

LANCO LAISU

REVISTA ANUAL DE LA MAESTRÍA EN TEORÍA PSICOANALÍTICA LACANIANA

SEGUNDO NÚMERO

Dioses Oscuros

ISSN: 2525-0965

INTERVIEW WITH EUGENIO RAÚL ZAFFARONI*

By **Agustina Brandi, David González, Eugenia Destéfanis** and **Sofía Kolic**

Zaffaroni argues that the criminal issue is a problem that is part of a global framework where the deepest core of the future form of coexistence—and even the very fate of humanity in the coming years—is at play.

His thesis that states commit mass homicides led him to say that “[w]hat has been verified is only that from time immemorial enemies are invented that are sacrificed, that a new enemy is then invented and a new sacrifice is produced, that it is more clearly and dramatically noticeable as modern civilization planetarizes itself and technology advances and each new sacrifice implies new mass homicides.” These concepts earned Zaffaroni The *Stockholm Prize* in 2009. He was the first non-English-speaking nominee to be awarded this prize, the highest in the field of criminology worldwide.

The issue of sacrifices is one Zaffaroni often addresses in his papers and books. For this reason, *LAPSO* requested an interview with him, knowing that the dialogue between law and psychoanalysis has always been fruitful, even considering the particular and dissimilar perspectives of each field.

In June 2017, Zaffaroni welcomed *LAPSO*'s Editorial Secretariat to his home. After walking across a garden with dense vegetation, we arrived at one of the most emblematic city block interiors in Barrio Flores, which houses an enormous mythical library with over 30,000 books. That was were—over a cup of coffee—the following conversation took place:

LAPSO: In several of your books, you have referred to “sacrifices”. When are these produced?

Zaffaroni: We should begin by asking ourselves: What do we understand by sacrifices? Europeans always use the *Shoah* as an example, but that's European.

Let's go back in time to the 16th century: that's when people started speaking of race. It made no sense before that. Only after the emergence of colonialism does it make sense to speak of it. Although illuminism appeared later, it had the hidden face of colonialism and slaveholding, because without colonialism and slaveholding there would have been no raw materials or methods of payment for the emergence of the European bourgeoisie. When this appeared, the first struggles—as well as the phenomena we're referring to here—occurred. After they settled in, we can find Spencerian biological reductionism, and this is the hidden face adopted by the illuminism and liberalism of those centuries (18th and beginning of the 19th). Of course, sacrifices were not performed in the same place; they couldn't be seen on the streets, but millions occurred.

Later on in time, the *Shoah* took place in Europe. One may wonder how a country such as Germany, where there were outstanding intellectuals, suddenly became involved in that. But Hitler was no

*Judge of the Inter-American Court of Human Rights (CIDH). Former Justice of the Supreme Court of Argentina. Ph.D. in Social and Judicial Sciences. Vice President of the International Association of Penal Law. Vice President of the International Society of Social Defense. Secretary General and founder of the Latin American Association of Penal Law and Criminology (ALPEC). Former Chairman of the ILANUD (United Nations Institute for the Prevention of Crime and the Treatment of Offenders) based in San José, Costa Rica. Former Intervenor of the National Institute Against Discrimination, Xenophobia and Racism (INADI) in Argentina. Author of more than 20 books. Recipient of Honorary Doctorates in more than 30 universities from different countries. Winner of the Stockholm Prize in Criminology.

magician; he came to fill a void that those German intellectuals had created with romanticism. Irrational thinking was generated. One day Hitler arrived and we may say it was all about the glorification of irrationalism, at a very special moment in a country humiliated after having experienced an illusion. But the Germans were as racist as the English, except that there were two versions: one was Spencerian and evolutionary (a pure racism based on a gross biologism), while the other was involuntal. However, they were not very different to all intents and purposes. The problem is European racism, which is paying for colonial crimes today. The Mediterranean is, at present, the new Arizona desert. European terrorism is produced by Europeans themselves. It's evident: you're born in a country, grow up, go to school, etc., and you're permanently segregated, permanently humiliated. They do not let you become a part of it. I'm not saying this happens to everybody, but some personalities are more vulnerable, more fragile, and they suddenly "flare up".

There are other types of racism, with different variables, but they're all intertwined with one another.

L: From psychoanalysis, that's what we call the forms of segregation that may take on racist overtones, that is, segregation by race, by religion, etc.

Z: Yes, all the forms discrimination may take, but which we find related to one another. As a general rule, every racist ideology accompanies the rest. In each paradigm of this nature everything goes together: contempt for the disabled, eugenics, misogyny, etc. These issues have settled in, but they still prevail, a bit on the sly. There are people who have learned there are things that shouldn't be said, but they still agree with them.

L: When does this become legitimate?

