

WHOSE LAW? WHOSE ORDER? OF CRIME AND PUNISHMENT

IN MODERN TIMES\*

[EMERGENZA CRIMINALITA' \*]

by

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The response by Italian national and local authorities to the organized crime problem has changed little in the past few years (Sabetti, 1989, 1990). Already by 1988 the megatrials were becoming a thing of the past and by 1991 they ended in mass acquittals. The Palermo and Catania communes have ceased to be --as they appeared in 1988-- vital points in the antimafia campaign and the people and coalitions that transformed those communes into antimafia outposts are in disarray. While the former DC mayor of Palermo, Leoluca Orlando, continues his antimafia campaign as a leader of the Network movement (Rete) and as Sicilian regional deputy, his former Catania counterpart, Republican Enzo Bianco, is struggling to shore up his moribund party in Sicily. Crime statistics are up. Even by the standards of Italy's crime-hardened South, 1990 and 1991 were exceptional blood-soaked years in Calabria, Sicily and Campania. In his traditional end of the year message, the president of the Republic expressed the hope that 1991 would be the year of justice. But the task of bringing underworld criminals to justice has been, to date, as difficult as solving the 1971 murder of the Palermo Chief Procurator, Pietro Scaglione, the first in a long series of

unsolved prominent murders (delitti eccellenti).

The law-enforcement agencies continue à la Max Weber to claim the monopoly of legitimate use of physical force in the troubled regions but they seem unable or unwilling to prevent, or put a stop to, others from employing force to maintain a parallel system of law and order there. From the Antimafia Commissioner to field police officers, from the Interior Minister to magistrates, they all admit that the state has lost control of wide swaths of Calabria, Campania, Sicily and even Apulia. A magistrate in Calabria echoed the thought of most of his colleagues when he likened the presence of the Italian state there to that of the Red Cross in a war zone: to help the wounded, to keep track of the dead and to inform the relatives (quoted in Chianura, 1991; see also Sciacca, 1991). A recurrent pattern could be observed in 1991. After the murder of a magistrate in Calabria or of an industrialist in Sicily, or after brutal mass killings in places like Gela and Taurianova, the interior and justice ministers would rush in, often separately, to affirm the presence (impegno) of the State. Their visit would be invariably accompanied by that of the police (polizia) chief, a high carabinieri official, the Antimafia Commissioner, members of parliament or of the Antimafia Parliamentary Commission and, sometimes, even the president of the Republic. Strong statements would be made but, after the distinguished visitors would return to Rome, the only lasting outcome of their visit would likely be yet another controversy about the competence of police and judicial officers in the field.

Even the move, in February 1991, of perhaps Italy's best known crime fighter, magistrate Giovanni Falcone, from the Palermo Tribunal to Rome's Justice Ministry, seemed, then, to lend additional weight to the argument that the instrumentalities of government were giving up on the organized criminality front (emergenza criminalità). We now know that Falcone's departure from Palermo signalled the beginning of a new antimafia policy whose main features emerged by the end of the year. But, as the experience of the American war on crime suggests, the complexities of translating an anticrime policy into administrative action can be daunting even under the most favourable of circumstances and the circumstances in Italy are hardly that. Thus little has changed for the better since 1988 (Sabetti, 1989, 1990). But the strength of organized crime groups, the renewed attempt to mount a seemingly more vigorous antimafia struggle from Rome and events connected with such developments offer scope for further reflections on the topic of law and order in contemporary Italy.

#### THE STRENGTH OF THE CRIMINAL UNDERWORLD

Not unlike mass media people, academic researchers have, for the most part, virtually no independent sources for surveying organized criminality and illegal markets. What they cover is the police and judicial coverage of the criminal underworld, their investigations and their prosecutorial results. There are reasons to be skeptical of such sources (Ericson, 1982:203; Reuter and Rubinstein, 1978; Santino and La Fiura, 1990:49-63). Nevertheless,

they do provide a starting point for making sense of a world that has its own laws and demands.

