

Nullum Crimen sine Præsente Iniuria: Time as a Diachronic Negative Element of the Offence

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ABSTRACT

Time is not merely an external procedural limit on the State's punitive power, but a structural, substantive component of the *gesamter Rechtszustand* that defines the criminal offence. This paper posits a fundamental dogmatic bifurcation within the temporal axis of the crime: while formal typicality crystallizes immutably at the *tempus commissi delicti*, substantive typicality operates as a dynamic normative vector. Within this framework, the statute of limitations does not just extinguish the right to punish; it reflects the progressive erosion of the fact's offensiveness (*konkreter Rechtsgutsangriff*). Commencing at the *tempus consummati delicti*, the limitation period (*tempus*) determines the temporal persistence of the harm to the protected legal interest (*Rechtsgut*), effectively functioning as a negative element of the typical act that matures *de die in diem*. By rejecting the volatile and sociologically driven metric of "social alarm" in favour of an objective measurement of the offence's current disvalue (*præsente iniuria*), the inquiry demonstrates that time enters the offence as a constitutive factor of its typified

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harmfulness. Far from representing a mere procedural bar to prosecution, the extinction of the offense through the lapse of time constitutes an institution of an inherently substantive nature: within the realm of *Tatstrafrecht*, time operates as a diachronic negative element, dissolving the act's degree of offensiveness and *ex post* draining typicality of its material substance.

Il tempo non è un mero limite processuale esterno alla potestà punitiva dello Stato, bensì una componente strutturale e sostanziale del gesamter Rechtszustand che definisce il reato. Il contributo individua una separazione dogmatica fondamentale all'interno dell'asse temporale dell'illecito: mentre la tipicità formale si cristallizza immutabilmente al tempus commissi delicti, la tipicità sostanziale opera come un vettore normativo dinamico. In questo quadro, la prescrizione non si limita ad estinguere la pretesa punitiva, ma riflette la progressiva erosione dell'offensività del fatto (konkreter Rechtsgutsangriff). A decorrere dal tempus consummati delicti, il termine prescrizionale (tempus) determina la persistenza temporale della lesione al bene giuridico tutelato (Rechtsgut), funzionando di fatto come un elemento negativo della tipicità che matura de die in diem. Rifiutando il parametro volatile e di matrice sociologica dell'«allarme sociale» in favore di una misurazione oggettiva del disvalore attuale del reato (præsente iniuria), l'indagine intende dimostrare che il tempo penetra nella fattispecie come fattore costitutivo della sua offensività tipizzata. Ben lungi dal rappresentare una mera causa d'improcedibilità, l'estinzione del reato per decorso del tempo si configura come un istituto di natura eminentemente sostanziale: nell'alveo del Tatstrafrecht, il tempo opera come elemento negativo diacronico, dissolvendo la portata offensiva dell'atto e svuotando ex post la tipicità della sua sostanza materiale.

1. Introduction.

The crime is not the historical event itself, but rather the reflection of that reality within the *gesamter Rechtszustand* ("entire normative complex")¹ as

¹ The reference to the *gesamter Rechtszustand* points to a category of German criminal-law dogmatics that does not designate a single doctrinal institution, but rather a systemic perspective: criminal law always operates in relation to the entire juridical order as a whole, not merely to the individual norm that has been violated. The genealogy of the concept is stratified. Its roots lie in the tradition of the *ius commune*, in which the offence was understood as an infringement of the

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described in every one of its elements for application to an indeterminate number of cases. It is a conceptual image corresponding to a normative or legal notion, encompassing every factor or coefficient (positive or negative) useful to describe the factual aspects (both natural and human) necessary to identify the punishable act, or, alternatively, a set of prescriptive propositions, even if only modificative or extinguishing. Each abstract factor or element captures one aspect of reality which, when combined with the other factual profiles absorbed by equally descriptive factors, composes the image of the historical fact that bears criminal relevance – that human act perfectly matching the *gesamter Rechtszustand* and giving rise to the penalty. This is clearly a functionalist interpretation that goes beyond the mere positive datum of the formal qualification of the concrete act, extending to include all instrumental norms related to the application of the sanction.

Legal reasoning must always be supported by arguments rigorously grounded in the positive law: these often arise from objections to a dominant interpretation, aimed at replacing it with a new reading. Every legal reflection carries with it a different and sometimes heterodox vision of the legal order as a

ordo iuridicus in its entirety; this approach is then rationalized by the Enlightenment and the codifications, which conceive the criminal statute as an expression of the general will and thus as a synthesis of the overall juridical order. Nineteenth-century German dogmatics (Binding, von Liszt) consolidates this framework by interpreting the criminal norm as a command of the legal order and criminal protection as the safeguarding of the essential conditions of social life. The decisive shift occurs, however, in the second half of the twentieth century, with the post-war reconstruction of the German legal order and, above all, with Jakobs's systemic theory, according to which criminal law serves to stabilize the normative expectations that make social coexistence possible. In this perspective, the offence is not merely the violation of a norm, but the negation of the validity of the legal order; punishment, in turn, restores confidence in the continued vigency of the normative system as a whole. It is in this context that the reference to the *gesamter Rechtszustand* acquires a technical meaning: it denotes the systemic horizon within which typicality, wrongfulness, and culpability are situated, and which functions as a parameter for assessing the legal relevance of conduct. Contemporary scholarship (Roxin, Frisch, Schünemann) has further developed this approach by linking material typicality to the function of protecting the overall legal order and to the systemic coherence of the protected legal interest. Even in Italian scholarship, although the term itself is not explicitly used, the category is received through the theory of material typicality and the conception of criminal law as a system of guarantees of the legal order (Fiandaca–Musco, Pulitanò, Donini). In sum, the *gesamter Rechtszustand* represents the systemic and unitary dimension of the legal order that criminal law contributes to preserving and constitutes the theoretical premise for understanding the selective function of typicality and its connection with the overall structure of the system.

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whole. An argument untethered (absolute) from any pre-comprehension is purely imaginary.

The distinction between the historical event and the crime – understood not as an empirical occurrence but as a conceptual construction – constitutes one of the cornerstones of contemporary criminal law theory. The crime does not coincide with the naturalistic event; rather, it corresponds to its normative reconstruction within the *gesamter Rechtszustand*, that is, the entire complex of norms – definitional, integrative, permissive, modifying, or extinguishing – that together delineate the legal figure of the offence. From this perspective, the punishable act is a conceptual image emerging from the interaction between descriptive and normative elements, each capturing a profile of reality relevant to the protection of the legal interest. This image is not a mere transcription of reality but the result of a process of selective abstraction, through which the legislator identifies and typifies only those aspects of human conduct that acquire significance for the legal order. Typicality, therefore, is not a static list of elements but a functional model that enables the interpreter to recognize, among the multitude of possible events, those that constitute a violation or endangerment of the protected interest.

This approach aligns with the normativist and functionalist theories developed within the German tradition, from Binding and Beling to the more recent elaborations of Jakobs. In these theories, the crime is not a “piece of reality” but a normative figure constructed through the combination of descriptive elements (referring to empirical data) and normative elements (referring to legal evaluations). The *gesamter Rechtszustand* does not end with the statutory definition of the offence in the strict sense; it encompasses the entire set of norms governing the relevance of the act, its attribution, the conditions of punishability, the grounds of justification, the grounds excluding culpability, and, importantly, the causes of extinction of the offence. Every norm that affects the possibility of applying the sanction participates in defining the conceptual image of the crime, as it contributes to determining whether and to what extent the historical event can be subsumed under the abstract legal figure.

Within this framework, legal interpretation cannot be conceived as a neutral or mechanical operation. Every argument is situated within a horizon of meaning, a pre-understanding of the legal system that guides the selection and

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hierarchy of interpretive criteria. Criminal law dogmatics, far from being a purely technical exercise, is a theoretical activity that presupposes a comprehensive vision of the legal order, its functions, and its values. Objections to dominant interpretations, as well as proposals for new readings, are not arbitrary deviations but physiological moments in the evolution of the law. Every theoretical reconstruction of the crime reflects a particular conception of the relationship between the individual and the legal order, between liberty and security, between legality and substantive justice.

In this context, the reference to statutory limitation (*prescrizione*) as a “cause of extinction of the offence” – as formulated in Article 157 of the Italian Criminal Code – assumes decisive systematic significance. The Italian legislator’s choice to classify limitation among the causes extinguishing the offence, rather than the penalty, presupposes a conception of the crime as a dynamic normative entity, whose existence persists over time until its extinction. If the crime were merely a historical fact, the notion of extinction would be meaningless: a past event cannot be “extinguished”; it can only be remembered or forgotten. Only a normative entity can be extinguished. Limitation, therefore, confirms that the crime is not the event itself but its legal qualification, its subsumption within the *gesamter Rechtszustand*. It operates not on the ontological plane but on the normative one, affecting the legal system’s ability to react to the event through punishment.