Z: There are different stages. There's a diffuse stage, such as hurling insults to a certain group or population in a soccer stadium. There's a second stage, a more organic one; that is, there are publications, newspapers, articles, books. And there's a third stage that takes the form of state policy. They are different stages by means of which it settles in.

Locally, we may say that our Republic's oligarchies were racist, as well as the Peruvian *patricianship*¹, the Mexican *Porfiriato*², and Brazil's *República Velha*³.

L: Could we think of present-day sacrifices?

Z: Yes, Haiti, a country they are letting die. But we need to think what sense is given to the expression of sacrifice, because, for example, we may also refer to institutional violence. It's not just about

¹*Patricianship* refers to the high classes or aristocracy in a social system.

²The Mexican *Porfiriato* was the government regime between 1876 and 1911, under the military control of Porfirio Díaz, characterized not only by Mexico's structural modifications, but also by the concentration of power and the marked inequality between social classes.

³*República Velha* or *First Republic* refers to the period in Brazilian history between 1889 and 1930, that is, when Brazil was declared a Republic. This period was characterized by a change in the form of government (although the modifications introduced did not result in considerable changes for the vast majority of the population), the concentration of power in the hands of landowners, and corruption among the elites.

⁴In his writings, Zaffaroni holds that the "human right to development" is a priority human right. There is a theoretical division that presents three generations of human rights, the first referring to individual rights; the second referring to social rights; and the third referring to third-generation human rights, where the "human right to development" is located. Zaffaroni considers that the "human right to development" is the most frequently injured right in Latin America, for example, and this fact is directly related to institutional violence and "drip, drip, drip genocide".

homicides, but if we think about the colonialism affecting the “human right to development”⁴, I believe there’s an ongoing “drip, drip, drip genocide”⁵. That is, let’s think of the homicides, the traffic deaths due to inadequate roads that can’t keep up with the increasing number of vehicles, occupational safety, deficient health campaigns, discriminatory health care. If we add this all up, we’ll get a mountain-high pile of corpses a year. Strange things are happening. The figures are saying strange things.

Brazil is an example of a very strange phenomenon. The country has 700,000 prisoners and 600,000 unexecuted arrest warrants. Every time a prison cell is left vacant, one of those people is arrested and put in jail. Obviously, that’s a source of human selection.

So if we add up the number of prisoners and the number of people with unexecuted arrest warrants, we’re talking about 1.3 million people. It’s a very strange situation where the Judiciary issues arrest warrants without taking prison capacity into consideration. It’s the only country with such a compartmentalized criminal justice system. Both the people who still haven’t been incarcerated and those already in prison total 1.3 million. Suppose there are about 700,000 that are being tried in court but not yet in prison, at least with arrest warrants. We have two million people involved in criminal proceedings, that is, the equivalent of half the population of Uruguay. One out of one hundred Brazilians is linked to a criminal process. Each has a family, around five or six people who are in close contact. That means there are five or six people who, in addition to that one person, become familiarized with the issue of criminal justice, courts, prison. That is, the issue is trivialized. They are 10 or 12 million people, the equivalent of a fourth of Argentina’s population. So then it’s a very strange phenomenon. Something is not working well in a society like that.

L: Is there a relationship between “drip, drip, drip genocide” and the economic system?

Z: Definitely, there’s been a turn in capitalism, a change in the concentration of capital as a result of which the financial system prevails over the productive system and is devouring it. I don’t know what the outcome of that will be. There’s a reaction of the productive system on the part of Trump and I believe they’re going to fire him any minute for this reason, not because he talks nonsense, but because he’s affecting financial capital. When he says, “I want products made in the country; you have to bring this work back to this country,” he’s putting himself on the side of productive capital. By contrast, the others say, “We’re going to make products in China or India with slave labor.”

I don’t know where capitalism is headed for; it may end in a catastrophe. We’re also witnessing this shift in Latin America when we see transnational corporations taking over politics—well, I mean in the world. There’s always been a relationship between politics and the *establishment*, but rather than a relationship, now it’s about the *establishment* devouring politics.

Thus, we can see that corporations have become the true power, since they have the advantage over politics of being able to move horizontally. In contrast, politics cannot do that because it’s evidently local.

⁵ In *Muertes anunciadas (Foretold Deaths)*, (2016), based on the research by Elías Carranza, Zaffaroni points out that there are two high rates in Latin America: on the one hand, Latin America has the highest homicide rates in the world and, on the other, it also has the highest Gini coefficients. Zaffaroni’s theoretical elaboration on “drip, drip, drip genocide” is related to those high rates and to the hypothesis that, in addition to the institutional violence exercised by the state, there is an increase in what he calls “foretold deaths” or “drip, drip, drip genocide”. In the same text, Zaffaroni says, “we have the feeling that the models of exclusionary society are no longer concerned with killing by means of their autonomous law enforcement agencies; they do it by fomenting contradictions and conflicts among the socially excluded themselves. They manage to have them kill each other, which absolutely serves their purpose.”

