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Culturally-motivated crimes committed by immigrants

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Premise

In order to address the topic of "culturally-motivated crimes" that are committed by immigrants, it is necessary to begin with the following preliminary statement.

During the last decades, Italy has evolved into a multicultural society also as a result of immigration.

As a matter of fact, whenever migrants leave their countries of origin, whenever Albanians, Moroccans, Romanians, Chinese, Egyptians, Syrians come to Italy, they carry with themselves their cultural background, and this luggage cannot be seized at the border.

Therefore, migration becomes, for our country, a source of plurality of cultures.

Culture

But what do we mean, more precisely, by "culture" in the context of multiculturalism, multicultural society and, hence, culturally-motivated offences.

The concept of culture is extremely ambiguous per se and compatible with more than one definition and meaning. Moreover, the notion is particularly fashionable; we hear, for instance, people talking about "food culture", "football culture", "enterprise culture" and so on. Nevertheless, what do we mean by "culture" with regard to multicultural societies and culturally-motivated offences.

Generally, we tend to adopt an interpretation of culture that derives from anthropology (although there is some scholarly disagreement). We refer to a complex yet organized system of ways of living and thinking, conceptions of just, good and beauty that are deeply rooted in a social group and are passed down that group while evolving and altering themselves from generation to generation.

From anthropology and other human sciences, we have also adopted the emphasis we put on the crucial importance of culture in the formation of mankind and its own biological evolution.

Human beings are, indeed, "culture-bearing animals": nothing is purely natural in them. Even human functions that correspond to physiological needs, such as hunger, sleep, sexual desire etc., are moulded by culture, and, in fact, different cultures do not provide the same answers to those needs. Culture offers, therefore, the codes, the "keys" to organize and interpret the external reality.

I will give an example to clarify this statement: if I, here in Cagliari, were to enter a religious site (like a church) wearing shoes on my feet, it would be considered an attitude that is absolutely respectful of the custom; on the contrary, it would be considered rude for me to enter barefoot.

However, if I were to enter a religious site in Istanbul (like the Blue Mosque) with my shoes on, it would be considered disrespectful because of the culture of that place.

The same behaviour or the same set of circumstances–like entering a religious site wearing shoes–acquires a different meaning when it is interpreted through different cultural lenses.

Let's try to address the question at the heart of this talk: What does "culture" have to do with criminal law?

The nexus is based on the close relationship between criminal law and the social group of which the criminal system is the manifestation of. Law - and criminal law in particular-is a cultural phenomenon; as Rad Bruch already declared almost a century ago, "Law is a cultural artifact".

Criminal norms can be conceived as expressions of the culture of the social group that adopts them: the culture of a specific social group becomes embedded in the criminal norms established by the same group.

The Italian Supreme Court (Corte di Cassazione) acknowledges the cultural aspect of criminal norms, as it recognizes – I quote a ruling of 2006 – that "criminal offenses involve a culturally conditioned assessment of the considered behaviours".

In order to understand the effects of culture on criminal law, one could consider the numerous norms of the Italian Criminal Code which, in order to qualify an offense, refer to the so-called cultural normative concepts, that is those concepts that can be understood and acknowledged only in light of a body of cultural norms.

Let's give a few examples

a) the concept of "prurient interest" that appears in obscenity crimes

b) the concept of "public decency"

c) the concept of "motives of relevant moral or social values", or, its opposite, the "vain and futile motives"

d) finally, the concept of "sexual acts"

These concepts can only be fully understood by referring to a body of cultural (ethical, moral, customary) norms.

Further evidence of the cultural bias of criminal law could be found in issues such as

a) abortion

b) euthanasia

c) medically assisted procreation

d) homosexuality

e) adultery

f) consumption of drugs

g) educational methods (including or excluding the use of violence)

h) blasphemy

i) animal abuse

j) prostitution

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These are all cases where criminal regulations change, often significantly, from country to country in light of the prevailing culture.

Consequently, crossing borders often determines a "switch" to a different criminal system.

Here's another example

If an adult, here in Cagliari, has a consensual sexual relationship with a fifteen-year-old girl, the event is considered legally irrelevant: the Italian Criminal Code, indeed, sets to 14 years of age the threshold under which a prohibition of sexual act with a minor can take place.