It follows that limitation is not merely a temporal limit on the State’s punitive power but an institution that affects the very legal existence of the offence, contributing to the definition of its conceptual structure. Its systematic placement confirms the normative nature of the crime and reinforces the thesis that the offence is a complex construct composed of multiple elements which, taken together, form the conceptual image of the punishable act. Reflection on limitation is therefore not a marginal topic but a privileged vantage point for understanding the nature of the crime and the functioning of the criminal justice system as a whole.

2. The *Rationes* Underlying the Inquiry into Time in Criminal Offences.

The historical and comparative observation that no society has ever ignored the temporal dimension of crime invites a broader theoretical reflection on the *juridification of time* within penal systems. Time, in criminal law, is never a neutral

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parameter: it is a structural component of normativity, a medium through which the legal order expresses its evaluations of social harm, moral blameworthiness, and the limits of punitive power. The institution of limitation periods (*præscriptiones*) thus emerges as a privileged locus for observing the dialectic between the persistence of collective memory and the progressive attenuation of punitive legitimacy.

From a theoretical standpoint, the dual rationales traditionally attributed to criminal limitation – the waning of the community's punitive interest and the individual's right to be forgotten – can be understood as expressions of two foundational principles of modern criminal law: the principle of offensiveness (*nullum crimen sine iniuria*) and the principle of human dignity. The former presupposes that the social meaning of an offence is not immutable: the harm or danger it represents may lose normative salience as time passes, especially in relation to minor or medium-gravity offences. The latter reflects the idea that punishment, to remain legitimate, must preserve a relation of proportionality and immediacy with the offender's personal identity at the time of the act. Excessive temporal distance risks transforming punishment into a form of symbolic violence, detached from the rehabilitative and communicative functions that justify its existence in a constitutional democracy².

These two trajectories – offensiveness and dignity – intersect in the *tempus præscriptiones*, which becomes a measure of the resilience of the offence to the natural evolution of social evaluations. The limitation period thus functions as a barometer of the community's capacity to retain the memory of wrongdoing until the definitive establishment of responsibility in a public trial. At the same time, it operates as a safeguard against punitive excess, preventing the State from imposing sanctions when the temporal gap has eroded the meaningfulness of blame and the fairness of adjudication.

Yet the contemporary condition profoundly challenges this classical architecture. The acceleration of communication, the deterritorialization of social relations, and the emergence of a digital environment characterized by

² In Anglo-American penal philosophy, the temporal limits of punishment are intimately tied to its communicative purpose. R.A. DUFF, *Punishment, Communication, and Community*, Oxford, 2001, 75-80, argues that criminal law operates as a moral dialogue; as time elapses and the offender's identity or the social context shifts, this communicative enterprise loses its intelligible target, rendering delayed punishment morally unjustified and purely afflictive.

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instantaneous circulation of information have produced what many theorists describe as a collapse of temporality³. In the “non-place” of telematic networks, the past is never truly past: digital traces persist indefinitely, accessible and reproducible without degradation. This phenomenon undermines the anthropological and epistemic premises upon which limitation periods were historically constructed. If memory becomes permanent and ubiquitous, the social forgetting that once justified the extinction of criminal liability appears increasingly implausible. The risk is that the legal system may be tempted to mirror this technological permanence, eroding the temporal limits that traditionally constrained punitive power.

This shift intersects with broader transformations associated with posthumanism, where the boundaries between human cognition and artificial intelligence become porous. In such a context, the human being risks being reduced to a surface of data, an interface among others in a continuum of informational flows. The juridical implications are profound: if identity becomes fluid, distributed, and technologically mediated, the very notion of personal responsibility – anchored in a temporally situated human act – faces unprecedented conceptual strain.

Against this backdrop, the normative framework of Italian criminal limitation rules offers a crucial vantage point for reaffirming the inseparability of time from the legally defined offence-conduct. Crime, as a lived human act, is inherently temporal not only in a chronological sense—situated between a before and an after—but also in a structural sense, since temporality permeates each constitutive element of the offence. The legally typified description of the act presupposes a temporally situated agent, a temporally determined conduct, and a temporally relevant harm or danger. The offence is thus a normative construct that cannot be abstracted from the temporal horizon in which it is conceived, committed, and judged.

³ It is a physical law observed by Einstein within Maxwell’s equations of electromagnetism and following the studies on the measurement of the speed of light by Galileo and the Danish astronomer Ole Christensen Rømer (1644–1710), as well as the experiments of Armand Hippolyte Fizeau (1819–1896), Léon Foucault (1819–1868), Albert Abraham Michelson (1852–1931), and Williams Morley (1838–1923): ‘a moving object therefore experiences a shorter duration than a stationary one: the clock ticks fewer seconds, a plant grows less, a boy dreams less.’ In Newton’s equations, time is present, whereas in contemporary physics it disappears.

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The inquiry therefore aims to demonstrate that the temporal dimension is not an external limit imposed upon criminal liability but an internal component of the offence itself. To detach crime from time would be to detach it from the human condition, thereby undermining the anthropological foundations of criminal responsibility. In an era that tends toward the abolition of temporal boundaries, reaffirming the temporal nature of crime becomes an act of resistance in defence of the humanistic core of criminal law.

3. Legal Framework

The limitation period in the Italian criminal justice system has a dual nature⁴. On the substantive level (Articles 157, 158 of the Criminal Code), it extinguishes the State's right to punish once a period has elapsed, calculated on the basis of the maximum statutory penalty prescribed for the offence, with a mandatory minimum of six years for felonies (*delitti*)⁵ and four years for misdemeanours (*contravvenzioni*)⁶. To this general rule are added significant exceptions: the imprescriptibility of offences punishable by life imprisonment, the doubling of limitation periods for particularly serious offences (terrorism, mafia-type association, sexual violence against minors, etc.), as well as special regimes introduced by sectoral legislation (for example, tax offences). On the procedural level (Articles 159–161 of the Criminal Code), the law governs suspension and interruption of the limitation period in connection with specific investigative acts or procedural circumstances, with effects extending up to the first-instance judgment (Article 161-*bis* of the Criminal Code), which constitutes the *dies ad quem* of the statute of limitations.

⁴ For a comprehensive and extensive analysis, see G. STEA, *L'ultima prescrizione. Storia, fondamento e disciplina della prescrizione del reato*, Padova, 2020, *passim*.

⁵ In the Italian criminal law system, *delitti* are the more serious offences, subject to a stricter regulatory regime, due to the greater social disvalue of the interests they protect. By contrast, *contravvenzioni* are the less serious offences, generally aimed at safeguarding functions and, consequently, instrumental interests serving the protection of ultimate interests.

⁶ The terms *felonies* and *misdemeanours* have been employed in order to render the text immediately accessible to an English-speaking audience; however, these are not technically perfect equivalences. In Italian criminal law, the distinction between *delitti* and *contravvenzioni* – as explained in the previous note – rests on foundations that differ from the common law bipartition between *felonies* and *misdemeanours*.

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Within this framework lies Article 344-*bis* of the Code of Criminal Procedure, which introduces a mechanism autonomous from the statute of limitations: it establishes maximum time limits for the second and third levels of appeal, the violation of which entails the inadmissibility of the action, subject to certain exceptions. This provision, inspired by the principle of the reasonable duration of proceedings, highlights the functional distinction between the statute of limitations and temporal guarantees of the trial: the former affects the substantive right of the State to punish, while the latter concerns the proper conduct of the proceedings.

4. Criminal Offence and Disvalue: Evaluative Frameworks and Temporal Axes.

The principle of offensiveness, in its modern constitutional formulation, represents far more than a substantive limit on criminalization: it embodies a structural criterion of legitimacy for the entire penal system. Its consolidation across diverse legal traditions reflects a shared commitment to a model of criminal law grounded in *material justice*, where punitive intervention is justified only when human conduct produces a level of harm that the legal order deems intolerable. This principle thus operates as a normative filter that prevents the transformation of criminal law into an instrument of moralization, symbolic repression, or excessive social control.

