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Gangs, mafia, organised groups in prisons: the formal and informal strategies of managing the "public enemy": Two cases-study between Global North and Global South

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Abstract

How does the label of "public enemy" influence the strategies of managing prisons? Using insights coming from on-the-field research conducted in different countries (mainly inside the prison for gangs in Triángulo Norte – El Salvador, Guatemala, Honduras – and into "high security" units for mafia members in Italy), the article focuses on the forced relationship between two complex organisations, the State and its punitive apparatus on one side and the organised groups, the non-state actor, on the other. Organised groups bring inside the walls of prison their habitus, organisation, leadership, hierarchy, symbols, typical of that continuum. The special units for dangerous prisoners are becoming a transnational strategy for experimenting different forms of relationship between State and criminal organisations: recognition, degradation, desertion and the underestimated desistance.

Key words

Organised crime; special prison regimes; mafia; gangs; desistance

Resumen

¿Qué influencia ejerce la etiqueta de "enemigo público" en las estrategias de gestión de prisiones? Utilizando hallazgos provenientes de investigaciones sobre el terreno realizadas en varios países (sobre todo, en prisiones para bandas del Triángulo Norte –El Salvador, Guatemala, Honduras– y en las unidades de "máxima seguridad" para miembros de la mafia en Italia), el artículo se centra en la relación forzada entre dos complejas organizaciones: el Estado y su aparato punitivo, por un lado, y los grupos organizados, el actor no estatal, por el otro. Los grupos organizados traen intramuros de la prisión su habitus, organización, liderazgo, jerarquía, símbolos, típicos de ese continuum. Las unidades especiales para presos peligrosos se están convirtiendo en una estrategia transnacional para experimentar con diferentes formas de relación entre el

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Estado y las organizaciones criminales: reconocimiento, degradación, deserción y el infravalorado desistimiento.

Palabras clave

Crimen organizado; regímenes penitenciarios especiales; mafia; bandas; desistimiento

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1. Special prison regimes and the contemporary punitive-turn

The formal or informal establishment of *special prison regimes* for the so-called "dangerous prisoners" is a feature of contemporary punishment that links the prisons of the Global North and the Global South. This article aims to examine these global trends, drawing on research from different contexts.

In order to better understand how special prison regimes link the Global North and the Global South, we need to briefly clarify the theoretical perspective adopted, which is rooted in the critical prison studies tradition.

Critical Prison Studies' scholars share the vision of penalty not as a set of narrowly technical strategies for controlling crime but as a broad social field that is embedded in the variegated institutional landscape of modern societies (Sutton 2013). Such a social field includes law and regulations, public (and private) administrative agencies, civil society, animating discourse and ideologies on punishment and influencing officials' daily practices.

This perspective is well-rooted within socio-legal perspective starting from the classical study carried out by Alexis de Tocqueville and Gustave the Beaumont (*On the penitentiary system in America and its Applications in France*, 1833) and with Emile Durkheim's first *Theory of Punishment and Social theory*. It soon became clear that forms, functions and transformations of punishment were not only an instrument to react to criminality and to individual deviance but an institution of power and social control.

So, punishment should be understood primarily in terms of its effects on the broader population and on governance, because "[t]he messages punishment communicates are aimed – not only – at criminals and potential criminals but at law-abiding citizens" (Garland 2001). The debate became even more intense since the 1970s the *mass incarceration era* began and it strongly influenced the approaches to prison trends and policies especially in the-so called Global North. In 1972 in the United States the number of inmates was 326,000: by 1975 such figure had soared to 380,000, doubling in the following decade and continued to increase at a 10% annual rate until the beginning of the new century, when the number of people incarcerated was in excess of 1,8 million (if we add people on parole and on probation, the figure reached around 7 million, 1 person every 310 US citizens).[1]

At least three correlated streams of critical theories could be used as backgrounds of our analysis on the use of prisons and, distinctly, the application of special regimes for "dangerous" prisoners.

Firstly, the studies based on the *economic* changes, underlying the link between the rise of neoliberalism with imprisonment as a new way to manage poverty and unemployment caused by widespread deindustrialization and globalisation (in this

[1] In absolute numbers, after the US the other "prison-states" countries currently are China (1.65 million inmates), Russia (640,000), Brazil (607,000), India (418,000), Thailand (311,000), Mexico (255,000) and Iran (225,000). For a complete overview on the statistics of incarceration, see the Word Prison Brief coordinated by the International Center for Prison Studies. For a European quantitative overview see the SPACE I-Council of Europe Annual Penal Statistics (Aebi and Cocco 2024).

sense, quoting Wacquant, "Punish the Poor" seems to become a common approach to penalty).

This desegregation of the welfare state has led to a new *political culture of crime control*, causing the shift from *welfare* to *prisonfare*. In such a context, as Simon suggests (2007), politically driven punitive reforms in criminal justice have inspired a "culture of fear" affecting many institutions. Not only courts, prisons and law-enforcement agencies, but also school, workplace and family.

Specifically on criminal policy, this cultural shift has been defined *penal populism* (Pratt 2007, Simon 2007), which is a phenomenon whereby the fear of crime has progressively become a tool to build political consensus. For many years policy-makers – independently of the ideologies and parties they represented – used a tough stance on crime and on other forms of deviance or anti-social behaviours to increase political approval ratings.

This trend contributed to separating to a certain extent the use of incarceration and criminality rates. A phenomenon that is typical of post-Fordism societies (De Giorgi 2010), it basically consists of a massive use of penal control measures, especially imprisonment (Garland 2001) that "disciplines" increasingly large multi-ethnic communities and harsh economic recessions. As a consequence, welfare instruments based on social inclusion are being substituted by repressive policies, even if official statistics show that numbers of crimes committed are decreasing (Simon 2007, Matthews 2009, Sparks and Simon 2012).

Whichever stream of theory is the most convincing, *mass imprisonment* diverted the penal system from its official goals, proclaimed worldwide in many constitutions and bill of rights,[2] such as to reduce recidivism rates (*deterrence*), to pursue the rehabilitation of offenders, to protect victims and to develop inclusive and sustainable instruments of social control.

On the contrary mass imprisonment emphasises the main hidden contemporary purpose of incarceration, the *neutralization* of entire groups of population, deemed "dangerous" or seen as "public enemies". Neutralization as a general hidden contemporary purpose of incarceration is practically reached through instruments of *microphysics of power* – quoting Foucault – able to transmit clear messages both to society and to the prison community itself.

