Oñati Socio-Legal Series (ISSN: 2079-5971)
Oñati International Institute for the Sociology of Law
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Impunity as a sanctuary

OÑATI SOCIO-LEGAL SERIES VOLUME 12, ISSUE 4 (2022), 981–1000: INVESTIGATIONS – INVESTIGACIONES – IKERLANAK
DOI LINK: HTTPS://DOI.ORG/10.35295/OSLS.IISL/0000-0000-0000-1316
RECEIVED 22 MARCH 2022, ACCEPTED 21 JUNE 2022, VERSION OF RECORD PUBLISHED 1 AUGUST 2022

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Abstract

Impunity as a sanctuary refers to a situation wherein structures are constituted to prevent the legal system from reacting to criminal conduct. Focusing on the state criminality, this study examines the concept of impunity as a form of interference with the legal process obstructing accountability for grave violations. In this line, it also analyzes the continuities between the structures of power prompting criminal conduct and the lack of legal sanction. In this sense, the metaphor "sanctuary" shifts the main understanding of impunity as a problem that is exclusive to the internal operation of the criminal system to a wider constraint that supposes studying possible asymmetries of power from the legal system vis-à-vis other powerful actors. With this purpose, this paper considers a number of cases shedding light to structures of denial and obfuscation that allow to understand the particularities of understanding impunity as a sanctuary.

Key words

Impunity; sanctuary; state crime; legal system

Resumen

La idea de la impunidad como santuario da cuenta de una forma específica de ausencia de rendición de cuentas cuando diferentes estructuras impiden que el sistema jurídico dé respuesta a conductas criminales. A la luz del estudio de la criminalidad de Estado este artículo explora el concepto de impunidad como una forma de interferencia del procesamiento judicial de las conductas violatorias. Refiere así a la comprensión de la continuidad entre las estructuras de poder que promueven las conductas criminales y su impunidad. En este sentido, la metáfora del "santuario" propone un viraje de la comprensión de la impunidad como un problema centrado en la operación interna del sistema penal a los elementos de influencia externa al sistema que supone el análisis de

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condicionantes mayores al funcionamiento del sistema de responsabilidad relacionados con posibles asimetrías de poder de diferentes actores capaces de influir en el funcionamiento de la rendición de cuentas. Con este propósito nuestro estudio aporta el análisis de algunos casos que permiten dar cuenta de las estructuras de negación y ocultamiento que involucra la comprensión de las particularidades de la impunidad como una forma de santuario.

Palabras clave

Impunidad; santuario; crimen de Estado; sistema jurídico

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1. Introduction

State crime is an organizational conduct (Ross 1998, Chambliss 1989, Green and Ward 2004). As such, these crimes are not committed due to individual spontaneous initiative (Tilly 1985 in Ross 1998) or in the mere pursuit of personal gain but in accordance with the operative goals of the formal organization that we call the State (Schrager and Short 1977, 412, Kauzlarich *et al.* 2001, Green and Ward 2004).[1] In this line, according to Chambliss (1989), "State-organized crime does not include criminal acts that benefit only individual officeholders, such as the acceptance of bribes or the illegal use of violence by the police against individuals, unless such acts violate existing criminal law and are official policy".

Crimes perpetrated by those who hold a relevant social, economic or political power, especially state-prompted crimes,[2] are often incited and performed in a way that nobody can be held accountable.[3] In state crime literature there is a recurrent concern for legal redress under the general observation that this kind of wrongdoing often lacks social restraint and proper redress (Andreu-Guzmán 1996, Welch 2009, Correa 2009, 2012).

The obstruction of the legal process when crimes are committed by powerful social actors may be described using the metaphor *sanctuary*. This article provides a description of sanctuaries of impunity as an explanatory idea that sheds light to the understanding of the continuum of state criminal conduct and impunity, the latter as the structural condition that simultaneously facilitates crimes and impedes prosecution. With this purpose a number of cases will be used to provide evidence on a number of indicators that contribute to the observation of sanctuaries and the ways they impact state criminal conduct.

The idea of *sanctuaries* creates an ecclesiastical imagery of the space in temples reserved for the high altar and the clergy[4] to which different civilizations have attributed a sacred

[1] Reducing state criminality to the study of the individuals "is to ignore the social, political, and historical contexts which shape the nature, form, and goals of state agencies" (Kauzlarich *et al.* 2001, 189).

