



“Fine pena: mai”- Never-Ending Punishment

The reproduction of State sovereignty *vis à vis*

organised crime: the case of the Italian State

and the Sicilian Mafia

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Abstract. *As Derrida has argued, the constitution of the criminal is related to the constitution of the sovereign, and both are situated outside the law, one above and one below it. The present contribution explores the way organised crime is excluded from the political realm and how this exclusion reproduces statist claims to sovereignty through exceptional measures which outlaw the (organised) criminal. This exploration is carried out by critically engaging with the dichotomy between economics and politics. I investigate what this tells us about the way the sovereign and the criminal are mutually and relationally constituted through the opposition between what is ideological and ascribed to the realm of politics and what is non-ideological and ascribed to the realm of economics. This dichotomy is explored through an analysis of the Italian State’s antimafia legislation, which relies upon the opposition between States and illicit violent non-state actors, but also on their internal differentiation, with the terrorist seen as political and ideological, and the organised criminal as non-ideological and apolitical, and therefore more dangerous than the terrorist. Through this differentiation, the sovereign Italian State reproduces itself vis à vis the mafioso. In the second part of my analysis, I investigate the counter discourse of the mafia.*

Introduction

Being-outside-the law can, no doubt, on the one hand (and this is the figure of sovereignty), take the form of being-above-the laws, and therefore take the form of the Law itself, of the origins of laws, the guarantor of laws, as though the Law with a capital L, the condition of the law, were before, above, and therefore outside the law, external or even heterogeneous to the law; but being-outside-the law can also, on the other hand (and this is the figure of what is most often understood by animality and bestiality), [being-outside-the-law can also] situate the place where the law does not appear, or is not respected, or gets violated. These modes of being-outside-the-law (be it the mode of what is called the beast, be it that of the criminal...even when he is condemned and executed, because, along with the law, he defies the sovereignty of the state as monopoly of violence... these different modes of being outside the law can

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I would like to thank Malte Riemann and Marco Bernardini for reading and critically engaging with this paper at different stages. My gratitude goes to my adviser, Andreas Behnke, who has supported and encouraged me during the writing of my thesis, which gave rise to this paper. I would also like to thank the organisers and participants at the Aberystwyth- Lancaster Postgraduate colloquium, in particular Julia Well and, who discussed the initial draft of this paper during the conference, and the two anonymous reviewers for their extremely useful and insightful comments.

seem to be heterogeneous among themselves, or even apparently heterogeneous to the law, but the fact remains, sharing this common being outside the law, beast, criminal, and sovereign have troubling remembrance: they call on each other and recall each other, from one to the other (Derrida, 2009: 17).

As claimed in the passage from Derrida cited above, the constitution of the criminal is related to the constitution of the sovereign, and both are situated outside the law. The present contribution explores the way organised crime is excluded from the political realm and how this reproduces statist claims to sovereignty through exceptional measures which outlaw the (organised) criminal. This exploration is carried out by critically engaging with the dichotomy between economics and politics. Investigating this dichotomy is innovative in relation to the literature dealing with the relational constitution of states and violent non-state actors such as organised crime, terrorist groups, mercenaries and so on, which generally focuses on the private/public violence dichotomy (Colàs and Mabee, 2010). The present paper offers a twofold contribution; first, at a theoretical level, I show that even though focusing on the distinction between private and public violence is important, the mutual constitution of organised crime and the State is not merely a matter of establishing a claim to the monopoly on legitimate violence in order to authorise sovereign narratives. In addition, I explore the way the sovereign and the criminal are mutually and relationally constituted through the opposition between what is ideological and ascribed to the realm of politics and what is non-ideological and ascribed to the realm of economics. Focusing on this dichotomy provides us with a more complex perspective on sovereign strategies of authorising politics. At an empirical level, this dichotomy is explored through an analysis of the Italian State's antimafia legislation, which relies upon the opposition between States and violent non-state actors, but also on their internal differentiation: the terrorist is seen as political and ideological, whereas the organised criminal is seen as non-ideological and profit-driven, and for this reason deserving of different treatment to the terrorist. Through this differentiation, the sovereign Italian State is reproduced vis à vis the mafioso. In the second part of the empirical analysis, I investigate the counter discourse of the mafia and I show that its counter narrative reproduces the politics/economics dichotomy while inverting its terms.