However, if the same situation were to happen in Zurich, with an adult engaging in a sexual relationship with a fifteen-year-old girl in Switzerland, it would be considered a crime (since the threshold in the Swiss Criminal Code is 16 years old).

Moreover, if the young partner is not yet 14 years old, and the couple were to spend the weekend in Barcelona, no crime would be committed, since the Spanish Criminal Code (up to a few years ago) declared that an adult is committing a crime only if he or she has a sexual relationship with a minor under 13 years of age.

If such differences emerge between countries that are culturally similar (in our example Italy, Switzerland and Spain), then a fortiori, they may easily appear between countries that are culturally "distant".

Borrowing a popular Italian saying, we could easily claim that: "country you go, crime you find!".

Therefore, migrants in Italy are often confronted with rules of the Italian Criminal Code that they might not know or might not understand because of cultural differences.

Migrants' cultural background may often include principles and concepts that are different from those present in the country where they have moved to, which can create normative and cultural conflicts.

Let's consider, for instance, the female genital mutilation

On one hand, we have certain ethnic groups, who believe–because of their culture-that young girls need to undergo this procedure.

On the other hand, the Criminal Code of countries like Italy, whose culture does not recognize the custom of FGM, forbids such practice because it is considered a violation of personal integrity and women's dignity.

Here is the conflict

In the last decade, criminal law scholars have begun to analyze those issues that raise situations of conflict, adopting the concept of "culturally motivated crime", that is to say "an act by a member of a minority culture (= an immigrant), which is considered an offence by the legal system of the dominant culture (=Italian culture).

That same act is nevertheless, within the cultural group of the offender, condoned, accepted as normal behavior and approved or even endorsed and promoted in the given situation".[1]

Now, how should our legal system react when a migrant commits a culturally motivated crime?

Does the Criminal Code have to consider the migrant's country of origin and the situation of cultural conflict? Does it have to borrow the North American expression "cultural defense".

Should criminal law rather ignore the cultural motivation? Or should it even consider the latter an aggravating circumstance? Moreover, a further question heavily impacts the issues raised so far: how can the defending counsel prove the offender's different culture and the impact it had on her/his behaviour in court? How do we distinguish, case by case, between the "culture of origin" of the defendant and her/his "personal inclination"?

Before we address these questions, we need to underline the existence of a risk in the process that should be taken into account, that is the risk of emotional reactions out of control. This refers to the risk to make decisions based on our guts, rather than on our brains.

However, a powerful measure against this threat, a "vaccine", comes from Italians' past.

Looking at our past, we could notice, first of all, how some of the current most frequent culturally motivated crimes were tolerated or, at the very least, considered with far more generous indulgence in our legal system up to a few decades ago. This is the case of honour killings and other crimes based on "cause of honour" that our penal system considered with extreme magnanimity until 1981. For example, sexual assault charges were removed by a "reparatory marriage" as a special case of discharge from the crime, which today we consider a cruel mockery imposed on the assaulted woman. If, instead, the sexual assault were to take place after marriage, the Italian law used to confer to the husband a sort of exemption from raping charges, as long as he would "contain" his violent acts secundum naturam. Furthermore, we are dealing with a numerous amount of insults, assaults and personal injuries committed within a domestic environment, covered for a long time by the protective umbrella of its corrigendi, recognized under various conditions to parents and husbands committing criminally relevant acts against, respectively, their children and their wives.

Moreover, in our past, there is a long history of emigration, which contributed to the formation of a conspicuous amount of judicial records: Italian defendants that emigrated in Switzerland, Germany, America and so on, and invoked their Italian culture as their defense.

As an example, we can mention the old case of Josephina Reggio, emigrated to New York from Sicily. As she was charged with murder, she declared that she had preserved her honour of "onesta picciotta" in the traditional Sicilian way.

We could also mention the very recent case of a Sardinian waiter emigrated to Germany. Despite the serious harm he caused to his partner as a result of cruel maltreatments and sexual violence, which he justified because of an alleged infidelity she would have committed, the Sardinian waiter received a moderate punishment from the German judges. According to the ruling, he had been "driven by an excessive impetus of jealousy, a passion that was rooted in his particular ethno-cultural print": "the conception of the role of man and woman" that was common all over Sardinia and was still part of the defendant's cultural background, "although it cannot count as a justification, it must be taken into account in order to be determine a less severe punishment".