[2] "This form of criminality cannot be reduced to an event of corruption in the pursuit of individual goals. Rather it is an intentional and strategic use of violence (Cohen, 2003), by which state agents and agencies participate in the planning, execution or covering of criminal activities, following a collective criminal setting expressing ideological, political or economic state goals and involving complex networks of organizational deviance and compromising the individual responsibility of the agents135. In short, state crime is essentially crime by, for the benefit (Doig 2011: 44) and on behalf of the State (Friedrichs 1992: 53)" (Umaña 2017, 187).

[3] According to the Human Rights Watch 2016 world report, this is a worldwide situation. The organization observed *inter alia* that crimes perpetrated by law enforcement officials result in frequent impunity in Georgia (p. 275). In Guatemala, the use of lethal force by the national police is a chronic problem and impunity is the rule (p. 292). LGBT people in Kyrgyzstan experience ill-treatment, extortion, and discrimination from state actors with widespread impunity (p. 368). In Mexico, unlawful killings of civilians by security forces take place amid an atmosphere of systematic and endemic impunity (p. 401). In Nigeria, impunity for human rights crimes committed by security forces remains pervasive (p. 422). In the Philippines, there is a failure to address impunity for the government's rights violations (p. 457). In Sri Lanka, an organization observed that the government took no significant measures to end impunity for security forces abuses, including police use of torture (p. 527). In Ukraine, there is a widespread perception of impunity on part of law enforcement agencies (p. 598). In Venezuela, impunity for abuses by security forces is noted as a serious problem (p. 631).

[4] Sanctuary is variously designated apsis or *concha* (from the shell-like, hemispherical dome), and since the Middle Ages, especially, it has been called "choir," from the choir of singers who are stationed there. Other names are *presbyterium*, *concessus chori*, *tribuna* or *tribunal*, *hagion*, *hasyton*, *sanctum*, and *sanctuarium*.

character. In this study, we use the metaphor *sancturium* to deepen the description of impunity. As a situation with a negative connotation, impunity represents the constitution of social spaces, general situations or specific conducts that remain inviolable, especially from legal accountability. Our use of the metaphor in this study refers to shelter or protection by virtue of which state criminality, take refuge from criminal accountability and general legal intervention.

The subtraction of a state's criminal conduct and, in general, the crimes of the powerful, from the organized operations of the criminal justice system is a relevant element for a sociological characterization of impunity. Under this premise, this study addresses the following question: *In what sense does the study of power sanctuaries contribute to a better comprehension of the issue of impunity?*

2. From the right to sanctuary to sanctuaries of impunity

In premodern times, people were allowed to flee from justice or persecution within the limits of certain sacred places (Alston 1912). "Sanctuaries in antiquity were multipurpose. As stated in Mosaic Law, they served as shelters to all those being prosecuted or persecuted. (…) [They] were often large places, sheltering persons of all shades and varieties: political dissidents, rebels, fugitive prisoners of war, persons deviating from the official creed and opinion, debtors, and of course criminals" (Bianchi 1994, 139).

This right endured antiquity and appeared in medieval legal tradition (Shoemaker 2011, ix). In the Western world, the confluence and tensions between the Christian doctrines and civil powers gave an unprecedented attention to the recognition of sanctuary as a right (Shoemaker 2011, 5). Some modern readings assert that this right emerged due to the imperfection of the legal system (d'Mazzinghi 1887) and the vulnerability of certain political regimes (Stanley 1861, 414), which had to cede power for the preservation of their authority. In the Early Middle Ages, this right was perceived as an expression of the power of the Catholic Church; however, according to Shoemaker (2011), by the Later Middle Ages, it was perceived as an appropriate form of civil government and pious kingship, "occasionally implemented with more enthusiasm (…) than the papacy found commendable" (Shoemaker 2011, 5). Following this interpretation, we can infer that sanctuaries were not expressions of the inadequacies of civil political power; rather, they expressed and enhanced the status of monarchs as rulers (Helmholz 2012, 589). Shoemaker's (2011) interpretation of the right to sanctuary as an expression of civil power is useful for the metaphor of sanctuary as *containment of the legal system* blocking the possibility of legal redress as a manifestation of political power.

To accept Hart's (2012, 27) assertion that "[t]he social function which criminal statute performs is that of setting up and defining certain kinds of conduct as something to be avoided or done by those to whom it applies, irrespective of their wishes," would entail that the strategy of obstruction of the legal system creates a form of exception or pseudo-exclusion of those to whom the laws should apply.

Such strategy is constructed by invoking the status of the actors. In cases of state criminality, for instance, where there is wrongdoing by authoritarian regimes and dictatorships against the population or where there are grave breaches of human rights perpetrated in the context of democracies, perpetrators are allegedly immunized

appealing to the supposed social worth of the actions, protection of the way of life of a particular population, or, ultimately, survival of the State or a particular configuration of the political and economic system. The imagery of self-exclusion, in sum, is drawn on the grounds of an open claim of protection from the *ius commune* regarding conducts that weigh against others (paraphrasing Libellus de verbis by Cortese in Steinberg 2013, 115).