Special prison regimes for dangerous prisoners are one of these instruments.

Following this trend, the focus of the article is therefore on the dual-use of special prison regimes, on the one hand as a tool for the peaceful management of prisons, but also as a political tool used by State power to wage war against those whom the State itself considers to be "public enemies".

[2] The most important legislative and judicial sources addressing the issue of the rehabilitation paradigm of prison in Europe are the European Convention of Human Rights, the European Prison Rules, jurisprudence and warning made by the European Court of Human Rights, The Committee for the Prevention of Torture, the Committee of Minsters of the Council of Europe; in America, the American Convention of Human Rights, the Inter-America Court of Human Rights. Worldwide the so-called "Mandela Rules" introduce UN Standard Minimum Rules for the Treatment of Prisoners (SMRs).

To this end, we are going to analyse two case-studies I had the chance to empirically study. The case of *Mafia* in the Italian prison system and the *Maras y Pandillas* (gangs) in Central America, distinctly in the so-called *Triángulo Norte* (the area of Central America formed by El Salvador, Guatemala and Honduras).[3] They are comparable, because they are organisations considered as criminal both in the national and international context, with their own hierarchy, internal rules – either formal and informal and both able to "control" a specific territory (Varese 2010, Brotherton 2015).

Even if the two case-studies come from very different contexts, one within the Global North and the latter one into Global South (Sozzo 2023), the hypothesis to be further discussed is whether the strategies to manage "dangerous groups" in prisons are localised national or generalised transnational phenomena. In other words, I want to demonstrate the existence of a cross-national tendency while public institutions face the issue of punishing powerful criminal organisations, even if regulatory models, traditions, trends and practices of prison management deeply differ.

To detect this hypothesis, I will divide the analysis on two different levels, analysing similarities and differences between the two case-studies: on one side, the legal definition of "dangerous group" and its impact on prison organisation, on the other side how the presence of dangerous group informally changes the purposes and strategies of the institutional interventions implemented by prison staff.

2. Legal definition of "dangerous groups" and of "special prison regimes", from emergencies to administrative routine

If we assume a direct link between the membership of an organised group and the application of "special" prison treatment, we must firstly consider what is considered by law "dangerous group" and how it becomes a "public enemy". In other words, how the legal definition impacts on the penitentiary system, influencing professional cultures, executive rules of managing prison and "public discourse".

Of course, every time criminal law introduces broad definitions related to "dangerousness", it takes the risk of using non-legal parameters, strongly influenced by political discretion. Those broad definitions come through especially as a consequence of political turbulence, linked with particular historical periods, where the urgency of

[3] The empirical insights presented link together different socio-legal researches conducted by the Author between 2018 and 2023. The whole empirical material regarding *Maras y Pandillas* have been collected during a research expedition, coordinated by the Italian Agency for International Cooperation, in order to study the prison system (distinctly the juvenile prison system) of Central America and the Caribbean. During over 90 days of fieldwork in 7 countries (Belize, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Panama), the author conducted a direct observation in 31 detention facilities. The observation focused on the organisation of inmates' daily life and on the respect of their human rights. Besides the observation, the researcher conducted many hours of semi-structured interviews, focus groups and informal meetings with institutional authorities and inmates, especially gang leaders or former gang members. A longer analysis of these materials has been published in a chapter of the *Routledge International Handbook of Critical Gang Studies* edited by David Brotherton and Rafael Gude in 2021. The insights regarding the Italian prison system and its 'special prison regime' have been collected through the Italian Prison Observatory, coordinated by the Author since 2015. The Observatory is the main independent body collecting quali-quantitative data on Italian prisons. Its 80 observers, mainly socio-legal scholars and independent researchers, but also healthcare practitioners, lawyers and social workers visits about 100 prison facilities every year.

contrasting threats to the public order seems to be impellent. In other words, "dangerousness" seems to be an unavoidable label to be used in law.

It is outside the scope of this article to conduct a socio-historical analysis of the models of legislation introduced after a period of political turbulence, but it is a fact both the case studies analysed were heavily impacted by the tumultuousness caused by, for Central American countries, the unrestrained increases of the level of violence in the early 2000s and, for Italy, the violent attacks committed by mafia groups in the early 1990s against judges, policeman, journalists, trade unionists and even public monuments.

In such complicated times, where the State appears to be "under attack", it is a common reaction to implement "emergency laws". Even within the public debate, *war*, *emergency*, *control*, *order*, soon became the new buzz-words used by policy-makers to justify the introduction of new measures to contrast these organisations. This is what has happened in both cases. But it is interesting to note as such emergency measures, born to be an exception (Agamben 2003), have been institutionalised (Salazar Ugarte 2012), shifting from extra-ordinary to ordinary measures.

This is even more surprising if we consider, the two groups were already well entrenched within the country. Therefore it is demonstrated that *gangs* in Central America have been active since the early 90s when a massive "deportation" from US to home-countries of hundreds of young migrants in response to violent street riots in different Us cities and especially in Los Angeles (Cannon 1999). In Italy the presence of the mafia, especially in the South, is even more rooted, as there is evidence of its activities since the beginning of the 20th century (Lupo 2004).

So, both in Central America and Italy, new regulations on gangs and mafia were firstly introduced as exceptional, transitional and temporary rules, using law, but also special decree or administrative acts, even if these organizations were not exceptional.

The state is obsessed with a general sense of urgency to appear to the public as firm, responsive and ready to act, whether it is in response to new threats (such as political or religious terrorism) or to "change the approach" to existing challenges.

In particular, the "zero tolerance" doctrine affected *Triángulo Norte* being denominated *Mano Dura* and *Super Mano Dura* strategies, developed in Central and Latin American in the early 2000s. Empathized by moral panic campaigns (Cohen 1973), gangs were soon identified as the main reason for the high level of violence in those countries.

This process of criminalisation is based on significant legal provisions adopted in the area.

Honduras was the first country of the area where the *mano dura* has been pioneered. In 2002 president Ricardo Maduro premised on the idea that gangs are primarily responsible for Honduras's frequent deadly violence and he started the "war on gangs", promising to make the country safe through sheer force. The resident Juan Orlando Hernandez approved some security-oriented initiatives to battle his country's rising murder rate: he created the Military Police of Public Order (PMOP), he also has successfully managed to pressure cell phone companies into creating a perimeter around prisons that cuts off satellite reception.