The tendency among law-enforcement agencies fighting organized crime in Italy, as in the United States, has been to focus more on the character of the criminals and less on the nature of the crime. This is understandable. Reputed professional criminals endowed with a high-visibility profile and reputation like mafiosi are easier to identify than transactions in illegal markets. The antimafia law no. 646 of September 13, 1982, also known as the Rognoni-La Torre law, and the ensuing judicial investigations by the "antimafia pool" of Palermo magistrates did much to direct attention to the nature of the crime. By 1991, however, there seemed to be no ongoing serious judicial investigations of illegal activities; according to magistrate Falcone, the last serious investigation of recycling of money from illegal markets took place in 1984 (Falcone cited in Manno, 1991; see also Cecchini et al., 1991:164-165). Also by 1991, gone was the view of the Sicilian mafia groups both as a single, unitary, Cosa Nostra organization and as a synonym for organized crime itself (but cf. Falcone 1991). What emerged, instead, is somewhat of a consensus that organized criminality is made up of different, and rivalrous, mafia, 'ndrangheta and camorra groups in Sicily, Calabria and Campania respectively, and that these groups are, in varying degrees, inseparable from most of the illegal markets and activities in Italy. People in such groups form the core underworld population.

We know a lot about this core underworld population. In his

April 1991 report to Parliament on the state of public security, the DC Interior Minister Enzo Scotti characterized this underworld population as made up of 500 criminal groups (cosche) with a total of 15,000 soldiers, territorially located as follows: 186 groups with about 5,000 members in Sicily, more than 2,500 of them are in the Palermo metropolitan area; 142 groups ('drine) with about 5,100 members in Calabria; 106 groups with more than 5,000 members in Campania, in and around Naples, Caserta and Salerno. Scotti identified a fourth growing pole of criminality in Apulia: 30 groups with some 1000 soldiers (cited in Chianura, 1991). But, according to Falcone, only members of the Sicilian gangs can be regarded as "the true professional criminals" ("veri professionisti del crimine") to the point that "even when they describe themselves as 'soldiers', they have the qualities of generals, or of cardinals of a church a lot less permissive than the Catholic one" ("anche quando si definiscono 'soldati' sono in realtà dei generali. O meglio cardinali di una chiesa molto meno indulgente di quella cattolica") (Falcone, 1991: 60). In September-October 1991, the weekly magazine Epoca published a leaked police document as "the yellow pages of the mafia", a list of presumed core members and enforcers of different Sicilian groups. What was left out of all these accounts is the total number of people actually employed in illegal or criminal activities, including extortion, cigarette-smuggling, trafficking of drugs and weapons and wine adulteration. It must be much higher than the data reported by Scotti and Epoca. A 1985 Censis estimate suggests that the total number varies

between half a million and one million, that is, between 2.5 per cent and 5.5 per cent of the Italian working population (cited in Santino, 1988: 228).

Eighty-two per cent of all the homicides committed in South in 1990 occurred in Campania, Calabria and Sicily (Svimez, 1991: 289). Seventy-one per cent of all the reported homicides in Italy in 1990 took place in the three regions and Apulia (Corriere della Sera 1991a). Calabria, in particular, had a 40 per cent per cent increase in homicides between 1989 and 1990: 15 homicides for every 100,000 inhabitants, five times the Italian average (Svimez, 1991:289). The crimes taking place in these regions stand out for three reasons. The first is the rapid succession or brutality of events. In a few months in 1991, forty-five people were killed in the Sicilian town of Gela. In May 1991, five people were shot within a few hours in the Calabrian town of Taurianuova, but what horrified Italians was the news that one of the victims had been beheaded by his assassins, who then used his head for target practice. Second, the homicide rate in Italy has sharply declined since the 1880s (Chinnici and Santino, 1989:34). Third, Italy has one of the lowest rates of homicides per 100,000 inhabitants in the world and especially among the advanced industrial nations—lower than the United States, Japan, France, West Germany and Canada (Chinnici and Santino, 1989: 33).

Thanks to the work of judicial authorities and researchers at the Giuseppe Impastato Sicilian Research Center (Centro siciliano di documentazione Giuseppe Impastato), it now possible to

disaggregate homicide statistics between underworld killings and non. The available data come from the city and province of Palermo for 1960-1966, and 1978-1984. Space does not permit extensive presentation and discussion of such data. Briefly stated, of the 93 mafia murders for 1960-1966, 77, or 83 per cent, were identified as "internal", that is, committed within and across different mafia groups; only 14, or 15 per cent, were deemed "external" to such groups, and of an economic or political nature. Between 1978 and 1984 the total number of identified mafia homicides increased to 332; the number of internal mafia murders was still high: 203, or 61 per cent; "external" murders were still relatively low: 57, or 17 per cent (Chinnici and Santino, 1989:201-203). We lack similar data for other regions, but it seems safe to conjecture that most, if not all, of the violent crimes in Calabria are "internal" to the criminal underworld. These findings refine and add to our knowledge of the criminal underworld in an important way.