The premodern *right to sanctuary*, however similar to the general protection (*sanctuary*) created around state criminal actions and other wrongdoing of the powerful as measures of exclusion from legal restraint, entails significant differences. Three substantial differences are derived to better characterize sanctuary as a containment of the legal system (i.e., characterization of impunity).

The *first substantial difference* is that while the "right to sanctuary" is a legal entitlement in favor of wrongdoers, who therefore enjoy protection from prosecution. Although it may take the form of *impunity de iure* as legal measures of immunization from legal action, impunity supposes a strategy for preserving power that is rejected as a proper legal right. In fact, human rights have championed and established the fight against impunity as a common goal of every political system. Thus, in the case of the crimes of the powerful, especially involving state criminality, although offenders may claim the support of the political structure to avoid the operation of the criminal justice system, such demand, as prevalent as it may appear in a specific social setting, does not constitute a legal entitlement, as it does not meet a correlative duty that is legally enforceable and justiciable.

For this reason, sanctuaries of impunity involve the design and implementation of a series of maneuvers or stratagems subtracting the wrongs from legal reaction. The efficacy of these mechanisms can be attributed to the different resources and machineries connected to the political and economic powers. From a sociological perspective, it is noticeable that the power and authority deriving from the State and other powerful actors and the considerable amount of resources that such actions express, severely constrain legal intervention when powerful agents engage in misconduct. Their privileged position allows them to mobilize significant resources to conceal their activities (Lasslett 2012, 126). Under the auspices of these resources, culprits may be reasonably admissible for evading legal intervention (inspired in Rodenhäuser 2014, 916).

Their operation remains dependent on different social factors and their implementation remains contestable as unlawful. Thus, this issue can be characterized as a struggle between the criminal law system and those institutions or systems acting as protectors, interested parties, or collaborators of the crimes (e.g., the military or political system). This tension may involve an asymmetry of power between the legal system and the intervening system, impeding the former to react autonomously; in other words, the organized criminal group might be sufficiently powerful to avoid any scrutiny. When the legal system is designed to avoid accountability of perpetrators of violence – such as state criminal conduct –, the legal framework may obfuscate the tension when the judiciary implements legal norms. However, *de iure* deterrents from legal accountability involve as well a form of interference of the criminal system program of action.

Sanctuary for crimes of the powerful is a strategy of protection from prosecution supported by social systems capable of exercising some sort of intrusion against accountability. In these cases, the independence, authority, competence, and impartiality

of the judiciary are affected. Interferences hampering legal accountability may be alien to the administration of justice.[5] This problem may be originated within the judicial system as well when tribunals set in action the political interference and other forms of social bias. In other words, the problem of interference is not limited to its actors, it rather refers to its objective: hampering any form of legal accountability shielding criminal conduct.

Sanctuaries of impunity are not physically delimited. In this sense, there is also a difference with Gerald Neuman's (1996) "anomalous zones." Through this expression, the scholar refers to geographic areas or particular contexts wherein certain principles accepted as general to the wider society are suspended in regard to certain problematic situations. Within this idea, Neuman (1996) studies two examples, namely, the red districts and Guantanamo refugee camps. In reference to the red districts, Neuman observes that the legal system tolerates activities that are normally considered as illegal (even criminal in some cases), without the need of a general assessment of breaking the validity of the legal order. In this same study, Neuman examines Guantanamo as a refugee camp, especially for Haitians. This is an example of the anomalous zones, because Guantanamo (in this and many more that can be added) emerges as a place where foreigners are deprived of their constitutional rights, including rules that are claimed to be essential to the legal system and that, although suspended, do not imply the formal deletion of the existing order. Within the study of "anomalous zones" there is the authorization of certain activities, in favor or against certain people, without invalidating the legal order. This double condition shows a similarity with the metaphor of sanctuary to impunity for crimes of the powerful, as on the one hand, there is no general invalidation of the order and, on the other hand, it is presented as both a benefit to "all" and an impairment to "certain people."

Different studies frame the phenomenon of impunity as a problem of power. In 1898, Tarde observed that powerful actors often escape from accountability and public redress, placing them above the law. Tarde (1898) referred to this problem as "impunity," shielding the strong (in terms of political power) from punishment. Tarde's work is useful for indicating a problem of certain social systems or actors who can obstruct the possibility for implementing the criminal law program of action (although in his work, Tarde preserved the traditional construction of impunity as opposed to punishment). The asymmetry of power concerns the possibility of action of the judicial system vis-à-vis the ability of defendants interfering with the judicial process and the vulnerability of the victims.

