



Constructing the mafia concept on the bench. The legal battles in the ‘Mafia Capitale’ case in Rome

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ABSTRACT

The Italian Antimafia Operation ‘Mondo di Mezzo’ (the World in Between) has presented the group called “Mafia Capitale” as a mafia-type group born and bred in Rome, with its own mandate and reach into public administration and politics. A maxi-trial established that the corruptive method employed by associates of Mafia Capitale, together with the entrepreneurial nature of the group, were enough to qualify the group as a mafia-type criminal association within the scope of article 416-bis of the Italian Penal Code.

Starting from considerations on legal constructivism, this paper compares juridical documents by the Antimafia Prosecutors and the first degree Tribunal to explore the diversity of their legal arguments. The paper will argue that considering systemic corruption as strategy of intimidation and manifestation of mafia power in contemporary days is imperative to evolve the concept of mafia itself.

1. Introduction

On the 2nd of December 2014, the District Antimafia Prosecutors in Rome revealed the findings of operation “Mondo di Mezzo” (World in Between) by arresting 38 people, among which Massimo Carminati, sentenced to 20 years of prison for its recidivist involvement in a number of criminal activities (such as extortion, loan-sharking, usury, etc.). It is beyond the scope of this paper to present and evaluate the criminal career of Carminati, who, well known to Italian authorities, has a past with right wing terrorism and organised crime groups in the capital city of Rome (Mazzeo, 2015; Martone, 2016b). Other 44 people were arrested in June 2015 within the same investigation. The group led by Carminati and his associates has been named “Mafia Capitale”.¹ In July 2017, as the first degree trial ended with 41 convictions for crimes as disparate as corruption, loan sharking, trafficking of favours and influences, obstruction of justice and of public administration, the Tribunal in Rome (hereinafter ‘the Tribunal’) argued that Mafia Capitale is certainly an unlawful association – characterised by organised corruption and serious crimes – but it cannot be considered a “mafia-type” association.² The Antimafia Prosecutors appealed the sentence against 19 defendants in December 2017. The Appeal trial confirmed the thesis of the Prosecutors and the mafia status of the group in September 2018.³

Since its inception, the case has attracted a lot of attention from media and scholars for its peculiar setting – the capital city of Rome – and because of its extremely successful, and for a long time unpunished, criminal character (Vannucci, 2016).

Relying on judicial documents including arrest warrants, interceptions, the first-degree sentence and its motivations, and the case for

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¹ Sergi, A. “The Mafia Mega Trial that has Italy on Tenterhooks.” *Newsweek Europe* 11 November 2015 (<http://europe.newsweek.com/mafia-mega-trial-that-has-italy-tenterhooks-336366?rx=eu>).

² See “Rome court convicts 41 in ‘Mafia Capitale’ corruption case”, by James Politi and David Ghiglione, *Financial Times* 20th July 2017, <https://www.ft.com/content/4cf9b6de-6d5f-11e7-bfeb-33fe0c5b7eaa>.

³ See Italian court cuts sentences for ringleaders of Rome’s ‘Mafia Capitale’ gang, 11 September 2018, <https://www.thelocal.it/20180911/italian-court-cuts-sentences-for-ringleaders-of-romes-mafia-capitale-gang>.

appeal, and including two interviews with the key Antimafia prosecutors on the case, this paper will perform a content analysis first (for a preliminary coding) and a discourse analysis afterwards, of the legal battle between the Antimafia Prosecutors and the first degree Tribunal in the recognition and legal qualification of Mafia Capitale. A total of 6500 pages of documents constitute the data considered for this paper. The two interviews only had the scope to clarify some of the legal choices and technicalities of the case and should be considered as supporting data to the documents. By assessing how legal constructivism has worked in this case, this study fundamentally reconsiders the core of the theoretical frameworks that – at both sociological and legal levels – define the phenomenon of mafias. An assessment of the debates in the course of the Mafia Capitale first trial reveals a profound revolution of the theoretical foundations of the mafia concept; the battle is, in this sense, not just a legal one, but also a conceptual one with repercussions beyond this trial.