The largest number of homicides takes place among gangsters, either within or across particular groups. Professional criminals face higher victimization risks than non-criminals. The level of risks adult offenders face of being victimized by other offenders as a result of their crime activities is very high. Sicilians and Calabrians doing crime face considerable occupational hazards among themselves (see also Cordeau and Tremblay, 1989). Why, then, some people subject themselves to such high occupational hazards? Recently, Giovanni Falcone put this question in the following form:

In certain moments of sadness, I allow myself to think about the destiny of men of honour: why is it that men

like others, some even endowed with real intellectual abilities, are compelled to devise for themselves a criminal career in order to survive with dignity? (Falcone, 1991: 72).

In certi momenti di malinconia, mi lascio andare a pensare al destino degli uomini d'onore: perchè mai degli uomini come gli altri, alcuni dotati di autentiche qualità intellettuali, sono costretti a inventarsi un'attività criminale per sopravvivere con dignità? (Falcone, 1991: 72).

Later in his book, Falcone answers his own question: many modern Sicilians prefer to live as parasites because the fast lane of crime has considerable attraction as a way of life (Falcone, 1991:132). This is so because most Sicilians still face conditions of life devoid of many lawful opportunities (see also Sabetti, 1984). In the absence of more extensive "criminal opportunity analysis" (Cloward and Ohlin, 1960) in Italian regions, we can offer only some tentative explanations for the attraction of doing crime.

### Crime Pays

In spite of the high proportion of underworld victimization, doing crime pays. Illegal activities -ranging from thefts, extortions, and blackmails to attempts on both private and public property- result in a transfer of wealth from one individual or groups of individuals to others. The national association of merchants (Confesercenti) suggested that the extortion racket alone involves an annual redistribution of about 30 billion lire (Cecchini et al, 1991). At the same time, crimes involving drug and weapon trafficking provide services to large groups of people in

society. It is estimated that in Naples alone there are 2,500 counters, often on street corners, for the sale of contraband cigarettes. It is not at all unusual to observe even some uniformed police officers buying their Marlboros or Merits there. Also in Naples there are at least 50,000 people earning a living from the running of illegal lotteries (as reported in Solazzo, 1991; see also Mastrogiacomo, 1991).

By the middle of the 1950s many mafia groups in the countryside had lost their *raison d'etre* and strength, and were dying out. By the 1960s new opportunities in drug running and urban and regional development served to expand and reinvigorate the pool of people doing crime for a living. Public works and forced industrialization brought with them a structure of perverse incentives that served to expand the range of illegal activities and the degree of corruption and violence. A case in point is the town of Gela, the scene of many homicides in the past few years. Thirty years ago, Gela was not the "illegal city" it has now become. The building of a refinery there 25 years ago radically changed the structure of opportunities in employment and in the construction industry and urban planning. It also revealed serious problems of institutional weakness and failure in government agencies as they tried to maintain some semblance of earlier delivery of public services, to meet the demands and needs of new residents in search of work and to fashion adequate responses to the challenge of forced industrial growth. The result was that the town that now stands was built, and operates, illegally. Gela is,

in many respects, a microcosm of the postwar transformation of Palermo. This logic of growth, with its emphasis on government-financed public contracts and huge sums in specialized aids to poorer regions, is a chief source of considerable profit for the underworld in other parts of the South as well. Eighty per cent of the construction industry in Reggio Calabria is said to fall within the control of outlaw groups (Antimafia Parliamentary Commission, cited in *Il Mondo*. 1991:35).

Recent attempts to quantify how much organized criminality pays in monetary terms estimate the total value to be at least 150,000 billion lire a year (*Il Mondo*, 1991). The national association of chambers of commerce (Unioncamere) estimates the underworld criminal economy to have reached about twelve percent of the gross domestic product (prodotto interno lordo), while the annual earnings of mafia-type groups to be greater than the combined annual earnings of the Fiat and IRI (*La Stampa* 1991a). Such figures must, of necessity and at best, be taken cum grano salis. No distinction is made between gross and net revenues; the cost of doing illegal business is left unclear; even with conjectures about the wealth of particular underworld figures, we still know very little about the relationship between access to monies and long-term control over the sources of such funds for, after all, a criminal enterprise could not be sold to settle an estate. These questions have been placed in sharp relief by a recent study of the property ownership and devolution in the organized crime environment by the Organized Crime Research Program

at the Temple University School of Law in Philadelphia (Libonati and Edelhertz, 1991) - and what applies to the economic data of American organized crime can be extended to the Sicilian case. Still, the figures available for Italy may, in the absence of careful analysis of questions of ownership, control and fruits of operations, be taken as suggestive of the strong attraction that the fast lane of crime has as a way of life. What, then, really needs to be explained is not why people do crime but, rather, why not more people are not doing it. As noted earlier, a 1985 Censis estimate suggests that, at most, only 5 per cent of the Italian working population is employed in underworld activities.