David (2006) proposes a classification of delinquents according to their interaction with the criminal law system referring to four categories, namely, the *sacrificeable* (under-privileged people who are recurring clients of the criminal justice system), the *undesirables* (deviants that regardless of their danger are portrayed as threatening and,

[5] The Inter-American jurisprudence has established that judicial independence is essential for the exercise of judicial function (Inter American Court – IA Court –, 2004, 171; 2005, 145; 2009, 67). This principle gives rise to a series of guarantees and rights, as the protection of judges against external pressures, guaranteeing their working conditions, stability, and due process of appointment and dismissal. The IA Court has understood that the tenure of judicial officers under these parameters ensures judicial protection against interference and political pressures.

hence, repressed through a combination of social control mechanisms), the *inaccessible* (delinquents who are hardly reached by the legal system, because of their skills, status, or power), and the *untouchables* (who enjoy legal immunity from prosecution).

The *second substantial difference* is that the medieval right to sanctuary triggered a composition system when implemented. Accordingly, the wrongdoer was protected from prosecution until a fine was paid, amends were made, goods were forfeited, or penance or exile took place, after which the person was exempted from corporal or capital punishment (Shoemaker 2011).

> Let no one dare drag forth a guilty one who has fled to a church, neither give him over to punishment or death, that the honor of churches may be preserved; but let rectors strive to obtain the fugitive's peace, life and members. However, let [the fugitive] make lawful composition for that which he did iniquitously (Gratian's Decretum at C. 17. q. 4. c. 8 in Corpus Iuris Canonici, 1879–81 in Shoemaker 2011, 157).

While impunity sanctuaries for the powerful may protect wrongdoers from legal action, it does not refer the parties to other forms of protective structures, nor does it provide compensation to victims or society. In this context, the lack of acknowledgment of the harm, victims, and possible reparations are the main issues in the crimes of the powerful, especially those involving state criminal conduct.

A regular justification of state criminal conduct is the allusion to the *raison d'état* as a narrative of necessity and urgency, according to which wrongdoing is performed for the sake of the State. The *raison d'état* does not necessarily deny the illegality of the conduct but intends to legitimatize it as an ultimate measure, a savior resource, and *ultima ratio* for protecting a superior interest. In the words of Foucault (2009, 138), the reason a state adopts the form of the infringement of the principles of law, equity, and humanity is in the sole interest of the State.

The form of containment that is described as impunity sanctuaries may not only involve the concealment of the misconduct — ranging from methodical obfuscation to denial or different forms of justification and excuses — but may also manifest as express endorsement, direct acknowledgment, or indirect recognition of the actions without admitting their consequences, followed by the subsequent obstruction of reaction by the criminal justice system.

For understanding the trajectories of denial and justification of such conduct, it is extremely illustrative the statement of former president Santos before the Colombian Truth Commission with regards to over 6,402 extrajudicial killings perpetrated by the military between 2002 and 2008 and falsely passed off killed in combat. President Santos asserted in his declaration:

> I wrapped myself in the tricolor flag and on several occasions, I publicly defended the institutions from what all of us at the establishment considered as malicious accusations. After all, I had belonged to the Military and had a firsthand knowledge about the integrity and the values with which officials are trained. I felt for them – and I continue feeling – much admiration and gratitude. These were inventions and forgeries, I thought to myself. Truth began to overcome the state of denial in which I was. On the one hand, I began to realize the consequences that the pressure to produce casualties caused to the operation of the military. In many of the official visits that we conducted together with then President Uribe to the garrisons, the number of casualties

> was presented as one of the most important report that commanders on duty gave us. (Santos 2021)

In the case of extrajudicial killings an extensive political campaign was directed not only to publicizing the 'hits' but to undermining the victims. The war was measured by litters of blood shed by people vulnerable to the action of the military and the plausible denial of society. In this sense, denial for such criminal conduct is not only designed to obstruct prosecution through the glorification of killing. Denial is also used at the service of creating social acceptation and engaging as many people and institutions of society as it can, facilitating crime and creating an endorsement structure that participate with or without express knowledge of the situation.

In this sense, sanctuaries shielding from prosecution grave human rights breaches are not necessarily constituted by the express determination of their actors, as they may exceed their mere knowledge and ability. The constitution of sanctuaries in these cases suppose complex networks composed of a number of resources. Such elements include symbolic elements capable of shaping public opinion and building alliances that operate before, during and after state crimes are committed. Such factors compose a savior rhetoric, aimed at 'ensuring the continuity of institutions' through shielding human rights breaches from legal scrutiny.