From a constitutional perspective, offensiveness functions as a meta-principle that coordinates the relationship between legislative discretion and judicial review. Legislatures retain the authority to define offences and calibrate sanctions, yet this authority is not absolute: it is constrained by the requirement that criminal norms must correspond to conduct capable of injuring or endangering a legally protected interest. Constitutional courts, in turn, have progressively refined the doctrine of offensiveness by distinguishing between its abstract dimension—which limits the legislature’s power to criminalize—and its concrete dimension, which obliges judges to verify the actual harmfulness of conduct in the specific case⁷. This dual structure ensures that the principle

⁷ The rationale underlying the relationship between the offence and the constitutionally protected legal interest in Bricola’s teaching, see S. CANESTRARI, L. CORNACCHIA, G. DE SIMONE, *Manuale di diritto penale. Parte generale*, 2nd edn, Bologna, 2017) 236 ff; M. DONINI, *L’eredità di Bricola e il costituzionalismo penale come metodo. Radici nazionali e sviluppi sovranazionali*, in *Dir. Pen. Cont.*, 2012 available at <https://dpc-rivista-trimestrale.criminaljusticenetwork.eu/pdf/DPC_Trim_2_2012-

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operates both *ex ante* (in the formation of the statute) and *ex post* (in its application), thereby preventing the drift toward a purely formal or symbolic criminal law⁸.

The theoretical architecture underlying offensiveness rests on the interplay between harm and legal interest. Harm constitutes the phenomenological manifestation of the offence's disvalue, while the legal interest provides the normative justification for its protection. This duality reflects a broader tension within criminal theory: the need to reconcile the empirical reality of harmful conduct with the normative structure of legal goods (*Rechtsgüter*). Recognizing both actual harm and potential danger as relevant forms of offensiveness allows the legal system to address not only consummated injuries but also emerging threats, provided that the latter are sufficiently concrete and socially significant. This approach aligns with the preventive function of criminal law while avoiding the pitfalls of overcriminalization characteristic of purely risk-based models.

The conformative nature of harm underscores that offensiveness is not a merely descriptive or ancillary requirement but a constitutive element of criminal liability. It is the bridge between the statutory definition of the offence and the historical fact, ensuring that the latter is not mechanically subsumed under the former without a substantive evaluation of its harmful charge. This evaluation requires a nuanced analysis of both objective and subjective dimensions: the material configuration of the conduct, the causal or risk nexus linking action and result, and the agent's culpability, which situates the harmful event within a framework of personal responsibility.

Within the broader theory of typicality, the inquiry into harm reveals the dual nature of criminal wrongfulness: formal typicality, which concerns the correspondence between conduct and statutory description, and substantive typicality, which concerns the actual or potential injury to the protected interest. This distinction is essential for preserving the principle of proportionality, which demands that punishment reflect not only the legal classification of the offence

55-78.pdf> (last accessed 26 September 2026). For dissenting views, see G. MARINUCCI, E. DOLCINI, *Costituzione e politica dei beni giuridici*, in *Riv. It. Dir. Proc. Pen.*, 2010, 345 ff; G. DE FRANCESCO, *Programmi di tutela e ruolo dell'intervento penale*, Turin, 2004, 47 ff.

⁸ Italian Constitutional Court, judgment of 21 November 2000, No. 519. All decisions of the Constitutional Court cited in this article are available at <<https://www.cortecostituzionale.it/actionPronuncia.do>> (last accessed 26 September 2026).

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but also the concrete disvalue generated by the conduct. Substantive typicality thus anchors sentencing to a realistic appraisal of harm, preventing disproportionate or purely symbolic sanctions⁹.

Thus, a structural split emerges within the temporal axis of the offence: while formal typicality permanently crystallizes at the *tempus commissi delicti*, capturing the empirical occurrence in its historical immutability, substantive typicality operates as a dynamic normative vector. The material disvalue of the event is not a static snapshot but a 'normative flux' that must maintain its vitality until the definitive judicial pronouncement. If the actual endangerment or injury to the protected legal interest dissipates through the mere passage of time before the final judgment, a constitutive element of substantive typicality ceases to exist. From a dogmatic standpoint, time therefore acts as a negative element of the typical fact – or, more precisely, as a cause of supervening exclusion of typicality – preventing the historical event from fully conforming to the teleological matrix of the *gesamter Rechtszustand*.

4.1 The Germinal Nature of Supervening Exclusion of Typicality.

In this perspective, the supervening exclusion of typicality does not constitute an extrinsic factor or an accidental *aliud* intervening *ex post* to truncate the punitive power, but rather a genetic 'seed' embedded within the structure of the offence from the very moment the historical act is committed (*tempus commissi delicti*). From its inception, the empirical event carries within itself the germ of its own temporal decay: as time passes, this germinal element develops to fruition, eroding the material substance of the harm from within and consuming the disvalue of the act. The supervening exclusion of typicality is thus revealed not as an artificial rupture, but as the maturation of a dynamic intrinsic to the offence, whereby time transforms the initial harm into present harmlessness.

In this respect, it is necessary to mark a clear dogmatic discontinuity with respect to the reconstructions that degrade the statute of limitations to a mere extrinsic cause of non-punishability. In fact, the passage of time directly affects the actuality of the disvalue of the fact: as a disintegrating factor of the *konkreter*

⁹ Permanence constitutes an inherent quality that, in practice, imbues the prohibited conduct associated with the notion of consummation, insofar as it continues to convey the legally recognised wrongfulness intrinsic to the offence as committed.

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Rechtsgutsangriff, time does not come from the outside as a procedural accident, but consumes the disvalue from within, preventing the formal typicality from being definitively consolidated into material typicality.

Ultimately, this theoretical architecture leads to a decisive dogmatic synthesis: time operates as a diachronic negative element of the offence (or *substantive typicality*). Whereas formal typicality is strictly synchronic – freezing the empirical event at the *tempus commissi delicti* – substantive typicality incorporates a negative temporal factor that matures dynamically across the normative continuum (*de die in diem*). The full accrual of this diachronic negative element progressively hollows out the *konkreter Rechtsgutsangriff*, leaving behind a mere historical shell stripped of *præsente iniuria*. Upon the expiry of the limitation period, the offence ceases to exist not because of an extrinsic procedural impediment, but because its substantive core has been ontologically and normatively dissolved from within.

5. The Gravity of the Offence as a Measure of the Collective Interest in Punishment: The Substantive Nature of the Statute of Limitations in the Italian Constitutional Court's Jurisprudence.

The substantive nature of the statute of limitations, as affirmed by the Italian Constitutional Court, reveals a deeper theoretical commitment to a conception of criminal law in which time functions as a constitutive element of punitive legitimacy. By classifying limitation as a criminal-law institution protected under Article 25(2) of the Constitution, the Court situates the passage of time within the core guarantees of legality, thereby acknowledging that the extinction of punishability is not a procedural contingency but a structural withdrawal of the State's punitive claim¹⁰. This withdrawal, far from being an act of benevolent indulgence, reflects a constitutional choice grounded in the principles of proportionality, legal certainty, and the temporal rationality of punishment¹¹.

The idea that limitation embodies a “total renunciation” of punitive power underscores its function as a systemic counterweight to the expansive tendencies of criminal justice. It expresses a general interest in preventing the prosecution of offences whose social meaning has been eroded by the passage of time. This

¹⁰ Among others, Italian Constitutional Court, judgment of 31 May 2018, No. 115

¹¹ Italian Constitutional Court, judgment of 23 November 2006, No. 393

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erosion concerns not only the fading of collective memory but also the attenuation of the *social alarm* originally triggered by the offence. The duality between memory and alarm – already present in the Court's earliest jurisprudence – reveals a sophisticated understanding of the social temporality of crime: while memory pertains to the persistence of the event in the collective consciousness, alarm concerns the perception of ongoing danger or the risk of recurrence¹². Their distinction is analytically significant, for it allows the legal system to recognise that certain offences may remain vividly remembered without continuing to generate a sense of threat.

This conceptual separation also aligns with criminological insights into the life cycle of social reactions to crime. Public alarm tends to be acute and short-lived, often shaped by media amplification and emotional immediacy, whereas collective memory may endure in a more reflective, less destabilizing form¹³. The metaphor of concentric circles – alarm as the inner circle encompassed by the broader circle of memory – captures this dynamic with precision. It also explains why the persistence of memory alone cannot justify the indefinite extension of punitive power: memory without alarm lacks the normative force necessary to sustain criminal prosecution in a constitutional democracy.

The Court's more recent tendency to privilege the attenuation of social alarm over the fading of memory marks a notable hermeneutical shift¹⁴. By grounding the rationale of limitation exclusively in the reduction of *post factum* social disvalue, the Court implicitly narrows the temporal logic of criminal liability to a single evaluative dimension. This evolution raises important theoretical questions: does the exclusive focus on alarm risk marginalizing the broader sociocultural processes through which societies metabolize wrongdoing? Does it reduce the temporal dimension of criminal liability to a mere function of fluctuating public sentiment? These questions highlight the

¹² Italian Constitutional Court, judgment of 16 December 1971, No. 202

¹³ Italian Constitutional Court, judgment of 16 December 1971, cited; Italian Constitutional Court, judgment of 19 March 1983, No. 68.