Guatemala in 2015 reduced the minimum age for criminal responsibility (at the time, president Otto Pérez Molina campaigned under the slogan *Mano dura, cabeza y corazón* ("Firm hand, head and heart"), advocating a hard line approach to rising crime in the country.

In El Salvador the decision of the *Tribunal Constitucional* on the 24 August 2015, which assimilated the *maras* and *pandillas* to terrorist organisation, applying from then onwards the *Ley Especial Contra Actos de Terrorismo* (LECAT). Under the supervision of a special task-force based in San Salvador, even the FBI helped Central American police forces in the coordination of law enforcement operations against gang members. This is probably a step forward towards criminalization: this judicial decision constitutes a sort of "official" recognition of the power and dangerousness of gangs. From now on *maras* and *pandillas* become by law a form of power capable of destroying the authority of the State. The will to "eradicate" gangs from El Salvador has been one of the main reasons for Nayib Bukele's political popularity, since he became the president of the country in 2019.

The impact on the prison system (both adult and juvenile) of those "exceptional" policies has been huge in the last two decades: in El Salvador the general prison population increased from 7,754 to 37,190 in 2020 (in percentage, it translates into a 393% increase), in Honduras from 11,500 to 19,619 in 2022 (+52%), in Guatemala from 6,979 to 23,361 in 2023 (+219%).[4]

In Italy immediately after the murder of the anti-mafia criminal prosecutor Paolo Borsellino, occurred in July 1992 shorter after the killing of his colleague Giovanni Falcone in May 1992, the law decree 306/1992 (converted to law 356/1992) was considered the "strong response" of the State to mafia. Within a general political willingness to compare mafia to terrorism, it introduced the special prison regimes for mafia leaders through article 41-bis of the prison law. The highly symbolic title of this article is "emergency situations", even if mafias are phenomena well-rooted in modern Italian history, since late 19th century. Such kind of prison regimes never existed before, nor during the political turbulence caused by political terrorism during the 60s and 70s. This has happened, while during the early 90s, Italy doubled its prison population rates, from 46 prisoners for every 100,000 of the national population in 1990 to 83 in 1995. In absolute numbers, it means an increase from 26,150 to 46,908 people imprisoned. This increasing trend continued until 2013, where the Italian prison population reached 70,000 people and the country was condemned by the European Court of Human Rights for its endemic prison overcrowding and the poor living conditions (see, the pilot-judgement *Torreggiani vs Italy*, 2013).

Given those scenarios, in both cases, prisons appear to be as a part of a broader strategy to contrast violent groups and organisations considered at the same level of terrorist organisation.

The common transnational idea is that the members of those groups deserve harsher prison regimes only on the basis of their membership and the hierarchical role inside their organisation. The overall idea inspiring every "special prison regime" is to add repressive-punitive significance to the status of deprivation of liberty.

[4] Source: World Prison Brief coordinated by the ICPS-International Center of Prison Studies.

This idea of making "special" prison regimes, based on the presumption that some inmates, due to their affiliation to organised groups, deserve a non-ordinary prison treatment seems to be accepted on the international level. Usually, those special regimes are linked with the concept of "high security" or "maximum security": definitions that well interpret the purposes of such regimes, recalling, once again, the idea of "different" prisoners.

So, even if, legally speaking, those regimes have been introduced during particular historical periods, they have been soon normalised, becoming a common strategy to manage prisons.

In this sense, it is interesting to underline how the special prison regime has been accepted by the international courts dealing with prisoners' human rights.

The European Court of Human Rights for instance admits it cannot be said that detention in a high-security prison regimes, be it on remand or following a criminal conviction, in itself raises an issue under Article 3 of the Convention (prohibition of torture and inhuman treatment). Public-order considerations may lead the State to introduce high-security prison regimes for particular categories of detainees and, indeed, in many State Parties to the European Convention of human rights more stringent security rules apply to dangerous detainees. Following the ECHR explanations, these arrangements, intended to prevent the risk of escape, attack or disturbance of the prison community and the contacts with the outside are based on *separation* of such detainees from the prison community together with tighter controls.

If we better analyse the ECHR case-law on special prison regimes, we must firstly underline Eastern European Countries (Poland, Romania and Bulgaria) on one side and Italy because of the 41bis prison regimes are the cases most scrutinised by the European judges.

Basically the Court analyse if special prison regimes practically respect human dignity, "that the manner and method of the execution of the measure do not subject prisoners to distress or hardship of an intensity exceeding that unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured" (*Piechowicz v. Poland*, 2012, paragraph 161). The placement of a detainee in a special prison regime may also give rise to an issue under Article 8 of the Convention. While subjecting a detainee to a special high-security regime is not, by itself a branch of such provision,[5] for it to be compatible with the requirements of that provision it must be applied "in accordance with the law", pursue one or more of the legitimate aims listed in paragraph 2 and, in addition, be justified as being "necessary in a democratic society". In the context of the "in accordance with the law" requirement, the Court has emphasised, in particular, the necessity of ensuring the protection from abuse and the detainees' effective participation in the proceedings

[5] Art 8, European Convention of Human Rights: "Everyone has the right to respect for his private and family life, his home and his correspondence. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

concerning his or her placement in the special regime, including the effectiveness of any review procedures concerning the matter (*Maslák v. Slovakia*, 2022).

The European Court has deeply examined the restrictions arising out of the application of the section 41bis regime for mafia leaders in the Italian context. Such cases gave rise to issues under Articles 3 and 8 of the Convention. From the perspective of Article 3, the Court has held, once again, that the imposition of the 41 bis regime does not give rise automatically to an issue under Article 3, even when it has been imposed for lengthy periods of time. Consequently, the main concern becomes the durability of such a regime.

In the well-known case of Bernardo Provenzano (*Provenzano v. Italy*, 2008), the boss of Cosa nostra captured in 2006 after a 43-year absconding.[6] The Court clarified whether or not the extended application of certain restrictions under the section 41 bis regime attains the minimum threshold of severity required to fall within the scope of Article 3, the length of time must be examined in the light of the circumstances of each case, which entails, inter alia, ascertaining whether the renewal or extension of the impugned restrictions was justified or not (*Provenzano v. Italy*, 2018, paragraph 147).