For such crimes, the mechanisms of denial, obfuscation, protection, and moralization may portray legal intervention as implausible, absurd, and even unjust. In this context, there is no alternative legal response to the problematic situation, simply no offer for a solution and, essentially, no acknowledgment of the problematic situation. In the case of extrajudicial killings in the context of the Colombian armed conflict it is noticeable that the rhetoric of heroism and the justification of war create a kind of political authorization for the conducts that hampers the legal system to properly react. Including the complicity form different sectors of the judiciary that assimilated and prompted the criminal conduct as has been revealed in the dossier that the Special Jurisdiction for Peace conducts regarding over 6,402 extrajudicial killings perpetrated by the military between 2002 and 2008 and falsely passed off killed in combat.

This characteristic is related to the *third substantial difference*, that is, the right to sanctuary entails a form of addressing of wrongdoing rather than a way of obfuscating the misconduct. In its medieval form, the right to sanctuary was attributed to individualized wrongdoers recognizing their infractions against which the legal system refrained from reacting. On the contrary, sanctuary for state crime and other misconduct of the powerful is meant to obfuscate the conduct, to hamper the application of the code crime/non-crime and to preserve the anonymity of the criminal (or at least of her actions as performed on behalf of the State or as endorsed by different structures of power).

With respect to state crime, the containment of the legal intervention may be implemented through strategies of silencing and denial as is noticeable in cases such as the disappearances that took place in the Palace of Justice (hereafter, PJ) in 1985. Different commentators have asserted that the PJ events are "one of the climactic moments in Colombia's problem with violence" (IACHR 1993: Introduction), "one of the most serious and disturbing events of the institutions in the long history of violence experienced by Colombia" (PJ Truth Commission in Gómez *et al.* 2010, 276), and

ultimately "one of the most emblematic human rights violations of the country's armed conflict" (DZC 2015).

This case comprises a series of crimes that materialized during the taking of the National Palace of Justice by the M19 guerrilla and the subsequent retaking of the building by the military, in November 1985. At the PJ, around 100 people died, including 11 justices of the Supreme Court; a conflagration consumed a significant part of the structure of the Palace and several hostages were released. The military labeled some as suspects in connection with the guerrilla and held them for interrogation. During their detention, some people were tortured, some were killed, and some forcibly disappeared (Inter-American Court 2014).[6]

For this case, a Truth Commission was established by the Supreme Court. The institution concluded that a political pact of silence was implemented concealing the misconduct committed during the PJ military operation: the complaints for the disappearances were not seriously addressed in the aftermath of the events; they were ignored and dealt with in silence (Gómez *et al*. 2010).

A form of obfuscating the misconducts and hampering the recognition of the crimes may entail an ambiguous endorsement of the relevant normative code while simply seeking to exempt a particular misconduct from any legal consequences (Hogg 2012, 90). Such situation entails a form of denial involving knowledge without acknowledgment. "Denial, then, includes *cognition* (not acknowledging the facts); *emotion* (not feeling, not being disturbed); *morality* (not recognizing wrongness or responsibility) and *action* (not taking active steps in response to knowledge)" (Cohen 2001, 9).

Denial may be expressed through verbal statements or other practices and ideas. As Cohen (2001) has emphasized, there are at least three prominent classes of statements of denial affecting the acknowledgement of the raw facts (*literal denial*), their meaning (*interpretative denial*), or the implications that follow from them (*implicatory denial*).

Literal denial is usually presented as "nothing happened." In the PJ case, retired Colonel Alfonso Plazas Vega (hereinafter, Plazas or retired Col. Plazas), who oversaw the field operation to retake the PJ, affirmed many times that no one disappeared in the case, while he also affirmed the opposite several times:

[6] For wider details about the events: Umaña 2022.

TABLE 1

People did not disappear[7]	People disappeared
"Such thing as the disappeared of the Palace of Justice simply does not exist" (Redacción El Heraldo 2012). "If we analyze what the legal procedures against military officials found (…) you can notice that the cafeteria employees never came out alive" (Plazas 2011, 27). "There are no disappeared people" (La Noche 2012, min. 4').	In 2008, Plazas published a book where he affirmed that Irma Franco "(…) is the only person about whom there is evidence that survived and was brought to the Casa del Florero, where she was interrogated by intelligence officers. At eight o'clock in the evening, a group of men in civilian clothes took her in a jeep. Since then, she does not appear" (Plazas 2008, 5). "The M19 is the one responsible for what happened. I think the M19 is not responsible for forced disappearance but for murdering. I want to make clear that the only disappeared is the guerrilla Irma Franco"[8] (Semana 2015).