After having presented how our past impacts the present, and therefore after having "taken the vaccine" coming from our past, we are now ready to deal with the inquiries pointed out above in relation to the culturally-motivated crimes.

The answer to those inquiries, however, cannot be an absolute one, neither can it be expressed through a single legal proposition valid for all the cases of culturally-motivated crime.

The term "culturally motivated crime" is, indeed, a very broad label that includes extremely heterogeneous cases, which – despite having in common the fact that the defendant justifies himself or herself in front of the judge through her/his culture of origin – might differ because of crucial variables.

The first variable, whose importance immediately stands out, concerns the legal asset offended, its nature, its rank and the intensity of the suffered harm. In principle, both pretty irrelevant actions and extremely harmful ones, can be qualified as culturally motivated crimes.

Our judges, for instance, had to deal with cases that evaluated:

Whether the use of burqa worn by women due to their Islamic religion and culture could be qualified as the crime of "obstacle to personal identification" (Legge Reale of 1975); Or whether the Indians that follow the Sikh religion, whenever found in public areas wearing a pocket-knife with its sheath (the kirpan, one of the symbols of the Sikh religion - like the clearly harmless turban), are committing the crime of carrying a weapon without a permit.

However, it is clear that we cannot automatically apply the legislative or judicial solutions that would be appropriate for the above-mentioned bagatelle cases to other cases that entail harm to the fundamental rights of an individual.

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a) The "cultural defense" has been invoked, as a matter of fact, by immigrants accused of

b) domestic abuses

c) homicides and personal injuries, in particular to defend one own's honour or that of their family

d) slavery

e) sexual assaults, often committed within the household (or by members of the same family).

The second variable, which advises us against the use of a "single measure" for every culturally motivated crime, has to do with the cultural norm that the defendant has followed:

a) At first, indeed, it might be useful to verify whether such a norm can be qualified also as a religious norm;

b) Furthermore, it might be suitable to verify whether such cultural norm also finds its counterpart in a norm of positive law, in force in the judicial system of the immigrant's country of origin.

c) Iin the third place, it would be appropriate to inquire about the degree to which such cultural norm is binding within the original group of the defendant: such norm, indeed, might merely enable a particular practice (as it is polygamy between Muslims) or be enforced with a high level of coercion and with a powerful apparatus of sanctions (as it happens in certain communities with regard to the practices of female and male circumcision); furthermore, such norm might be homogeneously followed by every member of the cultural group whom the defendant belongs to, or rather challenged by a big part of that group.

Finally, a third "variable" – which distinguishes the different cases of culturally motivated crimes – involves the biography of the defendant, and particularly her/his level of integration in the country of arrival and, on the contrary, his level of ongoing attachment to the culture of origin: the case may involve an immigrant who, regardless of the moment of arrival in the new country, did not have the chance to socialize in that country, or, instead, an immigrant who is well integrated, at least with regard to some aspects of his public life.

It is clear that the credibility of the "cultural motive" and the likeliness of its significance pro reo, are inversely proportional to the level of social inclusion of the defendant in the country where the trial occurs.

I reckon that these 3 variables were adequately considered during the recent ruling of the Court of Appeal of Venice.

This ruling was issued on 23 November 2012 on the first FGM trial in Italy since the Italian law of 2006 was adopted on the matter (art. 583 bis of Italian Criminal Code).

The event, that took place in Verona, concerned three Nigerian citizens, belonging to the Edo-bini community: a woman who was a midwife in Nigeria but did not have a license to regularly practice in Italy, a young Nigerian mother, and a young Nigerian father.

The parents wanted the "midwife" to perform the "aruè", a short and superficial incision of the clitoris on their newborn daughters.

In first instance the defendants were convicted, even if the punishment was not severe, for the crime of injury of female genital organs (583 bis p. 2 ital. c.p.).

On the contrary the Court of Appeal acquitted the parents for lack of malice: that specific malice – "the purpose of disabling sexual functions" – explicitly required by the art. 583 bis p. 2 ital. c.p.