#### The Failure of Clientelist Politics

A central point that emerged from Judith Chubb's study of Palermo and Naples is that scarcity of resources, rather than their availability, is what gives politicians their bargaining power (Chubb, 1982). There are strong indications that many Southern politicians have lost this bargaining power to local criminal elements for at least three reasons.

First, the highly competitive rivalry for electoral support and preference votes within and across governing coalition parties has served by now to undermine and reduce considerably the relative autonomy of elected and party officials. By limiting the choice to only one preference vote, the June 1991 referendum may work to reduce the politicians' dependence on clientelism (see Corriere della Sera, 1991b). But the press leak of intercepted telephone

conversations between Republican party activists and candidates and underworld figures during the June 1991 Sicilian regional elections --promptly labelled by the press as "the Catania scandal"-- was a vivid reminder of politicians's electoral dependence on underworld bosses (e.g. Bolzoni, 1991a). Second, the accumulated practice of clientelistic public employment coupled with virtually tenured positions in most public service delivery systems, including local health units (USL), has by now created an almost indestructible system of bureaucratic free enterprises, beyond the reach and control of elected and supervisory officials. Substantial anecdotal evidence exists to support the view that, below the pomp of mayoral offices and regional presidencies, there exists a vast network of public, non-elected officials who have converted public authority as private concessions to practice various forms of predatory rule and racketeering on citizens as well as on public administration. It is in this sense that Leoluca Orlando's often-repeated charge --that organized criminality has taken on the face of public institutions-- may best fit the conditions of public monopolies in Italy's troubled regions. The chief problem in Orlando's characterization is that it restricts perceptions of organized crime to mafia activities (cf. for the United States, Alexander and Caiden, 1986: 4-5). At the same time, it must be emphasized that the practice of bureaucratic free enterprises among public monopolies is not exclusively confined to Italy's Southern regions. Rebates on salaries and cuts to party and individual coffers do not have regional borders (La tangente non conosce confini)

(Giornale di Sicilia, 1991a). The Italian experience illustrates that public monopolies can pose even more difficult problems than private monopolies.

Third, there is the increasing dominant role that mafia-controlled firms have come to assume both in the underground and the public economy (Il Mondo, 1991; Santino and LaFiura, 1990). The "privileged position of business" (Lindblom, 1977), in society as in politics, can be all the more effective in stifling competition and market forces, when it is backed by its own, and very credible, enforcement mechanisms. Outlaw pressures in matters involving tendering public works have become great; in some areas, mayors like the present DC mayor of Reggio Calabria, Agatino Licandro, have come to question the wisdom of spending billions of lire for public works projects in their jurisdiction (Tucci, 1991; see also Sergi 1991).

The failure of clientelistic politics "to work as it should" has led to a further blurring of what standards apply or ought to apply to the conduct of public affairs. It should come as no surprise that the following items, however imprecise, made the news in 1991: the Antimafia Commissioner revealed in May that 15 per cent of all local, provincial and regional politicians -- 17,000 out of 124,000 elected officials -- had broken the law or were living in the shadow of the law (La Stampa 1991b); research by the Antimafia Parliamentary Commission found that at least 18 communal governments in three Southern regions were suspected of collusion with local outlaw groups, and that they all stood to be disbanded

and placed under public trusteeship (commissariati) by the Interior Minister Y. Corriere della Sera 1991c). Institutional weakness and failure run deep. As conjectured earlier for the reformist Orlando administration of Palermo (Sabetti, 1989: 290-292, 1990: 192-193), such weakness and failure cannot be overcome by one city government or by one generation of local officials.

### The Price of Crime

The year 1991 was rich in events in the troubled areas of the South that increased dissatisfaction and tension about and within law enforcement and administration of justice agencies. Many judicial districts have been chronically understaffed, often endowed with only the bare necessities of judicial work; when efforts were made to fill judicial appointments or to create new tribunals such as that at Gela, the President of the Republic characterized the new magistrates disparagingly as "little boys" (ragazzini), ignoring the way judicial appointments are made in Italy. The Antimafia Commissioner, Domenico Sica, publicly complained about the lack of professionalism among police and judicial officials but in August the Interior Minister removed him from office for practically the same reasons. Polizia and carabinieri officials blamed each other for bungling investigations. Frustration for lack of results in the fight against organized criminality became such that even magistrates with a reputation for being above reproach and suspicion were accused of being soft on criminals or on DC politicians "in odor