Table 1. Literal denial v partial recognition in the PJ case.

Statements of denial can be directed not only to the brute facts but also to their conventional explanation (*interpretative denial*). These are hermeneutic in nature and are often expressed through a "phraseology (…) needed if one wants to name things without calling up mental pictures of them" (Orwell, *Politics and English Language*; cited in Cohen 2001, 107). The usual interpretative denial statement is "it is not what it looks like." In the PJ case, retired Col. Plazas asserted that there were no disappearances but killings (executed by the guerrilla), there were wrong identifications of the bodies, and he even asserted that hostages were treated well and there was proper consideration of the hostages rather than enforced disappearance:

[7] This affirmation is also sustained in a publication from the Corporación Defensoría Militar (2013) that concludes that in this case there are no disappeared people but corpses without proper identification.

[8] In 2013, Plazas's defense had already affirmed that "[i]n the PJ one person disappeared" (Colprensa 2013).

TABLE 2

"People did not disappear; they are dead or unidentified"	"I am the rescuer, not the perpetrator. Others are responsible for what happened"
"I insist: there are no disappeared" (Plazas in El Espectador 2012a). "They are not disappeared, they are dead because they were killed by the M19" (Plazas 2011, 27).	"According to the prosecutor, retired Col. Plazas was coauthor of enforced disappearance just because he was cautious in dealing with the released hostages. What a conclusion! (…) It turns out that an act of mere courtesy with the hostages (…) trying to give them preferential treatment, when they were going out of that nightmare produced by M19 terrorists, called by the prosecutor 'a rebel group' (…) is the evidence of having committed such an atrocious crime as the one for which I have been wrongly accused? (…) No, Madame Prosecutor, that is not an argument of Col. Plazas ordering mistreatments or disappearance of people. It rather indicates quite the contrary" (Plazas 2008, 60–62).

Table 2. Interpretative denial in the PJ case.

Statements of denial may also focus on the implication of the events (*implicatory denial*). In these cases, the denial relates to the psychological, political, or moral implications that follow a wrongdoing. "Implicatory denial concedes the facts of the matter and even their conventional interpretations. But their expected implications (…) are not recognized. The significance of the reality is denied. These are 'denials' in the loosest sense. They evade the demand to respond by playing down the act's seriousness or by remaining indifferent" (Cohen 2001, 22). These mechanisms are numerous; some include the denial or minimization of the victims, condemnation of the condemners, advantageous comparisons with alleged aims, and scapegoating.[9]

The marginalization of victims occurs when the implications of the harmful actions are trivialized or unrecognized. In the PJ case, this form of denial had many expressions, for instance, when the victims' demands were portrayed as desperate expressions due to their social vulnerability attacking the validity of their claims:[10] "All they want is money". Plazas (2011) published a book entitled *The Business of Pain*, were he argued that the prosecution was part of a "business" created by unscrupulous individuals who profit from the suffering of others (Plazas 2011, 327). According to him, investigations were

[9] Scapegoating aims at blaming some "bad apples" for the misconduct of the group. This argument aims at maintaining the credibility of the system as well as making the rhetorical denial of the violations believable.
[10] The portrayal of the victims as individuals only interested in money is questioned in the interviews that were conducted on the case. Reparations do not seem to be the main argument why victims seek justice. In a general scenario, La Rota *et al.* (2010) concluded that on the prosecution of crimes against unionized workers in Colombia, only 8.3% dossiers for violence against unionists victims requested economic reparation for the damage. However, according to the study, in most cases the judge ordered *ex officio* financial compensation for the victims.

prompted by a group of people who were focused on taking economic compensation out of the situation: "we have to remember that they are very humble people. The business of pain" (Plazas 2011, 135). In different opportunities, Plazas (2011) assessed that the families of the disappeared are desperate to obtain money because they are poor.

Other forms of implicatory denial are advantageous comparisons claiming the benefit of a collective goal through arguments of convenience of the wrongdoing. This can be noticed when the violations are portrayed as mechanisms preventing other harmful activities, when the victims are exposed as worthy of harm, or when violations are considered as defending higher interests (Cohen 2011). An example of this logic can be found in the PJ case: Col. Plazas held an improvised press conference in the middle of the military operation. When asked what the military was doing, he asserted, "Here we are pal, saving the democracy!" This phrase has remained as a stigma of the military operation to which the victims replied, "murdering and disappearing people is no way for saving democracy!"[11]

According to Aldana-Pindell (2004), social acceptance of justifications may create a representation of empathy for the perpetrators. This could affect the feasibility of prosecutions as the social audience perception is publicized as the general view of the violations. In the case of enforced disappearances, denial affects not only the information about the disappeared persons but also the eventual blames and legal claims around what happened that can be easily portrayed as conjectures or part of conspiracy plans. "The general uncertainty as to what is really happening makes it easier to cling to lunatic beliefs. Since nothing is ever quite proved or disproved, the most unmistakable fact can be imprudently denied" (Orwel 1984, cited in Hogg, 2012, 92). This particularly affects the prosecution of enforced disappearance since its core definition involves the obfuscation of information on the fate or whereabouts of victims.

