	133	57953	0.229	
6	27384	0.022	47	67786	0.069	
5	28058	0.018	559	202052	0.277	
12	205313		871	581294		
1.5	25664.1	0.006	108.875	72661.8	0.102	

Table 3b (Cont.)

Dismissals			Other Decisions			
4422	Total	%	4422	Total	%	
0	337790	0	32	150051	0.021	
0	518006	0	122	312462	0.039	
0	855796	0	154	462513		
0	427898	0	77	231257	0.03	

Table 3a (Cont.)

Total Number of Court Decisions (313)	Total Number of Court Decisions		%
6	414887		0.001
16	415877		0.004
49	416810		0.012
125	434528		0.029
124	429909		0.029
354	439524		0.081
223	493352		0.045
784	625429		0.125
1681	3670316		
210.125	458789.5		0.041

Table 3b (Cont.)

Total Number of Court Decisions (4422)	Total Number of Court Decisions (Special Acts)		%
59	1189704		0.005
205	1563284		0.013
264	2752988		
132	1376494		0.009

c) Art. 313 - Ratios (1994-2001)

Years	Convictions	%	Acquittals	%	Dismissals	%
1994	1	17	1	17	0	0
1995	3	19	6	38	0	0
1996	12	24	19	39	0	0
1997	21	17	51	41	0	0
1998	32	26	41	33	1	1
1999	69	19	152	43	0	0
2000	79	35	101	45	6	3
2001	104	13	116	15	5	1
Total	321		487		12	
Average	40.13	21.25	60.88	33.88	1.50	0.63

Source: Justice Statistics

d) Act No. 4422 - Ratios (2000-2001)

Years	Convictions	%	Acquittals	%	Dismissals	%
2000	13	22	14	24	0	0
2001	23	11	60	29	0	0
Total	36		74		0	0
Average	18	16.5	37	26.5	0	0

Source: Justice Statistics

Table 3c (Cont.)

Other	%	Total
4	67	6
7	44	16
18	37	49
53	42	125
50	40	124
133	38	354
47	21	223
559	71	784
871		1681
108.88	45.00	210.13

Table 3d (Cont.)

Other	%	Total
32	54	59
122	60	205
154		264
77	57	132



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