of mafia." The DC Interior Minister himself joined the list of complainants several times, prompting at one point a high magistrate to criticize him publicly for misrepresenting ongoing judicial investigations of extortion rackets. The Socialist Justice Minister, Claudio Martelli, criticized both police officials and judges for being soft on criminals for other reasons. In the fall, Martelli went as far as to remove some judges from their position in Sicily, evoking, in turn, sharp rebukes from the National Association of Magistrates and from legal scholars like Guido Neppi Modona. An immensely popular marathon television program on the mafia in September 1991 helped to sensitize viewers to the problem of organized criminality but did little to clarify it. No purpose will be served to discuss ad plenum these events. What this kind of public debate --or spettacolo --tell us at most is that Italian officials are locked into a system of government that produces outcomes which they do not value very highly as viable alternatives. We must therefore look elsewhere for an understanding of the structure and play of this game or spettacolo.

Illegal activities, including the act of murder and extortion, may be approached like other commodities. Economic reasoning suggests that each commodity carries a price. What is the price of crime? Putting aside the human costs for the victim, we can for our purpose consider the probability of being caught, and, after capture, the legal opportunities available to the accused, the possible jail sentence, and the probability that any particular punishment will actually be implemented as the price of crime

(Miller et al., 1990). When this perspective is applied to an analysis of the structural and operational aspects of Italian law-enforcement agencies and administration of justice, it becomes easier to understand why there is profound dissatisfaction with the government war on criminality and why there has been recurrent tension between the police and the judicial branches and other components of the larger political system.

The probabilities of being caught for illegal activities, including murder, continued in 1991 to be very low. Law-enforcement officials were blamed for many unsolved crimes. The literature on police work in other industrialized countries suggest that police officers do not generally fight organized crime. They are, in fact, ill-equipped to do so (e.g., Alexander and Caiden, 1986). A lack of comparative perspective has led many in Italy to have expectations about police work that cannot possibly be met.

The case of the Palermo province illustrates other constraints. According to the Interior Minister and Police (Polizia) Chief (cited in Scalfari 1991), in that province there were in 1991 at least 3,700 "dangerous subjects" (soggetti a rischio), while the total number of police officials --polizia, carabinieri and guardie di finanza-- was 8,525, divided in three shifts of a little more than six hours each. That is, at any one point there were 2,840 police officials on duty in the province. It is obvious that even on a one-to-one basis, police officials could not keep a close watch on all the dangerous subjects. Nor on all those who refused the "protection" of outlaw groups, as it

happened in the case of the Palermitan industrialist, Libero Grassi, murdered in August 1991. It was public knowledge as early as January 1991 (Corriere della Sera, 1991d) that he had rejected, several times, the "protection" of gangsters and that this exposed him to mortal danger. Just as police officers could not protect him 24 hours a day, so the racketeers, after "waiting" for at least seven months for him to change his mind, could not fail to kill him when he did not. The credibility of their threat system was at stake. Moreover, fighting organized crime is only one of the many tasks that police officers have to do daily in Palermo as elsewhere. It has become a truism in American police studies to say that adding more officers to a police force does not necessarily mean increased output, less crimes and more arrest rates, and it hard to see why the same "truth" should not apply to Italy.

Libero Grassi's murder placed in sharp relief another dimension of the price of crime specific to Italy's system of bureaucratic administration: two national police forces with the same territorial jurisdiction, but without interorganizational arrangements for cooperative and joint efforts in overlapping matters. Parallel investigations of the Grassi murder led to parallel conclusions, antithetical to one another. The police (polizia) attributed the murder to a particular crime group, leading the Interior Minister to complain publicly, in October, that the Palermo magistrates were unaccountably slow in prosecuting the racketeers, which, in turn, compelled the Palermo Chief Procurator, Pietro Giammanco, to charge in a newspaper interview

that the minister had either lied or been misinformed by his own staff (e.i. the Police Chief) (La Repubblica, 1991). While this controversy raged on, it became known that the carabinieri had, for their part, concluded that the polizia and, by implication, the Interior Minister, had bungled the Grassi investigation; the carabinieri identified mafiosi from another gang as the authors (mandanti) of the murder (Bolzoni, 1991b). As a result, the search for the racketeers-murderers gave way, in the words of a Palermitan newspaper, to "a hunt for the State liars" ("Caccia ai bugiardi di Stato") (Giornale di Sicilia, 1991b).