TABLE 3

"There are no evidences"	"I am too clever to do things as what they say that happened"
"There is no evidence to suggest that there are people disappeared. The evidences that the prosecutor Buitrago presents to the public opinion through the mass media, are false! (…) If there is no evidence, there is no crime of forced disappearance. And, if there is no crime of forced disappearance, there is no way that civil courts have competence on this matter" (Plazas 2011, 29).	"How could it make sense that Col. Plazas, whose troops helped to rescue at least two hundred and sixty people, would have taken a group of workers who served coffee to torture and kill them afterwards? That is outrageous." "Col. Plazas, who has always been in top places (…) is not so clumsy as to have a group of people killed and buried in the same military unit he was commanding" (Plazas 2011, 257).

Table 3. No evidence, no crime.

[11] "At the time of the massacre in the Palace of Justice, and habitually, the military leadership depicted itself, and was described by the admiring media and politicians, as the defenders of democracy. And they are indeed the designated defenders of the particular version of democracy they defend with such ferocity. The Palace of Justice is a chilling but fascinating exploration of the realities that underlie the copious rhetoric of a pseudo-democracy" (Cruise 1993, 9–10).

The condemnation of the condemners is a form of implicatory denial relevant to strategies of obstruction, by which a person blamed for a crime can argue *tu quoque* by turning accusations back on the accuser. In the PJ case, retired Col. Plazas (2011) asserted that the testimonies of the prosecution were frauds organized by "dangerous communists" and his wife asserted that the people who gathered them were a "coalition of terrorists" and a group of "monstrosities of evil" (Vega 2011, 57). According to retired Col. Plazas, human rights NGOs, especially those involved in the procedures, are industries of conspiracy against the military and "apologists of terrorism" who want to change democracy for a "totalitarian Marxist system" by manipulating the justice system (Plazas 2011, 259–260). Further, he affirmed that the prosecution was complicit in drug trafficking and criminal gangs such that "the organized crime infiltrated the judicial system" (Plazas 2011, 327).

The attack against the forms of gathering evidence is particularly relevant in cases of enforced disappearance. By erasing the traces of the abducted person, perpetrators delete traces of their criminal actions and possible accountability. If there is no crime, there cannot be any responsibility, and of course, no legal redress. Such problem entails the intention to remove victims from the protection of the law.

The strategies of obstruction directed to the victims of the PJ case started when they received threats urging them to stop the search for their loved ones (Inter-American Court, 2014: 304). This implied a form of neutralization of the system because the victims were the main actors pushing for the criminal law investigations. Additionally, their legal representative, Lawyer Umaña, was threatened from the beginning of the inquiries[12] and was later assassinated in April 1998.[13] In this regard, María Navarrete[14] affirmed that "when Eduardo Umaña was killed I thought the case was lost" (personal interview). Jorge Franco[15] said, when this happened, "I completely stopped everything [referring to the search of information about his sister], because I thought none of that legal activity was worth it" (Juzgado Tercero 2010, 116). In this regard, Rosa Cárdenas[16] said "they killed the person who was like our father, who was taking us down that little road of justice; those were very sad times, and the case was paralyzed" (personal interview).

This form of blockage against the justice operators, the victims, and their legal representative was also directed against the information that they had gathered. In this regard, Ángela Buitrago (prosecutor) assessed that over 75 videos and several audio recordings of military communications that were part of the dossier had disappeared when she assumed the investigations on the case. Blockages against the justice system when assessing evidence may constitute a factor of impunity preventing the system from ascertaining the facts, establishing wrongdoing, and determining those responsible for them. This happens, for instance, when witnesses are attacked. In the PJ case, out of the group of witnesses, a former military officer, Edgar Villamizar, declared in 2007 that he

[12] In August 1987, a pamphlet threatening Umaña signaled him as a lawyer critical of the PJ military operation.
[13] In that same month, Umaña had obtained a Court Order for the exhumation of the PJ remains.
[14] Wife of Hector Beltrán, one of the employees disappeared.
[15] Brother of Irma Franco, one of the guerrillas disappeared.
[16] Daughter of Luz Mary Portela León, one of the employees disappeared.

had personally witnessed the torture of at least five people who, according to him, had been brought to the Cavalry School in 1985 (Semana 2015). At a turning point of the trial, Villamizar vanished (Tribunal Superior 2012, 403) and in 2011, he retracted his confessions declaring before the Procuraduría that he had never served as a witness in the process. Finally, in 2015, Thania Vega (Plazas's wife) tweeted: "Villamizar, who had the courage to denounce that his supposed testimony against Plazas was false, has died. May he rest in peace" (Justicia 2015).