¹⁴ Italian Constitutional Court, order of 28 July 1999, No. 373; Italian Constitutional Court, judgment of 23 November 2006, cited; Italian Constitutional Court, judgment of 28 March 2008, No. 72; Italian Constitutional Court, judgment of 1 August 2008, No. 324; Italian Constitutional Court, judgment of 20 November 2008, No. 384.

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need for a more comprehensive theory of limitation that integrates both memory and alarm within a unified framework of temporal legitimacy.

The determination of the duration of limitation periods, traditionally linked to the abstract gravity of the offence, reflects the legislator's assessment of the degree of disvalue attributed to the act. This correlation, codified in Article 157 of the Criminal Code, embodies a proportionality-based approach: the more serious the offence, the longer the period during which the State may legitimately assert its punitive claim¹⁵. The recent reaffirmation of this criterion at the European level – most notably in Directive (EU) 2024/1203 – demonstrates the growing convergence among European legal systems toward a model in which limitation is conceived as a substantive instrument of criminal policy, rather than a mere procedural constraint.

From a comparative perspective, the Italian approach aligns with a broader European trend that views the passage of time as a factor capable of transforming the normative meaning of the offence. In many jurisdictions, limitation is understood as a mechanism that reconciles the retributive and preventive functions of punishment with the need to avoid prosecutions that are belated, disproportionate, or disconnected from contemporary social relevance. This conception reflects a shared commitment to a temporal constitutionalism of punishment, in which the legitimacy of criminal intervention is inseparable from its temporal proximity to the offence.

Ultimately, the substantive nature of limitation underscores a fundamental insight: criminal liability is inherently temporal, and the legitimacy of punishment diminishes as the temporal distance from the offence increases. The statute of limitations thus operates as a constitutional safeguard that ensures that the State's punitive power remains anchored to the temporal horizon of the offence, preserving the balance between justice, legal certainty, and the evolving social meaning of wrongdoing.

¹⁵ Italian Constitutional Court, judgment of 28 May 2014, No. 143

5.1 Exceptions to the Penalty–Limitation Correlation: Protecting the Personal Dimension (Right to Be Forgotten) and Procedural Aspects of Criminal Liability.

The possibility for the legislature to depart from the ordinary proportionality rule governing limitation periods reveals a fundamental tension at the heart of criminal policy: the balance between temporal rationality and political responsiveness. While the general rule ties the duration of limitation to the abstract gravity of the offence – thus reflecting a principled, harm-based calibration – the recognition of legislative discretion to introduce exceptions demonstrates that the temporal architecture of criminal liability is not rigidly predetermined but remains permeable to differentiated assessments of social harm, investigative complexity, and collective sensibilities.

From a constitutional standpoint, this flexibility is permissible precisely because the ordinary proportionality rule is not itself a constitutional requirement, but rather a legislative technique for implementing the broader principles of legality, proportionality, and reasonableness¹⁶. The Court's jurisprudence makes clear that the Constitution does not mandate a single model of limitation; instead, it requires that any model adopted must respect the structural constraints of equality, rational justification, and coherence with the underlying rationales of the institution¹⁷. This opens the door to differentiated limitation regimes for offences whose phenomenology, social impact, or evidentiary structure diverge significantly from the ordinary paradigm.

The parameters identified by the Court – specific offence characteristics, balancing of interests, heightened social alarm, and investigative complexity – reflect a sophisticated understanding of the plural temporality of crime. Certain offences, particularly those involving organized criminality, corruption, environmental devastation, or systemic abuse, exhibit a temporal profile that resists assimilation to the standard model: they may be concealed for long periods, require extensive investigative resources, or provoke enduring social alarm disproportionate to the punitive response available under ordinary limitation rules. In such cases, extending the limitation period is not an

¹⁶ Italian Constitutional Court, judgement of 30 december 1998, No. 455

¹⁷ Italian Constitutional Court, judgment of 28 May 2014, cited

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expression of punitive excess but a recognition of the structural latency inherent in the offence.

At the same time, the Court's emphasis on the gravity of the offence as the primary index of the community's interest in punishment reveals the personalistic dimension of the temporal element¹⁸. The right to be forgotten – understood as a projection of human dignity into the temporal domain – is not absolute but contingent upon the seriousness of the harm inflicted. Where the offence expresses a level of disvalue so intense as to preclude temporal attenuation, the personalistic claim must yield to the collective interest in accountability. This confirms that the right to be forgotten is not a freestanding entitlement but a derivative guarantee, whose scope is determined by the proportionality relationship between the harm and the temporal limit.

This structure also exposes a deeper theoretical point: the exception to the right to be forgotten is not a deviation from proportionality but its ultimate confirmation. By excluding extremely serious offences from the protective scope of temporal extinction, the system reaffirms that limitation is justified only where the harm is compatible with temporal attenuation. The exception thus reinforces the rule by demonstrating that proportionality governs not only the quantum of punishment but also the temporal reach of punitive power.

However, the recognition of legislative discretion to depart from the proportionality rule also reveals a potential vulnerability: the risk that such departures may reflect not principled criminal policy but populist pressures rooted in emotive reactions to crime. The invocation of heightened social alarm as a justification for extending limitation periods is particularly susceptible to instrumentalization. Social alarm, unlike harm, is volatile, media-driven, and often disproportionate to the actual criminological significance of the offence. Its use as a legislative parameter may therefore signal a shift from a harm-based to a sentiment-based model of criminal policy, where the temporal structure of liability becomes responsive to public indignation rather than principled evaluation.

This dynamic is symptomatic of a broader phenomenon: the populist intolerance toward the “impunity of the wicked”, which tends to interpret

¹⁸ Italian Constitutional Court, judgment of 14 February 2013, No. 23

limitation not as a constitutional safeguard but as an unjustified obstacle to punitive efficiency. Such rhetoric, while politically potent, often masks deeper structural deficiencies in the State's capacity to investigate and prosecute complex offences within reasonable timeframes. The legislative extension of limitation periods may thus function as a compensatory mechanism for systemic inefficiencies, shifting the burden of institutional shortcomings onto the temporal rights of the accused.

From a theoretical perspective, this raises a critical question: to what extent can the temporal dimension of criminal liability be adjusted to accommodate political or institutional contingencies without undermining the constitutional identity of limitation as a substantive guarantee? The answer depends on maintaining a clear distinction between principled exceptions, grounded in the intrinsic temporality of certain offences, and opportunistic extensions, driven by populist sentiment or institutional inadequacy¹⁹. Only the former are compatible with a constitutional model of criminal law that respects the temporal dignity of the individual and the structural limits of punitive power²⁰.

5.1.1 *Limitation Periods vs. Reasonable Trial Time: Functional Divergences between Substantive and Procedural Temporal Regimes.*

The shift from a harm-based proportionality criterion to one grounded in procedural considerations—such as the need to complete investigations or to safeguard the defendant's right of defence—reveals a profound conceptual slippage: the statute of limitations, traditionally anchored to the *substantive* dimension of criminal liability, is progressively being reconfigured as a *procedural* device. This displacement is not merely terminological; it alters the very identity of the institution. In the Italian criminal justice system, limitation has historically functioned as a temporal expression of the proportionality principle, linking the duration of the State's punitive claim to the gravity of the offence²¹. Recasting it as a mechanism for managing procedural duration risks severing this foundational link.

¹⁹ Italian Constitutional Court, judgment of 28 May 2014, cited

²⁰ F. MORI, *Teorica del codice penale toscano*, Florence, 1854, 119

²¹ F. GIUNTA, *La prescrizione del reato: ossia la causa estintiva che visse due volte*, in *Criminalia*, 217, 380.

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This phenomenon has been sharply identified in contemporary scholarship, which notes that limitation has come to serve objectives extraneous to its original rationale²². The first is the guarantee of the “reasonable length of the trial” under Article 111 of the Constitution – a guarantee that, however fundamental, pertains to procedural fairness rather than to the substantive legitimacy of punishment. The second is the containment of judicial overload through the implicit encouragement of prosecutorial selectivity. Both developments illustrate what has been aptly described as systemic pathologies: the statute of limitations is transformed from a substantive instrument of criminal policy into a surrogate tool for compensating structural inefficiencies in the administration of justice.

This critique is difficult to refute. Limitation does not prevent excessive trial duration; it merely records its failure. It intervenes only after the reasonable time has already been exceeded, thereby functioning as a retrospective acknowledgment of procedural dysfunction rather than as a prospective guarantee of efficiency. This underscores the necessity of maintaining a strict conceptual separation between the limitation period and the reasonable time for adjudication. Their conflation obscures the distinct normative foundations on which each rests.