Even when law-enforcement officials and investigating magistrates succeed in bringing underworld figures to trial, problems connected with jail sentence emerge. An important aspect of the price of crime is whether or not the sentence will actually be implemented, as the accused or guilty parties pursue the legal opportunities afforded by the judicial system. These issues took several forms in the year under review but a few illustrations suffice.

In February 1991, Michele Greco, the so-called boss of bosses, and some 40 other mafiosi were released from jail by a law which allows anyone who appeals against a prison sentence to walk free unless the appeal is heard within a year. The government, spurred by the Interior and Justice ministers, rushed through a new law setting different rules for calculating the time spent waiting for an appeal. The mafiosi were back in jail soon after their release. But the legislation, applying as it did retroactively, was highly

contentious; it did little to instill confidence in public authority and led to a strike by Sicilian lawyers against "Martelli's justice" ("la giustizia di Martelli").

Another issue is that many guilty verdicts reached in trials of first instance cannot survive the scrutiny of other courts, and especially of the Supreme Court of Appeal (Cassazione). This is not at all unusual when viewed in a comparative context, even when allowances are made for the fact that, in marked contrast to other judicial systems where findings of fact are rarely at issue and only points of law may be appealed, Italian appeal courts have generally treated each case as though it had never been tried before (see Sabetti, 1989: 285, 1990: 188). The United States has a high arrest rate for murders but only about one-third of all murders result in conviction. But in Italy the pressures to secure guilty verdicts for real or reputed members of crime syndicates have become so great as to take precedence over due process of law and to expect, wrongly, that the accused would not pursue the legal opportunities afforded by the system. The Supreme Court of Appeal section headed by Judge Corrado Carnevale was vigorously criticized by elected officials and mass media people for what Carnevale considered to be a careful discharge of his judicial duties (Corriere della Sera, 1991e). By the end of 1991, a way was found to rotate the criminal cases among different sections of the Supreme Court of Appeal, with the intent of securing more guilty verdicts. But it remains to be seen whether this will have the desired results, given the nature of the appeal process and the

incentives for the accused to pursue his legal opportunities.

At the same time, even when in the past the Supreme Court section headed by Judge Carnevale sustained the guilty verdicts of lower courts, other issues would come up to remind government officials of other important, if neglected, problems in the administration of justice. These problems were brought to light in 1991 in a case involving a Palermitan underworld boss named Pietro Vernengo.

Arrested in 1986 and accused of taking part in 99 murders, Vernengo was found guilty for some and was twice condemned to life imprisonment. Since he suffered from a tumor of the bladder, Vernengo lawfully managed to delay the implementation of punishment. Until October 1991, he was a patient in a regular urology ward of the Palermo Civic Hospital. As soon as he received news that an appeal court had just sustained the judgment of a lower court against him for a drug trafficking charge, Vernengo, seeing perhaps no other prospect except life imprisonment, literally walked out of the hospital, where he had been left unguarded. His flight was a profound embarrassment to the central government. The Justice Minister Martelli proceeded to remove from the bench a Palermo appeal judge (presidente della Corte d'assise d'appello), Pasquale Barreca, who had recently extended Vernengo's stay in the public hospital. Martelli's frustration was understandable but his decision seemed ultra vires. He was sharply criticized by legal scholars and magistrates who expressed sympathy and support for Judge Barreca. The chain of events leading to

Vernengo's flight from the hospital was more complex than that suggested by Judge Barreca and less conspiratorial than that suggested by the Justice Minister and the media commentators.

First, soon after Vernengo's flight, the search was on for how many convicted underworld figures were passing time in hospital rather than in jail. But the *Corriere della Sera* (1991f) brought to light a report written in March 1989 by then Antimafia Commissioner, Domenico Sica, that gave the search a new twist. In that two-year old report, Sica had drawn attention to the fact that far too many convicted mafiosi were spending far too much time in hospital and not enough time in jail. Vernengo was one of them. Sica had wondered if all of them really needed hospitalization and extensive medical tests. He had urged action by the competent authorities. Sica's report, however, had not been acted upon by either the Socialist Justice Minister or the DC Interior Minister of the time, Giuliano Vassalli and Antonio Gava, respectively. It is not clear why they took no action. Other problems in the administration of justice were exposed.