From national to global, but always criminal

Since the end of the Cold War, in a context of change and the growing pluralisation of what has been renamed world politics, violent *non*-state actors have increasingly disrupted the idea that 'dangers are all outside' (Walker (b), 1993:157) the borders of the sovereign State. Instead States have been threatened not only by inter-state war but also by so-called 'transnational', sometimes termed 'global', security issues such as terrorism and organised crime. Despite the fact that terrorism and organised crime are not new phenomena, the effects of globalisation and the simultaneous emergence of new areas of instability have made these dangers far more concrete today.

First, groups that were originally national became global in their range of action, requiring new attention from the community of States (Schneider, C. and Schneider, P.T., 2007: 304). To cite the words of the former Secretary of the United Nations, Kofi Annan, 'If crime crosses borders, so must law enforcement. If the rule of law is undermined not only in one country, but in many, then those who defend it cannot limit themselves to purely national means' (UNODC, 2004: iii).

Secondly, violent non-state actors have increasingly come to be understood as *the enemy of all* (Heller-Roazen, 2009)¹, a threat to civilisation and even humanity itself. This understanding constitutes the basis of the first United Nations Convention against Transnational Organised Crime: 'If the *enemies of progress and human rights* seek to exploit the openness and opportunities of globalization for their purposes, then we must exploit those very same factors to defend human rights and defeat the forces of crime, corruption and trafficking in human beings' (UNODC, 2004: iii, emphasis added). Indeed, Kofi Annan, in the foreword to the first United Nations Convention against Transnational Organised Crime, signed in 2000, wrote, 'what I call "uncivil society"... are terrorists, criminals, drug dealers, traffickers in people and others who undo the good works of civil society' (UNODC, 2004: iii).

Despite the fact that in contemporary discourse organised crime and terrorist organisations are often grouped together under the label "violent non-state actors" (Thomas, Kiser, Casebeer, 2005; Bhatia, 2005), they are also understood as being differentiated by a fundamental characteristic: the former is considered to be non-ideological and acting to obtain economic gain, the latter is understood as being ideologically-motivated. Indeed, the UNODC Convention specifies that:

Organised criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, *in order to obtain, directly or indirectly, a financial or other material benefit* (UNOOC, 2004: 5, emphasis in the text).

Although one of the main concerns today is the increasing overlap and cooperation between terrorist groups and criminal organisations, the two categories are still distinctively opposed, with terrorist organisations characterised as political and acting out of ideological motivations, and criminal organisations characterised as driven by personal and non-ideological motivations to pursue purely economic goals. Critical investigation of the dichotomy between politics and economics, which is claimed to distinguish the identities of terrorist organisations and organised crime, is at the centre of this paper. This distinction is uncritically taken for granted by the literature on Terrorism and Criminology, even though one of the main concerns of this academic literature is the increasing link and overlap between organised crime and terrorism, which has been studied by scholars using the concept of the terror-crime nexus (Makarenko, 2004).² This theoretical model examines the increasingly blurred and overlapping identities of traditional organised crime groups and terrorist groups, but leaves unquestioned the distinction between the economic nature and non-ideological motivations of organised crime and the political nature and ideological motivations of terrorist organisations, which continues to underpin the theoretical model of the nexus.³ Instead, the first part of this paper aims to subject this dichotomy

¹ Despite the fact that Heller-Roazen (2009) uses this expression referring specifically to Piracy, I believe it to be increasingly indicative of the way in which other forms of organised crime are described.