L: On the basis of this turn of capitalism, are new phenomena of hatred and violence emerging along with the shift?

Z: Yes, that is, the economic plan of a financial capitalism results in a 30/70 society: 30% included in that society and 70% excluded from that society. And such a society isn't viable without repression. It's containment of exclusion, but there are different ways of containing it—some more and others less violent—but all the *populacherista*⁶, demagogic, and vindictive claim is intended to strengthen the repression system, which plays that role. Nobody cares about the corpses or the dead people, so much so that they don't care that no investigation is being done. There's no field criminology, nobody wants to know what's going on, so what's relevant is the media question. The concentrated media are helping to serve a purpose.

I've come to the sad conclusion that nobody cares. I believe nobody cares about homicide in general, either. Tell me what investigations are being done about homicides in Argentina or how much is being invested in them. Who is killed? What time are certain crimes committed? Who are they? What's going on? We don't know anything and no investment is being made either. In countries where investigations are done and investment is made, the effects are different, but I'm talking about Great Britain or Canada, for example.

L: Why isn't there field criminology?

Z: Because nobody cares about reality. They're actually concerned with its political and economic manipulation. If there were field criminology, we might look into reality and see what we can do. More vulnerable groups are spotted and there needs to be more communication; communication needs to be oriented toward them; they need to be protected differently. In every crime there are groups who are more vulnerable than others. Take swindle, for example; someone who is not used to doing business is more vulnerable than someone who runs a business. There's a whole current of victimological studies working on that. This research explores who is at a higher risk of victimization. We have to ask ourselves: who is more vulnerable to victimization?

L: Taking up Lacan, Miller says that racism is “hatred of the *jouissance* of the Other: the particular way in which the Other enjoys (*jouit*) is hated. How can this be legislated?

Z: I don't think law can solve that. The function of law is very limited.

I consider that proposing the aggravation of “hate crimes” is correct, but the fact that it seems correct to me doesn't mean the issue will be solved with that. “Hate crimes” are characterized by being crimes where the individual victim doesn't matter; what matters is a certain group; it's a crime against a minority, which is different from femicide, because in these cases what matters is the victim in her particularity. Both things are mixed up and people think it's a “hate crime”, but a femicide is much worse.

L: You say there are sacrifices that play certain roles. What would these be?

Z: Well, generally speaking, I understand that it depends on the context, but basically I'd say that

⁶ “Penal *populacherismo*” is a phrase coined by Zaffaroni to refer to a variant of what is known as *völkisch*. He uses it to differentiate it from political populism. It consists in the political exploitation of discriminatory prejudices. In an interview with Martín Granovsky, Dr. Zaffaroni explained that it is all about “building on the worst discriminatory prejudices in a society and delving deeply into them to exploit them politically, whether in search of votes or consensus in the practice of aberrations and uncontrolled punitive power.” Retrieved from <https://www.pagina12.com.ar/diario/elpais/1-259979-2014-11-16.html>

it's the role of providing identity to someone who does not have it. I do not know who I am, but I know I'm not the black person, I'm not the fat person, I know I'm not this or that, I'm not the gay person, I'm not the whore. I put masks on others to create my own. I don't identify myself for being but for what I'm not.

L: Why can't the sacrificed object be any object?

Z: It has to play a role and, according to the circumstances, it has to be someone; it can't stop being human, but a different human, and we continue from there. It depends on each historical and cultural circumstance. Candidates aren't the same in all circumstances, because if we say that the sacrificed object is a different human, we have to know that "that which is different" can be everything. From the outside, one does not easily contemplate it. In my opinion, Ireland was an example. I didn't understand anything, but I didn't understand it because, according to what I observed, they were all the same. I can understand that the Arabs fight against the Israelis—it is wrong—but it is understood because there are marked differences between them that we all know about.

In Ireland, after several hearings, I asked a person, "How do you distinguish yourselves from others?" They answered that they differed in the clubs they went to, and so on. I told them that they are the same and they replied, "No, no, they colonized us (the Scots)." And I wonder when that was. It was in the 1700's and it meant that they killed one another until 10 years ago. The city of Belfast is divided by a wall. If a taxi driver made a mistake and drove behind the other side of the wall, they would kill him. It's true; some are Anglicans and the other Catholics, but both religions are very close to each other. This shows that, in order to make others an object of sacrifice, we don't need very radical or very noticeable differences, another language or another religion.

L: You said that the role of sacrifice is to provide an identity to something that doesn't have it.