The first reason for this separation lies in the different logics governing the two institutions. The limitation period is calibrated to the gravity of the offence, reflecting the degree of harm to the protected legal interest. For the most serious offences, the legislature excludes limitation altogether, signalling that the social disvalue is incompatible with temporal attenuation. Yet the seriousness of an offence does not necessarily correlate with the complexity of the trial. A homicide case may be procedurally straightforward, while a minor financial offence may require years of technical investigation. Conversely, the right to a reasonable trial length admits no exceptions: the more serious the offence, the greater the constitutional imperative to reach a timely determination of responsibility, both to protect the accused and to reaffirm the violated norm before the public conscience.

The second reason concerns the functional autonomy of the two institutions. Limitation pertains to criminal policy and expresses the

²² D. PULITANÒ, *La moralità della prescrizione per decorso del tempo*, in *Criminalia*, 2017, 420

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proportionality between the gravity of the offence and the temporal reach of the State's punitive power. The reasonable duration of the trial, by contrast, concerns procedural efficiency and the protection of fundamental procedural rights. Their purposes, rationales, and constitutional foundations diverge. The most recent procedural reform, introducing Article 344-bis of the Code of Criminal Procedure, reinforces this distinction by establishing an autonomous regime for ensuring reasonable duration in appellate proceedings – one that operates independently of limitation and, indeed, suspends its running upon the delivery of the first-instance judgment.

This reform reflects a broader theoretical insight: the temporal legitimacy of punishment cannot be reduced to the temporal efficiency of procedure. To conflate the two is to risk transforming limitation into a compensatory mechanism for institutional shortcomings, thereby distorting its substantive function.

The functional overlap between the substantive limitation period and trial duration triggers a structural short-circuit under supranational human rights standards as well. While the reasonable time requirement under Article 6 ECHR obeys a purely jurisdictional and procedural logic aimed at shielding the individual from state inefficiency, the actuality of harm pertains directly to the legality and proportionality of penalties under Article 49 of the EU Charter of Fundamental Rights. The two plans cannot be confused. The danger is that limitation becomes a procedural safety valve rather than a principled expression of the temporal boundaries of criminal liability.

More broadly, this evolution reveals a deeper structural tension within contemporary criminal justice systems: the struggle to reconcile substantive proportionality with procedural functionality. When limitation is instrumentalized to address procedural inefficiencies, the result is a hybrid institution that satisfies neither function adequately. It fails to guarantee reasonable trial duration, and it undermines the substantive logic that once grounded its legitimacy.

Ultimately, the challenge is to preserve the constitutional identity of the statute of limitations as a substantive guarantee – one that expresses the temporal dimension of criminal responsibility – while developing autonomous procedural mechanisms capable of ensuring efficiency without distorting the architecture of

criminal liability. Only by maintaining this dual structure can the legal system avoid the drift toward a punitive model in which time is no longer a measure of proportionality but merely a variable of administrative convenience.

5.2. Notes on the Reasonable Calibration of the Limitation Period.

The progressive shift from “social memory” to “social alarm” as the central justificatory parameter for determining the limitation period reflects a deeper transformation in the epistemology of criminal law. Whereas the earlier jurisprudence of the Constitutional Court grounded the temporal extinction of criminal liability in a sociological process of collective forgetting, contemporary reasoning increasingly aligns with the emergency rationality characteristic of late-modern societies. In this framework, the gravity of the offence is no longer conceptualized as a stable index of harm to the protected legal interest, but as a dynamic function of the perceived insecurity and emotional volatility of the social body²³. This evolution signals a shift from a temporality rooted in the gradual attenuation of social significance to one governed by the fluctuating intensity of public alarm.

Anchoring the limitation period to the metric of 'social alarm' represents not merely a terminological shift, but a profound dogmatic fallacy that undermines the substantive nature of the criminal offence. Social alarm is inherently an external, sociological, and emotive parameter, highly susceptible to media amplification and majoritarian impulses. Conversely, the 'time of the offence' – understood as an intrinsic element of substantive typicality – must be rigorously calibrated against the objective, normative lifecycle of the specific protected legal interest (*Rechtsgut*). To substitute the physiological decay of the *Rechtsgut*'s injury with the volatility of public sentiment is to transmute the statute of limitations from a structural guarantee of substantive extinction into an instrument of political expediency. Such a paradigm shift fatally subverts the constitutional

²³ Italian Constitutional Court, judgment of 18 July 1989, No. 409, according to which ‘the principle of equality (...) requires that the penalty be proportionate to the wrongfulness of the unlawful act committed, so that the sanctioning system fulfils, at the same time, the function of social defence and that of protecting individual rights’, further clarifying that ‘the assessments necessary for this purpose fall within the scope of the legislature’s discretionary power, the exercise of which may be subject to review (...) only in cases where the limit of reasonableness has not been respected’.

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foundations of the *Tatstrafrecht*, replacing the objective measurement of harm with the subjective and ephemeral anxieties of the social body²⁴.

Such a shift is not normatively neutral. By privileging social alarm over social memory, the legal system risks anchoring the temporal dimension of criminal liability to affective states rather than to rational assessments of harm. Social alarm, unlike memory, is inherently unstable: it is shaped by media amplification, political rhetoric, and episodic surges of public indignation. Its incorporation into the proportionality analysis introduces a degree of contingency that may undermine the coherence and predictability of the limitation regime. This raises the question of whether the constitutional principle of proportionality – traditionally conceived as a rational, harm-based criterion – can accommodate parameters that are, by their nature, volatile and socially constructed.

The proportionality review conducted by the Constitutional Court, articulated through the dual lenses of intrinsic and extrinsic proportionality, provides a methodological framework for addressing these concerns. Intrinsic proportionality examines the relationship between the offence and the penalty, while extrinsic proportionality – divided into *intra delictum* and *inter delicta* dimensions – evaluates the coherence of the penalty within the broader system of criminal sanctions. This analytical structure reflects a sophisticated understanding of proportionality as a systemic principle, one that operates not only within individual offence definitions but across the entire architecture of criminal law²⁵.

Yet the Court's own jurisprudence acknowledges the conventional nature of the offence – penalty nexus. Because there is no ontological metric capable of equating the heterogeneity of offences and penalties, the proportionality assessment inevitably relies on axiological judgments embedded in legislative

²⁴ The drift towards a criminal law based on social anxieties and majoritarian feelings (*Gesinnungsstrafrecht* or *Feindstrafrecht*) rather than the objective act (*Tatstrafrecht*) has been extensively criticized in German dogmatics. Cf. G. JAKOBS, *Strafrecht Allgemeiner Teil. Die Grundlagen und die Zurechnungslehre*, 2nd ed., Berlin, 1991. For a critical perspective on how the 'modern' criminal law instrumentalizes fear, jeopardizing substantive guarantees, see also W. FRISCH, *Tatbestandsmäßiges Verhalten und Zurechnung des Erfolgs*, Heidelberg, 1988, and B. SCHÜNEMANN (ed.), *Festschrift für Claus Roxin zum 70. Geburtstag*, Berlin, 2001.

²⁵ See, among others, Italian Constitutional Court, judgment of 12 July 1995, No. 313; Italian Constitutional Court, judgment of 28 July 1993, No. 343.

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policy choices. This recognition underscores the limits of judicial review: while the Court may identify manifest disproportions or systemic incoherences, it cannot substitute its own value judgments for those of the democratic legislature without overstepping its constitutional role. The proportionality principle thus assumes a primarily negative function: it identifies what is *not* proportionate, revealing inconsistencies, anomalies, or irrational disparities within the system.

This negative function becomes particularly salient when examining the relationship between penalties and limitation periods. Because Article 157 of the Criminal Code ties the duration of the limitation period to the statutory penalty, any disproportionality in the latter reverberates into the former. The limitation period thus becomes a derivative expression of the offence–penalty relationship, inheriting its strengths and weaknesses. Where the penalty is disproportionate, the limitation period will be as well. This interdependence reinforces the need for a coherent and rational sentencing framework, as inconsistencies in one domain propagate into the temporal structure of criminal liability.