Thanks to the testimony of a series of experts (one academic of educational anthropology; one academic of pedagogy of mediation; a Christian priest belonging to the Edo-bini community, who had migrated to Italy about 20 years ago), the Court of Appeal of Venice recognized that the parents wanted to impose the practice of "aruè" to their children in order to celebrate a ritual of purification and humanization, and to shape their daughters' identity. They did not want to cause any harm to these children nor damage their sexual functions.

The venetian judges carefully observed the above-mentioned variables

a) As for the legal asset offended, the judges pointed out in that case that the physical integrity was the only thing that had been compromised (and not also the woman's dignity) and, most importantly, that the physical integrity of both little girls was minimally damaged, without any permanent consequence.

b) As for the cultural norm followed by the defendants, the judges underlined its high level of dissemination, of commitment and observation within the cultural group of the Edo-Bini.

c) lastly, with regard to the personal biographies of the defendants, the Venetian judges pointed out that the young mother was a person lacking higher education, who migrated to Italy not long before, barely understood Italian language and was completely isolated from the Italian community; as for the father, the judges pointed out his high commitment to his culture of origin: as we can understand from the ruling, he was connected by a feeling of deep belonging to the Edo-bini community, which pushed him to respect his traditions.

On the contrary, when we analyze the rulings that deal with abuses, homicides, sexual violence, deep personal injuries, we can easily notice that in these instances the first of the three variables–the legal asset offended–is invariably an obstacle to an evaluation of the cultural motivation that could lead to an acquittal.

The Supreme Court, indeed, has established a trend, according to which whenever "the conducts under scrutiny are characterized by a clear violation of the essential and inviolable rights of an individual, which constitute a cornerstone of our constitutional system, an insurmountable barrier has to be erected against the introduction in the civil society of 'anti-historical' habits, procedures and customs".

In spite of such statement, if we look carefully, we can see that cultural motivations have an impact, if not on the an, at least on the quantum of the punishment, as shown in the last case I will talk about.

This case is about two young Moroccan migrants that on December 2001 got married. The marriage was arranged by the parents of the bride.

After the first days of cohabitation, the husband forced his wife to have a sexual intercourse, and repeated the same behaviour over the following days, until the wife went back to her parents.

The husband was sentenced for the crime of sexual violence and appealed to the Supreme Court. Not only he completely ignored that in Italy sexual violence is a crime even when it occurs within a marriage, but also he ignored that his wife had been forced to marry him by her own parents; furthermore, the events in question occurred during the first week of the marriage between two virgin and sexually inexperienced spouses.

The Supreme Court rejected the appeal, but recognized to the defendant the mitigating circumstance of "minor seriousness of the offence" according to article 609 bis p. 3 Italian Criminal Code. The Supreme Court observed that the case deals with acts that occurred between young spouses, in the context of which the "common culture of origin denies that a sexual violence between spouses can be considered a crime"; thus the final verdict results undoubtedly mild.

Conclusion

The jurisprudential solutions that I described deserve, in my humble opinion, a great deal of attention and respect, as they show that a cautious and well-defined identification of the cultural factor pro reo – following a careful evaluation of the aforesaid variables – could result not only possible, but also fair and appropriate.

The fulfillment of the crime could, indeed, truly constitute the outcome of a cultural clash that is still unresolved and, therefore the crime committed by the migrant of a "different" cultural background might actually be considered – like Alison Renteln has eloquently highlighted in her excellent book – less culpable than an identical crime committed by a defendant of Italian culture.

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References

1. Basile F. Immigrazione e reati culturalmente motivati. Il diritto penale nelle società multiculturali, Milano. 2010.
2. Connolly AJ. *Cultural Difference On Trial:The Nature And Limits Of Judicial Understanding*. 1st edn. Londra;2010.
3. Foblets MC, Renteln A. *Multicultural Jurisprudence*. Oxford;2009.
4. Friedman Ramirez L. *Cultural Issues in Criminal Defence*. New York;2010.
5. Renteln A. *The Cultural Defense*. New York;2004.
6. Van Broeck J. Cultural Defence and Culturally Motivated Crimes (Cultural Offences) in European. *Journal of Crime, Criminal Law and Criminal Justice.* 2001;9(1):1–32.