Another form of interference expressly originated in the political system was the reaction of the national government and different Congressman against the prosecution. These pressures were particularly visible in public statements from President Uribe[17] who proposed a general law shielding the military from prosecution to "avoid demoralization of troops" when the first ruling against Plazas was issued (Redacción El Tiempo 2010). In the same line, his successor, President Santos, when the appeal Court ordered in 2012 to hold a public ceremony apologizing for the crimes committed on PJ, did the contrary offering a public apology "on behalf of all Colombians" to President Betancur and the Armed Forces for the Appeal Court decision (El Espectador 2012b). Further interference came from the Military High Command (CM& 2011) and some Congressmen.[18] Regarding this situation, the UNHCHR asserted that political and media pressure against the verdict posed "a threat to judicial independence and can increase the vulnerability of judicial officials and victims' families and their representatives" (UN 2012).

The described interference from the political system reminds the metaphor of sanctuary as an act of kingship (in the sense of the right to sanctuary), demonstrating the intention and ability of the political power to obstruct the operation of justice.

In this sense, the constitution of impunity sanctuaries involves the analysis of different power structures enabling strategies to obstruct legal redress. Such understanding also involves a space for contentions and strategies fighting against impunity, involving overcoming asymmetries of power *vis-à-vis* criminal actors, enhancing the capacity of the legal system to recognize and respond to criminal conduct of the powerful and protect victims.

3. Concluding remarks

Through the metaphor of *sanctuary*, we could characterize the strategy of obstruction of the legal system as a series of maneuvers or stratagems aimed at facilitating those engaged in criminal activities to evade legal liability, making them *untouchable* by the criminal law system. In this context, the lack of control over criminal activity is not to be

[17] When the ruling against Plazas was issued in 2010, then President Alvaro Uribe publicly expressed his regrets for the decision. In a publicized meeting President Uribe and the Military Commanders "examined" the ruling declaring to the media that Plazas's conviction was a piece of "legal insecurity" against the military while the Armed Forces Commander remarked the expectation of the institutions that the decision would be reconsidered (Semana 2010).

[18] In September 2011, the former vice-president, the heads of the largest business corporations and high politicians published a front-page article in the journal *El Tiempo* entitled "Why Colonel Plazas Vega is not free yet?", pushing for Plazas's liberty. The Congress also put pressure on the case during the debates of a Transitional Justice Bill. The author of the project declared that the Bill aimed at making right the "historic mistake" of holding the military accountable in the PJ case.

limited to a failure of restraint but may be observed as an intended outcome fostered by social systems alien to the legal system. Indeed, the strategy of obstruction of legal redress may be enforced by different social systems, creating a *safe space* for perpetrators beyond the reach of the criminal justice system.

A major clarification about the concept of impunity as it relates to the general problem of legal redress is that impunity may be incidental to or outside of the internal operation of the justice system. When reviewing the subject of criminality in connection with the phenomenon of impunity, a power intervention obstructing the possibility for implementing the criminal law program of action emerges for the analysis. In this sense, when observing the problem of impunity, it is important to consider the interactions of the legal system with other social systems and actors capable of affecting the autonomous operation of the criminal justice system.

These considerations may be important for the reconstruction of the concept of impunity. Caution should be taken when designating a phenomenon as an obstruction: any form of pressure, opposition, or tension against the judicial system may not constitute a problem of impunity. The problem of obstruction, based on the study of state criminality, is quite singular and specific: this phenomenon emerges when the judicial system is unable to maintain, preserve, and guarantee the possibility of autonomously implementing the criminal law program of action. In this sense, the metaphor of sanctuary shifts the main understanding of impunity as a problem that is exclusive to the internal operation of the criminal system to a wider constraint that supposes studying possible asymmetries of power from the legal system vis-à-vis other powerful actors.

In sum, we argued that the idea of sanctuaries of impunity provides a description that contributes to the visualization and acknowledgement of the continuum of state criminal conduct and those structural conditions that simultaneously facilitates crimes and impedes prosecution that is often encompassed within the notion of impunity.

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