The Court's use of *tertium comparationis* in *inter delicta* proportionality review further illustrates the systemic nature of the inquiry²⁶. By comparing the contested offence with analogous offences sharing the same *ratio incriminandi*, the Court situates the proportionality assessment within a relational matrix rather than an isolated evaluation. This comparative method allows the Court to identify legislative choices that disrupt the internal coherence of the criminal system, thereby violating the principle of equality under Article 3(1) of the Constitution²⁷. At the same time, the Court has shown a willingness to intervene

²⁶ See, among others, Italian Constitutional Court, judgment of 30 July 1981, No. 162; Italian Constitutional Court, judgment of 26 November 2004, No. 364; Italian Constitutional Court, order of 21 April 2006, No. 170; Italian Constitutional Court, order of 13 June 2006, No. 229; Italian Constitutional Court, judgment of 2 February 2007, No. 22, in *Giurisprudenza costituzionale*, 2007, 1, 151, with note by D. BRUNELLI, *La Corte costituzionale "vorrebbe ma non può" sulla entità delle pene: qualche apertura verso un controllo più incisivo della discrezionalità legislativa?*, 181 ff; Italian Constitutional Court, judgment of 14 November 1997, No. 329, in *Foro Italiano*, 1998, I, 26, with note by G. FIANDACA, *Altro passo avanti della Consulta nella rabberciatura dei reati contro la religione*, 26 ff; Italian Constitutional Court, judgment of 25 July 2001, No. 287; Italian Constitutional Court, judgment of 9 July 2002, No. 327; Italian Constitutional Court, judgment of 29 April 2005, No. 168; Italian Constitutional Court, judgment of 23 November 2006, No. 394.

²⁷ With regard to decisions upholding constitutional challenges, further clarifications on the principle of proportionality were provided in judgment No. 391 of 1994, which declared unconstitutional the statutory minimum penalty for the offence of contempt of a public official

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even in the absence of a *tertium comparationis* when the penalty is manifestly disproportionate in relation to the gravity of the conduct, grounding its review directly in Article 27(3) of the Constitution. This demonstrates that proportionality, while relational, also possesses an autonomous substantive dimension linked to the rehabilitative purpose of punishment²⁸.

(Article 341 of the Criminal Code). In that decision, while confirming ‘the principle according to which the determination of the quantity and quality of the criminal sanction falls within the legislature’s discretion’ and reiterating that ‘it is not for the Court (...) to re-determine the punitive choices made by the legislature, nor to establish specific sentencing levels’, the Court nonetheless recalled its duty ‘to verify that the exercise of legislative discretion in this field respects the limit of reasonableness’ and ‘to assess the compliance of the contested provision (...) in particular with the principle of proportionality’. This was decisive, in the case at hand, in finding an unreasonable disproportion between the statutory minimum penalty and the less serious instances of contempt, also in light of a comparison with the offence of insult under Article 594 of the Criminal Code. Likewise, in judgment of 23 March 2016, No. 56, declaring unconstitutional Article 181(1-bis) of Legislative Decree No. 42 of 2004, insofar as it imposed a more or less severe penalty depending on whether the violation concerned property subject to an administrative protection order or to statutory protection, the Court observed, *inter alia*, that the regulation of the two offences had undergone, within a few years, fluctuating amendments: initially punishing more severely violations affecting property protected by statute, then treating both equally, and finally punishing more severely violations affecting property protected by administrative order. The Court noted that ‘this is therefore a case of wavering legislation, not justified either by supervening factual circumstances or by changes in the underlying cultural orientations of the relevant legislation; and this alone is a symptom of the unreasonableness of the current regime. Such unreasonableness is further made manifest by the significant disparity both in the classification of the offences (in one case a felony, in the other a misdemeanour) and in the sanctioning treatment, in relation both to the severity of the penalty and to the rules on grounds for non-punishability and extinction of the offence’. Also noteworthy is judgment of 10 November 2016, No. 236, which declared unconstitutional Article 567(2) of the Criminal Code, insofar as it punished alteration of civil status by falsification with imprisonment from five to fifteen years, instead of the penalty – provided for in the first paragraph of the same article for the analogous offence of alteration of civil status by substitution of a newborn – of imprisonment from three to ten years. Most recently, in judgment of 22 March 2024, No. 46, § 3.3 (*Considerato in diritto*), the Court declared unconstitutional the sharp increase in the statutory minimum penalty for the offence of embezzlement (*appropriazione indebita*) introduced by Law No. 3 of 2019, raising it from fifteen days to two years’ imprisonment, finding the increase devoid of any plausible justification and manifestly disproportionate in light of the wide range of conduct encompassed by the offence.

²⁸ Italian Constitutional Court, judgment of 10 May 2019, No. 112, § 8.1.3 (*Considerato in diritto*). For an extensive analysis of the constitutional case law on the proportionality review of criminal penalties, see F. VIGANÒ, *La proporzionalità nella giurisprudenza recente della Corte costituzionale: un primo bilancio*, in *Sistema Penale*, available at <<https://www.sistemapenale.it/it/articolo/vigano-la-proporzionalita-nella-giurisprudenza-recente-della-corte-costituzionale-un-primo-bilancio>>

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Within this hermeneutic framework, the harm to the protected legal interest emerges as the central criterion for assessing both the proportionality of the penalty and, by extension, the reasonableness of the limitation period. The limitation period may be extended for evidentiary reasons, but such extensions must always be balanced against the temporal dimension of personal identity, encapsulated in the right to be forgotten. This right, however, is not absolute: it may be neutralized in cases of “extreme gravity,” where the social alarm generated by the offence outweighs the personalistic claim to temporal attenuation. This confirms the subsidiary nature of the right to be forgotten within the proportionality framework and underscores the primacy of harm as the decisive parameter.

Ultimately, the contemporary evolution of the limitation regime reveals a broader tension between constitutional rationality and societal emotionality. The challenge for the legal system is to preserve the proportionality principle as a rational constraint on punitive power while resisting the drift toward an alarm-driven criminal policy that risks undermining the temporal coherence and substantive legitimacy of criminal liability.

6. The Meaning of Time in the Statute of Limitations. *Nullum crimen sine præsente iniuria*.

It has been argued that the disvalue of human conduct must persist until the final determination of the offence. This principle derives from a set of rules governing criminal law – particularly those concerning intertemporal provisions – according to which the social condemnation of conduct contrary to a criminal provision must withstand the evolution of society, with the assessment of its offensiveness remaining substantially unchanged until the irrevocable declaration of liability.

This is not merely an empirical assessment *post factum patratum*, carried out by the judge when verifying the conformity of the concrete act to the *gesamter Rechtszustand* in force at the *tempus consummati delicti*, but also the requirement that such conformity persist—unaltered and in force—until the final decision, in application of the principles of *favor rei* and strict legality.

(last accessed 28 September 2025). Most recently, see Italian Constitutional Court, judgment of 4 February 2025, No. 7.

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The concrete assessment of a complex punitive provision, described in abstract terms by the legislature for application to an indefinite number of situations, entails that the continued actuality of the offence to the protected legal interest is a physiological feature of normative dynamism. *Nullum crimen sine præsente iniuria*: offensiveness evolves alongside the social fabric and, in the criminal law sphere, is reflected in the succession of behavioural norms in a democratic society. If offensiveness concerns the “entire normative complex” (*gesamter Rechtszustand*), it follows that it must endure the natural evolution of social evaluations until the definitive finding of liability in a public trial²⁹.

In this light, the State's interest in punishment cannot be reduced to a utilitarian rationale of 'procedural economy' or evidentiary deterioration, as posited by purely procedural theories. Rather, it signifies the radical disappearance of the fact's offensiveness (*konkrete Rechtsgutsangriff*). While the historical event remains indelibly inscribed in the past as a formal violation of the norm, it progressively sheds its *iniuria*. Without a *præsente iniuria*, the requisite of concrete offensiveness evaporates. Consequently, the subsumption of the historical fact into the conceptual model of the *gesamter Rechtszustand* ultimately fails: not because the procedural apparatus is exhausted, but because the substantive core of the wrongfulness has ontologically and legally ceased to exist³⁰.

The statute of limitations assigns legal significance to the mere passage of time *post factum*, with extinguishing effects on the offence that persists beyond the threshold of harm sufficient to complete the offence – this threshold being the core of the *gesamter Rechtszustand*. Under the codified rules, the limitation period begins at the ultimate boundary of the crime (Article 158 of the Criminal Code), precisely when the concrete act reaches the level of harm to the protected legal

²⁹ This line of reasoning derives from the dynamics of political-criminal discretion, particularly with regard to legislative choices involving the total or partial decriminalisation of conduct. Such choices reflect the democratic legislature's determination that a category of acts, once included in the catalogue of criminal offences, no longer warrants – nor requires – the intervention of the criminal law.

³⁰ On the foundational distinction between formal typicality and *materielle Rechtswidrigkeit*, and the necessity that the substantive injury to the *Rechtsgut* persists, see C. ROXIN, *Strafrecht. Allgemeiner Teil. Band I: Grundlagen. Der Aufbau der Verbrechenslehre*, 4th ed., München, 2006, 556 ff. See also W. HASSEMER, *Theorie und Soziologie des Verbrechens. Ansatz zu einer rechtsgutsbezogenen Kriminalpolitik*, Frankfurt am Main, 1973, who warns against detaching the offence from the objective reality of the legal interest.