However, the Provenzano judgement is relevant in another respect: the renewal of the regime despite the presence of specific medical opinions relating to the total impairment of the state of health – and despite the presence, in the case under examination, of an opinion contrary to the renewal by the District Anti-Mafia Prosecutor's Office of Caltanissetta on the basis of the deterioration of cognitive functions.[7]

This element highlights the relevance that the Italian Authorities wanted to assign to the *symbolic value* of the detained person in relation to the role played in the criminal organisation to which he belongs – and in this specific case to the prolonged absconding – to the detriment of the purpose of such regime contained in the *actual* possibility of producing communication, information or even orders to the organisations themselves. This symbolic slippage is and must remain entirely external not only to the exercise of the dutiful penal function, but also to the identification of the forms in which the penal sanction is carried out and above all to the risk of yielding to criteria of consensual legitimacy in giving effectiveness to the sanctions themselves, rather than to criteria of mere adherence to principles of legality and full respect for the fundamental rights of the person.

In supporting the Italian government position the Court regards Article 8 of the Convention noted that before the introduction of the 41 bis special regime, many dangerous prisoners had been able to maintain their positions within the criminal organisations to which they belonged, to exchange information with other prisoners and with the outside world and to organise and procure the commission of criminal offences. In that context the Court considered that, given the specific nature of the phenomenon of organised crime, particularly of the mafia type, and the fact that family visits have

[6] Bernardo Provenzano died on 12 July 2016, less than four months after this regime was renewed for a further two years. The 41 bis regime had previously been imposed on him by measures staggered by one or two years on 5 April 2007, 3 April 2008, 2 April 2009, 1 April 2010, 28 March 2012, 26 March 2014 and, finally, 23 March 2016. He was admitted to the special section of the San Paolo Hospital in Milan on 9 April 2014.

[7] Opinion delivered on 22 July 2013 and reported in the aforementioned judgment of the Edu Court, paragraph. 61.

frequently served as a means of conveying orders and instructions to the outside, the – admittedly substantial – restrictions on visits, and the accompanying controls, could not be said to be disproportionate to the legitimate aims pursued under Article 8 of the Convention (*Enea v. Italy*, 2009, paragraph 126). In the Enea case, the Court found that the domestic authorities had convincingly established the applicant's dangerousness when extending the special regime. Moreover, the applicant had had a possibility to receive visits from his family and his other complaints of inadequate conditions of detention had been unsubstantiated. The Court thus found that the restrictions on the applicant's right to respect for his private and family life did not go beyond what was necessary in a democratic society in the interests of public safety and for the prevention of disorder and crime.

Also the two cases against Turkey (in 2005 and 2014) in relation with the "political imprisonment" of the Kurdish leader Abdullah Öcalan are helpful in order to better understand what are the judicial concerns of special prison regimes, even if here the Court deals with a case considered as "political detention".

In those cases, the Court never put in doubt – it would be outside their role to do so – the definition of Öcalan as "one of the most dangerous terrorists in the country". In 2005 the Court did not find the special regime against the Convention, but in the second decision (2014) the Court decided that for a certain period of time his detention regime had amounted to a violation of Article 3, considered as inhuman treatment, due to the prolonged prisoner's isolation. Öcalan for nineteen years and nine months was the only inmate in a prison located on an island; there was a lack of communication media to prevent the applicant's social isolation (protracted absence of a television set in the cell and of telephone calls); excessive restrictions on access to news information; the persistent major problems with access by visitors to the prison (for family members and lawyers) and the insufficiency of the means of marine transport in coping with weather conditions; the restriction of staff communication with the applicant to the bare minimum required for their work; the lack of any constructive doctor/patient relationship with the applicant; the deterioration in the applicant's mental state resulting from a state of chronic stress and social and affective isolation combined with a feeling of abandonment and disillusionment; and the fact that no alternatives were sought to the applicant's solitary confinement at the relevant time.

Similar concerns about the compatibility between the human rights of prisoners and special prison regimes have also been raised in the American context by the Inter-American Human Rights System and, in particular, by the Inter-American Court of Human Rights, through high-impacting decisions concerning members of armed groups and ordinary prisoners (*Maximum Security Prison at Kilometer 14 v. Colombia*, 2004) and members of different armed groups (*Political Prisoners in Buildings 1 and 2 of the National Model Prison in Bogotá v. Colombia*, 2000).

As it is now clear, from a human rights perspective, the special prison regimes seem acceptable until they do not impose a prolonged *separation* and *social isolation*.

3. Common trends of "special prison regimes": the dichotomy separation *vs* inclusion

It soon becomes clear separation is a key-aspect of every special prison regime. A closer look to what empirically means separation within the two case-studies, gives the possibility to reflect how the legal definition shapes the law-in-action. While the contemporary prison rhetoric is extensively influenced to terminology such as re-entry, inclusion, socialisation, underlying the concept of prisoners as a subject to be re-insert within the social group, after a break of the social contract (the offence committed), the prison regimes for "dangerous" individuals are explicitly built around the concept of separation.

All "special prison regimes" consist of a catalogue of limitations aimed at reducing the frequency of contacts with the outside world of the top members of criminal organisations, to prevent them from continuing to run the criminal organisation from prison. It is therefore a preventive instrument (and is in fact applied indiscriminately to convicted persons or those awaiting trial), which aims to "isolate" the person from the rest of the criminal organisation and the outside world, but given the rigidity of its content, it is evident that it also takes on a repressive-punitive significance in addition to the status of deprivation of liberty.

More specifically, in the Italian context there are two branches of "special prison regimes", the 41bis regime and the high security circuits (*Alta Sicurezza*). Technically only the 41bis is a proper "regime" stated by law, the letter is a circuit, set by an administrative provision of the prison administration since 2009.

Legally speaking, the 41bis regime is the most particular – and critical – even if very limited applied. On a total 67,000 inmates, in 2023 there were 740 persons at 41bis, 204 serving a life sentence. In 1993, when this regime was introduced, there were 498 inmates.