Vernengo did indeed have a tumor of the bladder, requiring medical care. Imprisoned in the Palermo Ucciardone Penitentiary, he was expected to receive medical attention in its infirmary. Here problems connected with the administration of penal institutions surfaced. While huge sums of money had been spent to equip the Ucciardone prison for the megatrials of the 1980s, little or no money had been set aside to improve the penitentiary infirmary. Since Vernengo could not be adequately cared for in prison, he had

been sent to the security ward for penitentiary inmates at the Palermo Civic Hospital. The problem here was that the special wing had only a twelve-bed surgical unit; the other units of the security wing had not been built yet. As late as December 1991 it was still not clear which level of government - regional or central- should fund the construction project. As a result, the hospital assigned Vernengo to the regular urology department of the hospital, where he remained a patient for some years. Magistrates were familiar with the particular circumstances of this case and approved of the arrangement. What Judge Barreca did was to uphold the earlier judicial decision. In so doing, however, he interpreted recently issued precautionary detention measures by the government as not applicable to ongoing cases like Vernengo's. Here was another problem. Barreca felt to be under no obligation to apply the new regulations retroactively, and his interpretation brought him on a collision course with the justice minister. The case revealed yet another problem still not resolved: why Vernengo was without police guard or surveillance in the hospital and who - judge, police station or hospital director - should be held responsible for this omission. Commentators unbridled their imagination to search for a directing mind orchestrating the failure of the justice system, but it is easier to see how and why complexly nested problems in the administration of justice itself served to reduce the punishment of crimes.

### A NEW ANTICRIME POLICY

Falcone became the director of penal affairs of the Justice Ministry in Rome and an close aide to Justice Minister Martelli in March 1991. In retrospect, it now seems clear that Falcone's move to the Justice Ministry was the beginning of the new anticrime policy that emerged by November 1991. Not that he was the only artificer of the new policy (Pirani, 1991). But he had been enticed to leave Palermo on the promise, made by Martelli, that he would have considerable latitude in helping to fashion a more appropriate institutional response to the mafia problem. Falcone was attracted by Martelli's "decisionism" as Justice Minister. Personalities and decisionism aside, there were other factors that pressed for a new anticrime approach. By 1991 there was widespread recognition among high government officials that the work of the Antimafia Commissioner had not, after 9 years, produced the desired results. Other events of the year, including the August murders of Cassation magistrate Antonio Scopelliti in his native Calabria and of Libero Grassi in Sicily, gave renewed vigor to the preparatory work for the new policy. This initiative, which emerged by the fall, called for the creation of a special, parallel, system of public administration to handle law enforcement and judicial investigations against the mafia. It was made up of two units: 1) an antimafia investigative directorate [Direzione Investigativa Antimafia] (DIA), and 2) a national antimafia procurator's office [Direzione Nazionale Antimafia] (DNA).

The Antimafia Investigative Directorate (DIA)

The creation of the office of the Antimafia Investigative Directorate (DIA) was an attempt to overcome problems in law enforcement agencies and to direct organized crime investigations. Opposition to its creation was especially strong among high carabinieri officials who feared that their own specialized antimafia intelligence unit would have to be disbanded. The carabinieri (L'Arma dei carabinieri) relented when Interior Minister Scotti named a carabinieri general to head DIA, Giuseppe Tavormina. In a balancing act, a very able police (polizia) official and former head of Criminalpol was named as vice-director, Gianni De Gennaro. The former is Sicilian; the latter, Calabrian. Together, they are expected to supervise and give focus to the work of especially selected, and highly trained, special agents whose number is expected to be between 3,000 and 5,000. DIA will have four main operative field stations located strategically in Palermo, Reggio Calabria, Naples, and Milan. The annual operating budget was initially set to be 2,000 billion lire.

DIA will be responsible to a General Council for the Fight against Organized Crime (Consiglio generale per la lotta alla criminalità organizzata), chaired by the Interior Minister and made up of the chief of police, the commandants of the carabinieri and the excise police (guardia di finanza), the Antimafia Commissioner, and the chiefs of two intelligence agencies (SISMI and SISDE). The General Council is expected to impart DIA with the broad policy objectives of the government. Operationally, however, DIA and its

special agents, presumably now being selected and in training, are expected to be the investigative arm of the teams of magistrates making up the other new organization. Government officials and news media people have popularized DIA as a kind of Italian FBI.