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interest deemed intolerable by the legislature. The *tempus consummati delicti* marks the precise temporal threshold at which the concrete execution of the typified harmful conduct reaches its cessation, corresponding to the level of harm *in abstracto* described in the incriminating provision. This abstract harm, however, continues beyond consummation, as it is necessarily inherent in the description of every element instrumental to the post-factum punitive response³¹.

In this sense, the statute of limitations becomes the conventional index of the current disvalue of the act: the temporal distance from the commission of the offence is inversely proportional to the social interest – and thus to the persistence of the offence—in protecting the legal interest harmed by the *factum patratum*. The equivalence between penalty and *tempori cedere* set out in Article 157 of the Criminal Code confirms this: the maximum measure of the penalty determines the *quantum* of the limitation period, since the legislature calibrates both on the abstract disvalue of the offence, according to criteria of intrinsic (*intra delictum*) and extrinsic (*inter delicta*) proportionality.

The proportionality of the offence *in abstracto* is conventional: there is no empirical standard capable of objectively commensurating penalty and offence without recourse to value-based criteria, which belong to the stage of determining the statutory sentencing range. Consequently, the choice is eminently political and difficult to review without encroaching upon the legislature's prerogatives. The limitation period likewise participates in this political choice, referring to the abstract offence rather than to the concrete harmful or dangerous consequences for the victim.

This is confirmed, for example, by Article 198 of the Criminal Code, which recognises the relevance of a time-barred offence for the purposes of civil compensation, thereby distinguishing the consequences of the offence from the harm to the protected legal interest. The equivalence between the statutory

³¹ Italian Constitutional Court, judgment of 5 November 2012, No. 251, according to which 'the principle of offensiveness is to operate not only with regard to the basic offence and its constituent circumstances, but also in relation to all legal institutions that affect the individualisation of the penalty and its final determination. Were it otherwise, the relevance of the offensiveness of the basic offence could be "neutralised" by an individualisation process predominantly oriented towards culpability and dangerousness'. To the same effect, more recently, Italian Constitutional Court, judgment of 21 June 2017, No. 205; previously, Italian Constitutional Court, judgment of 18 April 2014, No. 105; Italian Constitutional Court, order of 18 December 2014, No. 283.

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penalty and the limitation period requires acknowledging that both reflect the same legislative assessment of the gravity of the offence *in abstracto*, allowing for the separation of criminal unlawfulness (and its effects) from civil unlawfulness (and its effects), since the offence may cease to exist while the damage caused by the offender's conduct persists.

The statute of limitations is thus an integral part of the *gesamter Rechtszustand*, as it assigns legal significance to a temporal phenomenon already present in reality and considered by the legislature – through a political evaluation – when defining the other elements constituting the offence. In this way, time enters into typicality, in the part that expresses the offence, setting the predetermined maximum duration of its necessary social persistence until irrevocable punishment.

Once this period expires, the act can no longer be fully reflected in the complex offence structure, as the essential element of the current social offensiveness has disappeared: the act is no longer deserving of punishment, according to the principle that the offence must retain an axiological foundation for the persistence of punishability. In other words, attributing the temporal dimension to offensiveness *in abstracto* – which serves to delimit the scope of criminal relevance – and considering that the limitation period is not measured by the concrete disvalue of the act (Article 157 of the Criminal Code), it becomes clear that the passage of time has effects on the act itself (objective offence) in relation to the abstract offence definition (subsumption), capturing the empirical temporal aspect of reality that is the actuality of the offence committed.

Placing the limitation period within the framework of establishing the criminal act – and, in particular, as an aspect of substantive typicality capable of undermining the very existence of the harmful nature of the typical conduct – is consistent with the substantive nature of the statute of limitations and with the traditional gradualism in verifying the elements of the offence. This also justifies the positive rule that the statute of limitations is a cause for the extinction of the offence, understood in a substantive sense as harm to a constitutionally protected legal interest.

7. A brief comparative perspective on limitation periods in the Spanish, German, and English legal systems.

It is not possible here to offer a detailed comparative survey of limitation rules; within the constraints of this contribution, only the essential features of the Spanish, German (civil law), and English (common law) systems will be outlined.

In the Spanish system³², limitation is entirely detached from the ‘clock of oblivion’ of the offence, operating instead at the pre-trial stage: the initiation of criminal proceedings permanently interrupts the *tempus præscriptionis*, save where the proceedings are suspended or fail to conclude with a conviction³³. In effect, the exercise of criminal action produces an *erga omnes* ‘suspension’ of the limitation period until a conviction is reached, with the possibility of reactivation should the proceedings stall or the defendant be acquitted. Through this mechanism of intra-trial reactivation, limitation also serves to regulate the reasonable length of proceedings, albeit without procedural tools to ensure their acceleration³⁴. The *dies a quo* is the moment of consummation of the offence, except for continuing offences, where the period runs ‘*en los casos de delito continuado, delito permanente, así como en las infracciones que exijan habitualidad, (...) respectivamente, desde el día en que se realizó la última infracción, desde que se eliminó la situación ilícita o desde que cesó la conducta*’³⁵. As to its legal nature—substantive or procedural—regardless of its placement in the Criminal Code among *las causas que extinguen la responsabilidad criminal*, the prevailing doctrine and case law agree in defining the *tempus præscriptionis* as a ‘ground for extinction of punishability’ which does not affect the structure of the offence (still less culpability), but merely prevents the imposition of punitive consequences. The rationale is consistently identified in the disappearance of the need for punishment, with the passage of

³² The regulation of the *prescripción del delito* is contained in the Spanish Criminal Code, Title VII (*De la extinción de la responsabilidad criminal y sus efectos*), Chapter I (*De las causas que extinguen la responsabilidad criminal*), Articles 131 and 132.

³³ L. SIRACUSA, *Oblío e memoria del reato nel sistema penale*, Turin, 2022, 177.

³⁴ The absence of procedural tools to expedite the course of criminal proceedings does not preclude an undue extension of their duration; on this point, see C. REY GONZÁLEZ, *La prescripción de la infracción penal en el Código de 1995*, Madrid, 1999, 61 ff.

³⁵ *Ley Orgánica 4/2023, de 27 de abril, para la modificación de la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*, BOE núm. 101, 28 April 2023, in force from 29 April 2023, available at Boletín Oficial del Estado (last accessed 14 September 2026)

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time functioning as a natural instrument of the offender's resocialisation, while also sacrificing the general prevention aim of punishment³⁶.

In Germany³⁷, statutory limitation excludes '*die Ahndung der Tat und die Anordnung von Maßnahmen aus*' and, once matured, bars prosecution for the specific act³⁸. The interaction with proceedings is governed by suspension and interruption, designed to safeguard the State's interest in establishing criminal responsibility and imposing punishment. Suspension is strictly objective, covering extra-procedural circumstances beyond judicial control that impede the normal continuation of proceedings. A sui generis permanent suspension (or postponement of the *dies ad quem*) is provided in § 78b(3) StGB: if a first-instance judgment is delivered before expiry of the limitation period, the period does not run until the proceedings conclude with a final judgment. Thus, appeal and cassation stages are excluded from the computation. Interruptions are exhaustively listed in § 78c StGB; after each interruption, the period recommences in full. In any case, the offence is time-barred at the latest when twice the ordinary limitation period under § 78 StGB has elapsed from the *dies a quo*, subject to § 78b StGB. The dominant view, especially in case law, treats limitation as procedural in nature, grounded in considerations of procedural economy (*Verfahrensökonomie*) and the deterioration of evidence over time (*Beweisvergänglichkeit*). Limitation thus constitutes an obstacle to the continuation of proceedings—a supervening bar to prosecution (*Verfolgungshindernis*)—without altering the wrongfulness of the act. By contrast, the substantive conception is a distinctly minority view: the *tempus praescriptionis* would operate as a ground for extinguishing the offence (*Unrechtsaufhebungsgrund*), eliminating the State's right to punish due to the supervening loss of criminal unlawfulness. A further strand of scholarship, while recognising the substantive foundation (*Grund*) of limitation in its connection to punitive aims, nonetheless maintains its

³⁶ Among others, L. MORILLAS CUEVA, *Acerca de la prescripción de los delitos y de las penas*, Granada, 1980, 22 ff. For an in-depth analysis also of the minority proceduralist theses, see L. SIRACUSA, *Oblío e memoria del reato nel sistema penale*, cited above, 187 ff.

³⁷ The limitation of criminal offences (*Verfolgungsverjährung*) is set out in the German Criminal Code (*Strafgesetzbuch*, StGB) at §§ 78–78c.