The prisoners at 41bis are housed in special sections or institutes exclusively dedicated to them (12 in all over the country) never into regions where the mafias are most influential. The aim of the restrictions is to cut off all contact with the criminal organisations outside, but also to limit interaction with other prisoners as much as possible, especially if they belong to the same criminal organisation.

The person in 41 bis can only have one in-person meeting per month with family members and always without physical contact. An exception is made only for children under 12 years of age, who, with the authorisation of the magistrate, are the only ones allowed to have physical contact with their parents who are detained at 41bis.

The only other possibility of communicating with the outside world is through a 10-minute phone call per week that they can make to their relatives.

In any case, all interviews, phone calls and letters written from prison are subject to police control. The only "free" and unrestricted communications are with defence lawyers.

Prisoners in 41bis are allowed to receive limited amounts of money from outside and objects, in order to avoid ostentation of power within the detention section.

"Exclusion" is also very evident whenever the law decides on life inside the hard prison sections. The inmates at 41bis all live in single cells and are only allowed out for two hours a day, divided into groups of four, belonging to different criminal groups. These groups of four are called "social groups" and are, in fact, the only people the Mafia bosses see during the day. With these they can talk, but not exchange objects.

To this list of limitations, the legislator had added others, such as the ban on cooking food, which, however, was declared illegitimate by the Constitutional Court in 2018 because it was unnecessarily vexatious. Each prison institution housing persons subject to 41bis can provide for further limitations at the level of local regulations, creating considerable diversity between institutions.

Who decides who should be detained under 41bis prison regime? The decision is made by motivated decree of the Ministry of Justice – following also an investigation of the Ministry of the Interior – usually on the proposal of the public prosecutor in charge of the investigation and after consulting the National Anti-Mafia Directorate and the law-enforcement agencies. Two prerequisites must exist: one "objective", i.e. the commission of one of the mafia-related-offences strictly provided for by law, and the other "subjective", i.e. the need to demonstrate the presence of "elements such as to suggest the existence of links with a criminal, terrorist and subversive association" and a position of leadership in such organizations.

The application of the regime lasts four years and can be extended if the conditions are still met (in particular the "subjective" one of the ability to maintain links with the criminal, terrorist or subversive association to which one belongs).

The High Security circuits, regulated in 2009 by Prison Administration are divided into three levels (High Security 1, 2 and 3). In order to be considered "high security" prisoners, only the crime committed for which one is convicted or charged is relevant, while membership of the criminal organisation is not required. If it is one of the offences on the (increasingly long) list in Article 4 of the Prison Act, then one automatically enters this circuit. Inclusion in the High Security circuit does not imply a difference in the prison regime (as in the case of 41 bis) in relation to the rights and duties of prisoners and the possibility of access to treatment opportunities.

High Security is divided into three types, "High Security 1". in which are placed prisoners for whom the 41bis regime has not been renewed (in prison jargon they are called the declassified, meaning the persons who have spent a previous period at 41bis).

Then there is "High Security 2", around 80 persons, where members of terrorist organisations, including international or religious ones, are placed.

The largest group (around 9,000 persons) is in "High Security 3", where persons convicted or accused of being members of mafia, but also association for the purpose of drug trafficking, kidnapping for extortion, human trafficking, and some serious sexual offences are placed. These are crimes that do not necessarily presuppose affiliation to a mafia organisation. In any case, differently than 41bis, it is not necessary to demonstrate a role of leadership inside the organizations, this is why at High Security 3 are allocated members of the mafia with medium or low positions inside the organizations.

The legal framework in the Central American context is less formalised and the power of the prison administration in managing gang members in prison is higher, as a consequence the most interesting aspect to consider when comparing the two contexts is the cohabitation between members of different criminal organizations and the role given to prison staff on the allocation of prisoners.

Differently from Italy, where leaders of different criminal groups must cohabit, both at 41bis and High security circuits, in Central America, the first strategy in common in the three countries to peacefully manage prison facilities is the strict partition between different gangs. While at 41bis to be members of the same organization lead you to be separated, in Central America is the opposite.

The two most powerful gangs active within Triángulo Norte, Mara Salvatrucha (MS 13) and Calle 18, are everywhere strictly divided, so the main informal method to allocate the inmates appears to be their membership, even if national laws and international standards require considering mainly the judicial position – dividing people in pre-trial detention and convicted – or the family status, trying to send the person to a prison close to his or her family. A prison director from Honduras interviewed during the fieldwork said: "Firstly we need to know as soon as possible who they belong to". Consequently, the individual identity loses importance in respect of their affiliation.

In the eyes of prison staff, the pandillero or the marero "belongs" to someone: they belong to their gangs. That's why for their own safety and for the safety of the staff, the institutional actors have to urgently label him in order to decide where to allocate him fast.

This "urgency" seems justify by historical reasons: in Guatemala since August 2005, when the Pacto del Sur between MS-13 and Calle 18 was broken, a series of deadly attacks against staff and members of rival groups began, first at the adult prison in Escuintla and then at other prisons (including the Gaviota juvenile prison).

Immediately after the end of the pact, cohabitation among members from different gangs became impossible and even forbidden by their leaders. The idea of strict separation also impacted the juvenile prison system, and it was deemed inevitable after riots between the two gangs in the juvenile centres of San Francisco Gotera (July 1999) and Ciudad Barrios (September 1999). Segregation began to gain followers under the belief that gangs hated one another to death, and life was the ultimate good to be safeguarded, to the detriment of any ambition towards rehabilitation.

Then, in August 2004, in the worst massacre recorded in a Salvadoran prison, 32 teenagers were killed, and several were beaten up or went missing. Two weeks after that massacre, the government formalised the unprecedented decision of assigning entire facilities either to MS-13 or Calle 18 members.

Since then, the segregation of gang members has become a milestone in the evolution of the gang phenomenon. As a consequence, while observing prisons in Triángulo Norte, it is common to find even in official documents next to the name of a prison the name of the gang most represented inside. Therefore, in El Salvador, while we were visiting three prisons under the responsibility of ISNA, Instituto Salvadoreño para el Desarrollo Integral de la Niñez y Adolescencia we have discovered in Tonacatepeque, 92% of the young people belong to MS-13; in El Espino, the totality of the detainees belongs to

Pandilla 18 (but divided in two groups, Revolucionarios and Sureños); in the female prison, 97% of inmates have a link with a gang, and they are divided into different units by affiliation as well.