#### The National Antimafia Directorate (DNA)

As the National Antimafia Directorate (DNA) was taking shape, magistrates expressed considerable reservations about the parallel judicial system being set up to combat organized crime. The reservations expressed were many and much nuanced. They were grounded in three fundamental concerns: 1) the DNA or Superprocura would be too dependent on the political executive, a grave danger to a judiciary already highly politicized; 2) it would come into jurisdictional conflict with the regular judicial administration; and 3) it would undermine the already difficult implementation of the new code of criminal procedure which does not contemplate a special branch of the judiciary implied by the creation of the Superprocura (Geraci, 1991; La Stampa, 1991c). Support for the new special judicial branch was grounded in the argument advanced by, among others, the Florence Procurator that the DNA

will make it possible to undertake more effective investigations of mafia power and its plans. The basic idea is to oppose expert and skilled criminals with inquiring magistrates endowed with a high degree of professionalism and organization (Pier Luigi Vigna, quoted in Corriere della Sera 1991g).

consentirà di svolgere indagini più organizzate contro il potere mafioso che agisce in modo programmato. L'idea di fondo è quello di contrapporre investigatori con alta professionalità ed organizzazione, a delinquenti

specializzati e lucidi (Pier Luigi Vigna in Corriere della Sera, 1991g).

With a decree-law in November 1991, expected to be approved by Parliament by January 18, 1992, the central government began to give shape to the new judicial institution. The DNA central office is placed under the jurisdiction of the Chief Procurator of Cassation. The DNA is headed by a National Antimafia Procurator, assisted by a team of 20 magistrates - all to be named, not by the government, but by the Superior Judicial Council, the self-regulating body of magistrates. Special teams of DNA investigating magistrates will be set in 26 regional or special-district procure, and their exclusive and only mandate is to investigate and prosecute elements of the criminal underworld. This will concentrate the work now done among the 159 regular procure. At the same time, all the judicial districts will be given additional support staff. Both the DNA Office or Superprocura and the special-district teams of antimafia magistrates -once set up--will have at their disposal about 80 billion lire a year to finance their operation.

#### CITIZENS BETWEEN THE STATE AND THE CRIMINAL UNDERWORLD

While a primary concern of central government officials was how to respond effectively to the threat posed by the criminal underworld, a Censis report published in December 1990 revealed that the major concern of Italian citizens lay elsewhere. Health care, education, public transportation and postal service were at

the top of a general dissatisfaction with the public service delivery system (cited in Corriere della Sera, 1990). In a subsequent public opinion survey, made known in March 1991, health care continued to be at the top of people's worries; only 11 percent of the respondents viewed organized criminality as a major problem (cited in Ruffolo, 1991). Italian citizens appeared to restrict themselves to the sanctuary of their parish churches and their homes or apartments -- fortified with armoured doors, by those who could afford them -- and to circles of relatives and friends. They sought to throw a protective distance between themselves and both police and gangsters. Libero Grassi knew the risks he took when he decided to stand up to racketeers.

The favourable response in the South to the June referendum on the preference vote may be interpreted as an encouraging reaction against machine politics and boss rule. But an unmistakably strong reaction against the criminal underworld in 1991 came from a small town near Messina, Capo d'Orlando. There the local merchants overcame the logic of collective inaction that seems to prevail in the large urban areas of Naples, Palermo and Reggio Calabria. They organized themselves into an association, Acio (Associazione dei commercianti orlandini) to fight the racket industry. In the end, they pressed charges against two bands competing to impose a shakedown racket on the local economy. By the end of November 1991, a regular tribunal found fourteen defendants guilty as charged.

### CONCLUSIONS

The 1990s began with the instrumentalities of government engaged in a losing battle with the criminal underworld. In some towns, the interpenetration between the inlaw and outlaw regimes had become such that it was difficult to distinguish between them. Three developments in 1991 offered some scintillas of hope: the results of the referendum on preference voting; the collective action undertaken by the merchants of Capo d'Orlando, backed up in that particular instance by the regular law-enforcement and justice system; and the new antimafia policy instruments set up by the national government. Will the year 1992 be a turning point in the fight against violence, boss rule and machine politics?

It is hard to be optimistic. As long as opportunities for criminal activities exist, and as long as people are locked into institutional arrangements that offer little prospects for legally pursuing individual and collective opportunities, it is difficult to anticipate positive changes. The greatest disappointment may, therefore, come from the new government initiative. DIA and DNA have built up expectations that they cannot match in practice. If they work to make the fast lane of crime more costly to professional criminals and discourage others from entering it, they will have succeeded as deterrents. But the criminal underground cannot easily be dried up or eradicated by government fiat. Moreover, there are too many res incoqnitae in DIA and DNA and the experience of past anticrime initiatives - and indeed of previous agencies and institutions of "special administration" in Italian

history (see Germino and Passigli, 1968: chap. 6) -- does not encourage optimism. But, to paraphrase somewhat what was said elsewhere (Sabetti and Catanzaro, 1991:7), Italy, which confounded its critics and became an industrial nation, may yet amaze its critics again and come to terms with its own political problems and have its share in the shaping of a new law and order for itself and for Europe.

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