This paper will ultimately argue that the legal interpretation given by the Antimafia prosecutors and confirmed in the Appeal trial appears more aligned with criminological conceptualisations of mafias, whose actions need to be qualified as set of methods and set of behaviours (Sergi, 2017b; Sciarrone and Storti, 2014). These concepts better describe modern manifestations of organised crime groups, seeking both power and profit, and using both violence and systemic corruption, as in Italy so abroad. The thesis of this paper is not entirely an original one. Other scholars have already looked at this case as paradigmatic of a very profound set of changes currently happening within Italian jurisprudence when it comes to unlinking mafia associations from the geographical and structural elements usually attributed to them (Visconti, 2015b, 2015c; Ciccarello, 2016; Manzini, 2016). Within these studies, Mafia Capitale has been defined an “idealtypic” case (Ciccarello, 2016) because it represents the possibility to reconsider the debate on mafia offences ideally, as well as representing a very specific case, which might be difficult to generalise. This current study, aimed at an international audience, aims at contributing to the current debate with an analysis of the legal discourse that shows how legal constructivism within current debates in Italian jurisprudence actually work in practice.

2. Framing mafia and organised crime: an outlook to the Italian legal context

The terms ‘organised crime’ and ‘mafia’ are often considered to be interchangeable, especially in public and media discourses around the world (Whithorn, 2014). In Italian institutional discourses, these terms overlap (Sergi, 2015a). However, scholars and policy makers tend to be more nuanced in the way mafia-type organised crime differs from non-mafia/other organised crime, even though differences might be more fictional than substantial (Von Lampe, 2016).

These two phenomena have been approached from various disciplinary points of view. Seminal studies have stressed the importance of understanding criminal groups within the culture and the socio-psychological traits of their territories of origin, through analysis of families, communities, trust and ethnic solidarity (Hess and Osers, 1973; Schneider and Schneider, 2005; Paoli, 2003). Next to socio-cultural studies, we find socio-economic studies, which understand organised crime as a product of the liberal market (Mattina, 2011; Ardizzi et al., 2012; Shapland and Ponsaers, 2009), thus opportunistic in nature and oriented to maximisation of profits. Increasingly, the strength of traditional, Southern Italian, mafias – the Sicilian Cosa Nostra (or simply Sicilian mafia, the Calabrian ‘ndrangheta and the Campanian camorra – has been identified in their mixed nature: embedded in their original culture, but also crucially entrepreneurial in illegal and legal markets (Sergi and Lavorgna, 2016; Lupo, 2011). Studies on mafias and organised crime have also evolved to include organisational studies and network-based studies that enrich and complete both cultural and economic approaches (Calderoni et al., 2017; Sciarrone, 2014; Catino, 2019).

Crucially, public corruption might be one of the differentiating factors between the two phenomena. It has been argued that the difference between “mafia-type” unlawful association and “other” unlawful associations, is in the ability to systematically corrupt and infiltrate various facets of public and political life (CSD, 2010; Holmes, 2010; Sciarrone and Storti, 2016; Mete and Sciarrone, 2016; Sciarrone, 2016). In other words, whereas organised crime is often paired with either occasional, ad-hoc, corruption or long-term usually sectorial (finance, justice, health sectors) infiltration in public administration (CSD, 2010), mafia groups –successful ones – are more likely to climb up to political powers (Vannucci, 2001, 2016). This is essentially because “other” organised crime groups, generally speaking, aim at financial gains, while mafia groups aim at both financial gains and connivance with, and acquisition of, power (Sergi, 2017b). The environments where criminal groups operate will often mould the capacity and reach of criminal groups into political circles. In societies, like for example certain areas of the South of Italy, where communities’ ties have developed across clientelistic and familial bonds (Piselli and Arrighi, 1985), the overlapping of interests among entrepreneurs, politicians and mafia affiliates – for acquisition of power and money – is expected (Dalla Chiesa, 2010; Sciarrone and Storti, 2016).

It is in the law, in article 416-bis of the Italian Penal Code (i.e. the mafia offence), that we find the specification of mafia-type associations as more serious (even for sentencing purposes) and qualified forms of unlawful associations. “Other” organised crime is covered by article 416 of the Penal Code instead and, compared to the mafia offence, lacks the employment of the mafia method, including political ties. In fact, article 416-bis requires a certain number of “ingredients” to “make” a mafia group (Morosini, 2010). A mafia type criminal association exists when a group of people systemically employ the “mafia method”:

“When the participants take advantage of the intimidating power of the association and of the resulting conditions of submission and silence [omertà] to commit criminal offences, to manage or in any way control, either directly or indirectly, economic activities, concessions, authorisations, public contracts and services, or to obtain unlawful profits or advantages for themselves or for any other persons, or with a view to prevent or limit the freedom to vote, or to get votes for themselves or for other persons on the occasion of an election”.

The interpretation of the mafia method, how it manifests and how it can be proved, is the core of the split between prosecutors and judges across many Antimafia cases. The Supreme Court (Court of Cassation) clarified in 2015⁴ that the mafia method is “the use

⁴ Corte di Cassazione, sez. VI, no. 18459–22 January 2015.

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