³⁸ In German legal scholarship, A. GREGER, K. LOHSE, B. VALERIUS, J. WEINGARTEN, *Strafgesetzbuch. Leipziger Kommentar*, §§ 69–79c StGB, vol. 6, Berlin, 2024.

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strictly procedural nature, classifying it as a ground for excluding prosecutability.

Common law systems do not recognise limitation in the sense understood in civil law jurisdictions³⁹. English law, for instance, provides for a time limit on the exercise of prosecutorial power, with the overarching aim of ensuring the reasonable duration of proceedings (*due process of law*). As in civil law systems, time limits vary according to the category of offence and the procedural forum, as set out in the Magistrates' Courts Act 1980. *Summary offences* are less serious and fall within the jurisdiction of a single judge, whereas *indictable offences* – punishable by more than three months' imprisonment – are tried before the Magistrates' Courts or the Crown Court (with a jury). The time limit for *summary offences* is six months from the commission of the offence, unless otherwise provided by statute⁴⁰. For *indictable offences*, there is no statutory time limit. The centrality of the reasonable-time requirement is underscored by the *staleness doctrine*: although *indictable offences* are not subject to a time limit, the Crown Prosecution Service assesses the practical viability of prosecution in light of the evidential reliability of the case and the continuing satisfaction of public-interest criteria⁴¹.

A brief concluding remark: notwithstanding the divergent regulatory approaches and the differing classifications of limitation as substantive or procedural, it is undeniable that the degree of public interest in prosecuting or adjudicating an offence is proportionate to the gravity of the harm to the protected legal interest—which is, in essence, the protected social interest itself. Thus, in Spain, Article 131 of the Criminal Code fixes limitation periods

³⁹ Fundamental, G. HOCHMAYR, *A Comparative Analysis of Statutes of Limitation*, in *Die Verjährung als Herausforderung für die grenzüberschreitende Zusammenarbeit in Strafsachen*, Baden-Baden, 2021, 708 ff.

⁴⁰ For example, an extension of the time limit is provided for *Benefit Fraud* under Section 17 of the Social Security Fraud Act 2001; for *animal cruelty offences* under Section 31 of the Animal Welfare Act 2006; and, likewise, for certain *building offences* under Section 13 of the Climate Change and Sustainable Energy Act 2006.

⁴¹ For a comprehensive overview of how English law attempts to balance the lack of formal limitation periods for indictable offences with the abuse of process doctrine and the overarching principle of proportionality, see A. ASHWORTH, J. HORDER, *Principles of Criminal Law*, 7th ed., Oxford, 2013, 175-182. Furthermore, on the broader Anglo-American debate regarding the limits of state coercion over time, see D. HUSAK, *Overcriminalization: The Limits of the Criminal Law*, Oxford, 2008.

according to a scale of seriousness for *delitos*, subject to the imprescriptibility of crimes against humanity, genocide, war crimes, and terrorism-related offences; likewise in Germany, where limitation periods are proportionate to the seriousness of the offence (§ 78(2)–(4) StGB), again subject to the imprescriptibility of *Mord* (aggravated intentional homicide), genocide, crimes against humanity, and war crimes; and even, despite the markedly different framework, in the English system, where the imprescriptibility of the most serious crimes (*indictable offences*) is tempered only by the concrete assessment of the sustainability of the prosecution in a *due process* framework and, above all, by the continuing presence of a public interest in prosecution. In every State governed by the rule of law, therefore, the nexus between time and harm is inescapable.

8. Concluding Remarks.

The multifaceted composition of the *gesamter Rechtszustand* – consisting, as noted, of an interweaving of heterogeneous factors aimed at punitive affliction – finds its unity in *disvalue*, understood as the offence (harm or endangerment) to the protected legal interest, which must persist until the final determination of the concrete act's subsumption into the complex offence structure.

Among these factors, time also reflects an aspect of reality which, like the others, must find its place within the articulated structure of the *gesamter Rechtszustand*. The limitation period constitutes that element of the complex offence which captures the temporal dimension of the offence, attributing legal significance to the mere passage of time *post factum*, with extinguishing effects on the disvalue that extends beyond the threshold of harm defined by the criminal provision. This is a time external to the historical fact, yet internal to the *gesamter Rechtszustand*, proportionate to the gravity of the offence against the protected legal interest, and endowed with the capacity to “remove the criminal nature of the act,” thereby historically anchoring itself to the *voluntas legislatoris*, which has recognised in limitation an additional cause for the extinction of the offence itself.

The limitation period begins at the ultimate boundary of the crime (Article 158 of the Criminal Code), namely, when the concrete act conforms to the incriminating provision, reaching the threshold of harm to the protected legal interest deemed intolerable by the legislature. The *tempus consummati delicti*

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represents the moment of final convergence between the concrete cessation of the typical conduct and the full realization of the offence's harmful charge, corresponding to the level of harm in abstracto described in the provision. Such abstract harm nonetheless persists beyond consummation, as it is necessarily inherent in the description of every element instrumental to the post-factum punitive response.

Thus, limitation becomes the conventional index of the current disvalue of the act: the temporal distance from the commission of the typical act is inversely proportional to the social interest – and thus to the persistence of the offence – in protecting the legal interest harmed by the *factum patratum*. Penalty and limitation operate on the same plane, since the maximum measure of the former determines the *quantum* of the latter (Article 157 of the Criminal Code), both being calibrated on the abstract disvalue of the offence, according to criteria of intrinsic (*intra delictum*) and extrinsic (*inter delicta*) proportionality.

Time, therefore, has legal value and cannot be ignored: the normative choice is to attribute to it the capacity to extinguish the offence to the legal interest, according to predetermined terms proportionate *in abstracto* to the objective gravity of the harm and the intrinsic normative significance of the protected legal interest (*Rechtsgut*) within the democratic fabric.

A distinction must, however, be drawn between the *tempus* and the procedural “term”: the latter measures the duration of the process of determining criminal liability, may wholly or partially overlap with the *tempus præscriptionis*, but is procedural in nature, not substantive; it is not proportionate to the offence, but is instead calculated to ensure the efficiency of the judicial apparatus in pursuing crimes. The evident heterogeneity between *tempus* and term necessitates different regulatory regimes, while acknowledging the undeniable interaction between the measure of the offence's actuality and that of the reasonable length of proceedings.

The current legal framework represents a political compromise: until the delivery of the first-instance judgment (Article 161-*bis* of the Criminal Code), the substantive time of limitation (Articles 157-158) relating to the right to punish is distinguished from the procedural time of suspension and interruption (Articles 159 -161), relating to the conduct of criminal proceedings, a distinction reinforced

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by the introduction of the inadmissibility regime under Article 344-*bis* of the Code of Criminal Procedure.

While not perfect, this solution confirms the thesis advanced here: the *tempus* is an aspect of substantive typicality. Ideally, the limitation period would cease upon the exercise of criminal action, and from that moment a procedural term – structured by trial phases – would run, the expiry of which would result in inadmissibility.

The objection that procedural inadmissibility might intervene before the *tempus præscriptionis* has fully expired – and thus while the offence allegedly retains its social currency – fails to grasp the dogmatic autonomy of substantive typicality. Such an objection conflates the material decay of the *præsente iniuria* with the procedural constraints placed upon the State's *potestas iudicandi*. While the *tempus præscriptionis* acts as an intrinsic negative element of substantive typicality, eroding the *konkreter Rechtsgutsangriff* from within, procedural timeframes operate externally as insurmountable prosecution barriers (*Verfolgungshindernisse*). Where procedural inadmissibility occurs, the legal order does not deny the potential persistence of historical disvalue; rather, it affirms that substantive typicality can never be legitimately declared through a constitutionally defective and delayed trial. Conflating *tempus* and procedural term distorts the essence of both: it reduces the substantive time of *præsente iniuria* to a mere device of judicial management, while overlooking the fact that an untimely trial destroys the very constitutional framework required to verify the ongoing material disvalue of the offence.

Should the current political compromise be abandoned in favour of the primacy of substantive time, it becomes dogmatically imperative to conceive time as a factor governing the continuous graduation of the offence's material disvalue. Elevating this proposition to a fundamental postulate of general legal theory, the mitigation of punishment due to the passage of time must not be understood merely as an equitable or compensatory remedy for trial delay (along the lines of ECHR case law), but as a direct corollary of the substantive nature of temporal typicality. If time progressively erodes the offensive charge of the crime until its complete extinguishment upon expiry of the limitation period, this erosion does not function as a binary switch (all-or-nothing), but as a normative continuum. A material disvalue partially eroded by time strictly requires a

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correspondingly reduced quantum of sanction. In rigorous adherence to the constitutional principles of proportionality and culpability, the temporal decay of the offence mandates a proportional mitigation of punishment, definitively confirming that time permeates the entire 'normative lifespan' of typicality.

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