In Guatemala, the partition is even stricter: two facilities are exclusively dedicated to Pandilla 18 (Etapa II and Gaviota, which is the biggest juvenile prison of the country) and one to MS-13 (Anexo). The female prison (Gorriones) hosts mainly girls affiliated with Pandilla 18 and, in a different building, a small group of MS-13 girls. In all four prisons, there are special wards dedicated to non-affiliated juvenile offenders, known as paisas.

Only in Honduras, where the strict separation is still presented as the only possible way to manage juvenile prisons, the affiliation is verified directly by the judicial authority and not by prison staff. So gang members are sent to a specific prison directly by the judge according to affiliation.

As a consequence, at El Carmen Prison in San Pedro Sula, only members of Mara Salvatrucha are represented; at the Renaciendo, mainly members of Calle 18 (and other smaller gangs like Chirizos and El Combo Que No Se Deja). Coexistence and shared use of common areas are considered impossible, and there are no ongoing experiments in this regard.

In Honduras, this division by groups reaches a stage of self-management of entire sections of the facilities by gang members. Therefore, the level of control by the staff is reduced to a minimum. There, the young inmates are in charge of surveillance and maintenance of the section, with formal shifts also at night. Even our access inside the prison units as researchers was approved by the inmates, and our movements were constantly monitored.

Nowadays in Central America strict separation seems irreversible. Recalling the labelling theory developed by the School of Chicago and by Howard Becker (1973), it is interesting to underline the duable meanings of the "labelling strategies" used by institutional actors, especially prison staff. On one side, it is a way to recognise the powerful hierarchy, the very existence of gangs (their "gothic sovereignty", using the definition by John Carter, 2014); on the other side, it promotes the osmosis between street culture and prison culture. In other words, the strict separation between gangs seems not only as a safety measure but also as a mutual recognition between gangs and authority, the first step to achieve a permanent negotiation between institutional actors and gangs inside prisons. Traditionally, as explained by Sykes and Matza, imprisonment is shocking; upon entering a prison, the individual loses his status (student, worker, father, son, citizen) and he is forced to maintain only the "label" of the inmate. Inmates usually undergo a process of "mortification of the self" first described by Goffman. But for gang members in the special prison regimes of Triángulo Norte, the shock of imprisonment (Goffman 1961) appears less upsetting, because they basically maintain the same status and the same position in the hierarchy of the group. They are gang members both in free and captive society; their individual and collective agency is preserved (Brotherton 2015).

Another aspect to consider is that in Italy, in the case of mafia members, the membership to a specific group is directly proof by the judicial system and the penitentiary authority does not have any relevant rule neither formal nor informal.

On the contrary in Central America the role of prison authority is much more crucial, they are asked to decide the allocation and to determine the correct membership and the hierarchical role inside gangs.

On how to label inmates, each prison acts independently; therefore, the experience of the staff in charge of the so-called first-entry interview assumes a central role. This first point of contact between prisoner and staff is a crucial aspect of the punishment. According to Sykes and Matza and their theory of delinquency (1957), it could be considered a ritual, the first of a series of degradation ceremonies the inmates must undergo after incarceration. During the interview, the staff first considers "aesthetic" aspects (the presence of tattoos – now in sharp decline, as they are too likely to expose inmates to stigmatisation and criminalisation risks – the way of dressing, the haircut), but also the way of speaking, the use of idiomatic expressions that could reveal affiliation with a group or another.

Second, the "geographical origin" (depending on the neighbourhood or street where the juvenile offender says he lives, the interviewer deduces that he may belong to one specific gang). Therefore, many operators admit that the margin of error is large. The risk is to take for gang members, even unaffiliated teenagers, maybe only because they live in a particular barrio. Sometimes even the other inmates are involved in the labelling process: in Honduras it happens that in case of doubt about affiliation to a group, before deciding the allocation, the young inmate is accompanied before a leader who will either recognise him or not as a pandillero, considering above all the use of typical idioms or tattoos on the body. In those cases, the leader grants his informal authorisation to put the juvenile offender in that sector.

Those first-entry interviews are often unrecorded and mainly informal, sometimes the prison staff are requested to fill in a survey where all information about membership are carefully noted, even the rank (called "fase") and the place where his group ("clica") operates.

Beside those relevant differences, it is important to note the allocation inside a "special circuit" is interpreted also as a recognition of the habitus of the inmates and of the position in the hierarchy of the group. Through this recognition, implicitly, their individual and collective agency is preserved (Brotherton 2010) and the osmosis between the informal code of prisoners (the convict code, quoting Irwin 1970) and the code of criminal organisation is enforced. Therefore, inside the special circuit for dangerous prisons the two social systems – prison and criminal organisation – become tangled.

4. Recognition, degradation and desertion: the current multifaceted purpose of the special prison regimes

The procedures followed to allocate "dangerous" inmates are not simply part of an organisational process ethically neutral, but they recall the crucial question about the purposes of prison, and, distinctly, the political sense of the special prison regimes.

Given the socio-legal scenario described in the previous paragraphs, the purpose of a special prison regime could not be considered rehabilitation (or reintegration or re-education, depending on the wording chosen by the national legislator). The repressive-turn in penalty mentioned at the beginning of this article has influenced ordinary detention regimes and, more intensively, the special prison regime, which, in many cases, are ones of the direct consequence of that turn.

As a consequence, inside the "special prison units" prison staff do not even have the chance to seek rehabilitation choosing within the broad apparatus of ordinary treatment activities (education, sport, work, culture and spirituality), because these "tools" of rehabilitation are limited (or even forbidden) by law. Moreover, the length of the sentence the prisoners in special regime are usually serving is basically unfeasible with a re-entry process in society.

So if rehabilitation is ontologically outside the scope of any special regimes, we should interpret the aims of such regimes somewhere between two antipodes, on one end, recognition of the criminal organisation to which one belongs, thus favouring inmates' *resistance* practices, or, on the opposite end, *degradation* with a view to *desertion*.

To understand the antipodes, it is helpful to use the empirical insights collected during the interviews with prison staff in Central America, applicable in different contexts changing the word "gangs" with the denomination of whatever "dangerous criminal organization".

The *recognition* of the criminal organisation is observable whenever a prison officer says: "La pandilla no es nuestro problema" ("The gang is not our problem"). For the ones (apparently the majority) who adopt this stance, membership in a gang stops at the door of the "institution" ("Se detuviera en la puerta de la 'institución'").