Z: Of course, if I need to define myself for what I'm not, it's because I'm living in a rather inauthentic way. I'm concealing a lack of existence. The more fragile the identity of someone is, the more prone it is to give masks to others. That's what explains that until yesterday someone could talk to their neighbor and today they hate them as if they were no longer the neighbor, but rather an enemy, a collective enemy. The individuality of the neighbor disappeared.

L: You have argued that, frequently, punitive power generates more genocides. When does that occur?

Z: Yes, my argument is that if it goes uncontrolled, it's a genocide. This means that the criminal justice system in modern societies tries to channel vengeance rationally. For this reason, I consider that punitive power never played the role it says it plays; it was always used for something else. It has been reestablished for about a thousand years. The first excuse was Satan and the girls, then heretics, then syphilis, then alcoholism, then drugs, then international terrorism. It never solved anything; none of these problems was solved with punitive power. But on the pretext of all these emergencies, they killed a few million people. In that sense punitive power is a historical scam, the biggest scam in history. But it's a political fact and it exists. War is also a political fact; don't ask me to justify it, but it's there.

What I know is that, in the immediate future, we have to contain it. When I raise this question, I think of limiting or containing the waves of vengeance, of exhausting the possibilities of the models for effective conflict resolution, and of denouncing the techniques of neutralizing mass homicides. Because, of course, I can quietly sit down to think about our society in a café in Paris,

but if we are in Central America with bullets passing over our heads, I think we'll have a different opinion. In Guatemala, when you go to a fancy restaurant, you find a locker with a sign saying, "Leave your weapon here." In that case, we don't have time to think about society without punitive power. It's awful.

L: In an interview, you said that punitive power is a "false God".

Z: A long time ago, I was at a congress in Vienna with the late Ruth Morris, a Canadian sociologist and abolitionist. I finished my lecture and went to listen to another presentation. I was sitting next to her and I asked her, "Ruth, am I missing something or are they discussing nuclear criminality?" She told me that, indeed, they were discussing that. The Soviet Union still existed; it was before the 90's. My answer was, "But these people won't have realized that if there were nuclear criminality, there'd none of us left, not even one who could take that kind of criminality to court." And she said, "No, because they're religious. For them, punitive power is God; they believe that he can solve all problems."

L: You stated that the *establishment* devours politics. Can we think that the dimension of that which is political disappears?

Z: That which is political will never disappear. That which is political is the government of the polis and every society needs a government, a leadership. This doesn't mean that you need a führer. What happens is that today, that which is financial prevails over that which is political. Then a society run by financial capital... in our case, in Latin America, it's one more stage of colonialism. Clearly, it's an advanced phase of colonialism. It's not neocolonialism—that's over—but a financial colonialism, a superior and different phase of colonialism. I think that national security dictatorships put an end to neocolonialism, and since then there's been a different stage we don't know where it ends. The world is experiencing a very complex time.

L: For several years, you were one of the justices of the Supreme Court of Argentina. What did this experience mean for you?

Z: You see power more closely; you're more aware of the structural defects it has. You experience it. And yes, indeed, our Judiciary has a disastrous structure. There is no other Judiciary in the democratic world with this structure. Power is concentrated and under pressure. It's dangerous, very dangerous.

L: And is it possible to take individual action within that structure?

Z: Of course, you can do things. At the same time, you note that the operation of this structure should be reformed. I hadn't had such a direct experience until I was there—to begin with, very serious things. As a justice of the Supreme Court, you have to rule on different matters. And no one knows about all matters. It's not that I'm scared to delegate. If the Judiciary does not delegate, nothing can be decided. The point is that you can give someone instructions and delegate the writing of a sentence to them. Then you can read and correct it. However, something very different happens; that is, you look at the person who actually wrote the sentence and say, "Are you sure of what you wrote?" Forcing someone to do this is just not appropriate. No one can know about everything. They may know about just one or two subjects. For example, in matters of taxation I need to call an accountant. So when you see that things work this way, then you say, "There's something wrong here that needs to be fixed."

L: Going back to the question of sacrifices, what do you think are the objects of sacrifice today?

Z: There are different types. In Brazil, deadly police violence is on the rise. The percentage of black people being killed is increasing. Statistics indicate so. But there are others. Refugees in Europe, of course. There is an important number, but what happens is that we trivialize it. We drink white coffee and eat croissants while we're watching it on television in the morning. There is a kind of desensitization. Societies wake up when catastrophes occur. As they occur, people wake up. That's what happened with the *Shoah*, not with the colonial genocides of Africa or with the Armenian genocide. But when the Europeans saw the *Shoah* was taking place there, they realized that they all shared the same lack of melanin and they were frightened. That's when they awoke and wrote the Declaration of Human Rights, not because they reasoned so but because they were afraid. Progress is made on the basis of fear, which is why I say that it is catastrophes that awaken society.