The recurrent justification is based on "personal safety" concerns: despite the security measures they adopt (choose a nickname while working, cover the numberplate of their cars while commuting to prison), they are still afraid.

It is true that, quite frequently in the past and even today, prison staff have been threatened or even murdered in both contexts. The ones not too afraid also mention the frustration:

> ¿Qué podemos hacer? Afuera, la sociedad no ofrece esperanza a los jóvenes pandilleros… terminada la sanción regresan a sus contextos y empiezan de nuevo como antes. Todos nuestros esfuerzos no sirven para nada.[8] (Interview with a social worker, Honduras)
>
> El profesional no puede hacer nada, son ellos los que deben querer cambiar. Nosotros no les podemos ayudar.[9] (F., social worker, El Salvador)

But this is, at the end, a form of the recognition of how powerful these organizations are.

As already noted above, whereas this approach prevails, the consequence is prison bureaucracy transforms the prison facility into temporary "territory" of the

[8] "What can we do? Outside, society offers no hope to young gang members… Once they serve their sentence, they go back to their world and they start again like before, all our efforts are useless" (all translations by author).

[9] "The staff cannot do anything, they are the ones who must change, we cannot help them".

organizations, a place that must be conquered, controlled and defended, exactly like the *barrio* (neighbourhood) or the *calle* (street) outside. As Conquergood underlines in his studies on the relation between spaces and gangs, the spaces of prison become "socio-political domains" (Conquergood 1997); consequently, it seems the condition of deprivation of liberty does not change the essence of "street organisation" (Brotherton 2007) and it enforce different form of resistance.

Exactly like outside, prison units, cells, grey courtyards are removed from state sovereignty and embezzled by the criminal organisations, where every member imprisoned must prove that he/she is strong enough or, at least, stronger than "them" (the prison authorities). It is "[t]he conscious or unconscious opposition of individuals and groups to structural constraints" (Brotherton 2007, p. 59).

As Carter notes, "[t]hey have transformed prisons into antimonuments, sites of negation that disrupt the temporality of politics and become sites of potential futures, in which gang members reclaim sovereign violence through expressions as invigorating as they have been esoteric" (Carter 2014, p. 477).

Detention, as we know it from the Foucauldian tradition, is the evidence clearly showing, once again, who are the enemies and what borders you have to respect, here and now.

The resilient attitude is even more evident when finishing serving the sentence:

> Salgo martes. Nadie me ha dicho cómo funciona. Tengo una tía, que tiene una tienda, le preguntaré si puedo ayudarla allí mismo. Pero alguien como yo, que pasó muchos años interno, no agrada a nadie, ni siquiera a la familia. Si la pandilla me llega a buscar… voy a tener que decidir si volver con ellos o… o… aceptar las consecuencias… Dios decidirá.[10] (Interview with R., leader of Calle 18, detained in a special prison unit of Guatemala)

The chronic lack of actions aimed at readmitting to society after imprisonment, despite the rhetoric of rehabilitation, is actually a great indirect help to the gangs, which remain the only point of reference for the inmates who are bewildered by sudden freedom.

The second approach seeks for *desertion*, mainly through *humiliation* caused by harsh prison conditions. In this case the end of the membership is crucial and the prison bureaucracy seems to have the duty to convince the prisoner to leave the organization or to betrayed it by giving confidential information to the public authority.

After all a detention regime that defines itself as "harsh" cannot but evoke the idea of an intransigent system that aims to "break down" (also psychophysically) those subjected to it, aiming, always in a latent form, at "redemption",[11] (*rectius* collaboration with justice).

In this sense it is interesting to note in the Italian context the main "criterion for ascertaining the severance of links with organised crime" (accepted also by the Italian

[10] "I'm leaving on Tuesday [the interview was held on the previous Thursday]. Nobody has told me how it works, I have an aunt who has a store, I'll ask her if I can help her right there. But nobody likes people like me, who spent years in prison, not even the family. If the gang comes looking for me… I will have to decide whether to go back with them or… or… to accept the consequences… God will decide".

[11] It is interesting to note the word used in Italian to define the collaboration with justice of a mafia leader is *pentimento*, recalling a sort of a transcendent meaning with ethical implication.

Constitutional Court sentence in 2001) as so to avoid (or to leave) the 41bis unit is the "actual collaboration" with the justice system.

This approach risks creating a kind of perpetual (but informal) negotiation between the prisoner and the authority, in which the prisoner gives information and in return gets less harsh treatment. Every national legislative framework should declare more clearly what the limits (or the non-limits) the police enforcement agencies and judiciary and penitentiary authorities could use to encourage the option of breaking the "pact" between the member and his group.

Quoting a prison officer from Central America this approach could be summarised as: "Queremos que el joven se disocie del grupo**"** ("We want them to leave the gangs"). In this case prison staff specifically address the gang issue and strive to start a path that leads away from the gang while respecting the original personal decisions of young people to join gangs. Within the Triángulo Norte, there are no specific laws that deal with the consequences of dissociation (with the only exception of special programmes for witness protection but strictly only for the duration of the criminal trial).

This approach is extremely interesting, because it opens a specific field of research over whether a member of the organisation actually has the opportunity – and the freedom – to choose to leave the group and whether it is legitimate – and appropriate – for state authorities to facilitate the desertion. Generally speaking, the membership to a criminal organisation is perpetual by definition and whoever collaborates with the State (seen as enemy) deciding to leave the organisation becomes a traitor.

But every organisation has its own rules, and many factors could play a role, in Central America: "The exit of the gang is not only possible, it is more common than people think, and despite the difficulties involved. If it is true that it is mainly a personal choice, but it is a decision in relation to which the gang must agree" (Cruz *et al.* 2017, p. 7). Indeed, the continuous inflow and outflow is not surprising.

Going deeper inside the rules of gangs, this "voluntary" quitting has different forms. On one side we found the sharpest way of desertion (in Spanish, *desistimiento*) and on the other side (see below, next paragraph) the softer *calmarse* (literally to "calm down") or the decision not to participate in the active life of the gang and its activities anymore (i.e. meetings, criminal acts, illicit traffic) while remaining a member, part of that eternal loyalty pact with the group.

From the prison perspective, desertion is more troublesome, because it is considered a true betrayal, heavily punished by gang rules, in the Triángulo Norte usually translating into death:

> Cuando sucede al interior del Centro, es un problema… tenemos poco tiempo para salvar al joven. Por lo general, ordeno el traslado inmediato de dormitorio, a continuación, ofrezco la oportunidad al joven de informar inmediatamente a la familia… ellos también, en ese momento están en peligro, y es importante que la noticia del abandono no los agarre de sorpresa. En los casos más graves, esto significa deben transferirse de inmediato e ir a un lugar seguro, de lo contrario la venganza de la

> pandilla sería inmediata. Estamos hablando no de días, de minutos.[12] (Interview with prison director, Guatemala)

None of the prisons observed have formal protocols or procedures that establish what to do if a young person expresses the will to leave a gang. The simple manifestation of the wish is difficult to understand by the staff. Often, people ask to "hablar" (to talk), asking for a meeting with a social worker or, more frequently, with the director, but they cannot do it openly, because they would be immediately seen by the other inmates and their behaviour considered suspicious. So it is common for them to rely on highly symbolic gestures that demonstrate the choice of desertion (running out of the bedroom or refusing to return after an activity or feigning discomfort in order to be taken to infirmary).

In other cases, the *desertion* is the final stage of long confidential operations by the intelligence agencies.

In case of desertion, the inmate becomes a "retirado" or "ex". This is a third group, different from the "activos" (gang members) and the "población común" or "paisas" (not gang members). They live in a specific prison unit with increased safety measures to protect them from gang vengeance.

A similar reaction is observable in the Italian context whenever a mafia member decides to collaborate with the judicial authority (commonly called "collaboratori"), they are moved with an urgent administrative decision made by the national prison administration to a different prison and allocated in a protected unit. Also the families outside can receive some forms of protections (i.e. a new accommodation far away from the territory where the criminal organisation operates).

5. Conclusions. Re-discovering *desistance*

During my research on special prison regimes, both in Central America and Italy, I have been surprised by the lack of the concept of desistance as a formal or informal strategy of governing prison.

Yet desistence could become the way to reshape the relationship between State power and "dangerous offenders" and for a punishment more respectful of human dignity, ethically neutral and utilitarian in terms of public security.

Desistance is "the process by which people come to cease and sustain cessation of offending behaviour" (Weaver 2019, p. 642), it is the renunciation of violence. Desistance underlines the need of criminal policy more concentrated on the offence and less on the offender.

In other words, desistance shifts the focus to the "dangerous" prisoner, emphasising the need for authority to achieve the renunciation of violence (and harmful behaviour), and

[12] "When it happens in prison it is a problem…we have little time to save the young person. In general, I order the immediate transfer from the dormitory. I then offer the young person the opportunity to immediately inform the family…they too, at that moment, are in danger, and it is important that they find out about the choice of desertion as soon as possible. In the most serious cases, this means they should leave immediately and move to a safe place, otherwise the revenge of the gang would be immediate, we are talking not of days but of minutes".

not necessarily the desertion from the organisation or the betrayal or, even, a moral change.

The process of distance can be facilitated by different factors and any "one size fits all" strategy is not helpful. Researchers in social sciences usually distinguish forms of individual desistance and of group desistance. In the first case they underline individual factors more related with the single offender, such as economical (Jump 2020), anthropological (Bugnon 2020), psychological and cognitive (Best 2019), family and gender (Leverentz 2014).

In the letter case they study social, historical and political factors, some well-known examples of group desistance are the cases of ETA in the Basque Country (Martinez-Herrera 2002), FARC in Colombia (Dudley 2004) or IRA and Sinn Fein in Ireland (Kee 2000). In all those cases, desistance has appeared as an effective strategy to deal with the political movements, and they could be used as historical examples to explore what are the form of desistance related to organized groups, even when the political implications are more nuanced.

Once again, a deep knowledge of the codes and rules of the organisation is essential, in Central America the example of "calmarse" (to calm down) is an accepted possibility (especially for gang leaders), and it does not usually entail negative consequences. Like an electronic device in stand-by, the one who chooses to "calm down" remains a gang member. What this means is perfectly explained by a "calm" gang member from El Salvador:

> Esta noche podrían venir a tocar a mi puerta y decirme, te necesitamos… tienes que hacernos un trabajo… no podría decir que no. Podría enojarme, quejarme, pero finalmente aceptaría… es por eso que trato de evitar los mismos lugares de cuando estaba activo. Espero que al no verme, se olviden de mí. (Interview outside prison, E., former leader of Calle 18, El Salvador).[13]

The process to obtain the "permission" to calm down from the leader of the gang can be long and complicated, and, in that situation, the gang member is quite submissive. Usually the gang requests one last "act", after which permission is granted.

> Hay que hablar, hablar, hablar, hablar… y esperar… pero al final tienes éxito. (Interview with P., former leader of Calle 18, Guatemala)

So far, in both cases-study, any attempt to seek for desistance have been interpreted as a "defeat of the State", a demonstration of its weakness so as an implicit victory of the criminal organisations and definitely not coherent with the zero tolerance doctrine previously described. Officers and civil servants have tried to find a way of dialogue with such organisation have been politically contested and even accused of criminal misconduct.[14]

[13] "Tonight they might come to knock on my door and tell me, we need you… you have to do 'a job'... I could not say no. I could get angry, complain, but I would finally accept… that's why I try to avoid the same places where I used to hang around when I was active. I hope that by not seeing me, they will forget about me".

[14] In Italy, this is the case of the criminal trial called '*trattativa*'- the negotiation-, where some high representatives of the States have been accused of seeking for a compromise with mafia leaders.

But desistance should become a strategy to be considered in order to have a peaceful and safer society. In this sense the special prison regimes could become a strategic setting, where both the strict respect of the inmates' fundamental rights and of the integrity of the State could be preserved.

But the determination to avoid any form of "dialogue" with criminal groups, and thus to nip in the bud any attempt at desistance, shows once again how the main aim of the special prison regimes is to send a political message to the community. This is also done by accepting the risk that, despite the severity of the prison regimes, criminal organisations will continue to exist, do business and increase their power. The paradox is that while the costs of these special prison regimes in terms of human rights violations and material management are high, the benefits are low.

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