² This concept has been widely used in the literature on Terrorism and Organised Crime; see for instance: Emma Bjornehed, 2004; Johan Engvall, 2006; Ryan Clarke and Stuart Lee, 2008; Justine A. Rosenthal, 2008; Frank S. Perry and Richard G. Brody, 2011; Annette Hubschle, "From Theory to Practice: Exploring the Organised Crime- Terror Nexus in Sub-Saharan Africa", *Perspectives on Terrorism*, 2011

³ I develop a much more articulate critique of the shortcomings of the concept terror-crime nexus the article in *Global Crime*, "Breaking the nexus: conceptualising illicit sovereigns", June 2014.

to close critical scrutiny, enabling us to understand the ways this dichotomous characterisation is constituted and reproduced, and secondly, to examine it empirically. Indeed, as Edwards and Gill have argued, 'a more reflexive approach implies the need for both academics and official agencies to question those terms, to treat them as objects of study in themselves and not to take them as the unproblematic starting point for analysis' (2002: 246).

My argument takes as its starting point the consideration that the way in which organised crime has been understood to date simply reproduces and reifies statist categories of the dichotomy between what is ideological and political and what is non-ideological and economic. The question then becomes: what does the exclusion of organised crime from the realm of politics on the basis that the latter is economically motivated actually *do*? In other words, the present contribution does not aim to demonstrate that organised crime is *in reality* part of the political, rather than the economic, spectrum by reconceptualising politics beyond the statist understanding.⁴ Yet merely including the mafia in the political spectrum would expand the boundaries of the 'political' actors at the expense of 'economic' actors, without enabling investigation of the way in which this specific understanding of the identities of organised crime actors has been made possible historically and tied to claims of state sovereignty. The point is instead to raise questions 'about the conditions under which specific meanings and distinctions came to be acceptable in the first place' (Bigo and Walker, 2007: 3). My aim is thus to ask what the dichotomous distinction between politics and economics does and allows in the reproduction of the "real" in which "we" live, specifically as regards the reproduction of state sovereignty. Indeed, as Walker and Ashley have argued, these practices of drawing boundaries to constitute different dichotomies can be regarded as 'arbitrary cultural constructs by which, in modern culture, modes of subjectivity, objectivity, and conduct are imposed' (1990: 264), and the politics/economics dichotomy is one of such arbitrary constructs. Specifically, what I am interested in here is examining what these claims imply in relation to crime that is understood as "organised". In other words, my aim is to investigate how the understanding of organised crime as non-ideological and profit-driven contributes to reproducing the claim that the Modern State is the only possible form of political 'authorisation'.⁵ After this part has been addressed, I look at the ways in which this claim has been contested.

The case of the Italian State and the Sicilian mafia is extremely important for a number of reasons. First, the Sicilian Mafia can be considered both as a "local" and as a "global" actor (Santino: 2013), making it quite difficult to draw as an a-priori given a strict distinction between internal and external dimensions (Walker, 1991: 456). Moreover, the Sicilian mafia has been defined as the ideal type of organised crime (Hagan: 1983) and the study of organised crime in Italy has played a central role in shaping international knowledge of this subject. For instance, the sociologist Pino Arlacchi, author of *Mafia Business*, one of the most important policy advisors involved in creating the DIA (*Direzione Investigativa Antimafia* – Anti-mafia Investigative Department) in Italy during the first half of the 1990s, was subsequently appointed to head the UNODC from 1997-2002 and charged with shaping the first United Nations programs of inter-state cooperation against organised crime and terrorism. This led to the signing of the first international convention in 2000 on the regulation of state cooperation to counter organised crime, which I mentioned earlier (Arlacchi, 2007).

⁴ For this approach see Marco Santoro, 2007.

⁵ For the meaning of authorisation and author see Michel Foucault, 2010 (1984)

To recapitulate, this paper examines the exclusion of organised crime from the political realm and the way this exclusion reproduces statist claims of solipsistic authorisation of the political community through the politics/economics dichotomy. First, I build on various authors' understanding of the Modern State's claim to sovereignty as only one historical form of authorisation of politics. Then, by focusing on the relation between the Italian State and the Sicilian mafia, I analyse how this authorisation of politics takes place via labelling the mafioso as a profit-driven "criminal" in opposition to the "terrorist", and the effects of this discursive strategy of sovereign representation. Finally, I analyse the counter discourse which challenges this understanding and, through discourse analysis of recently published texts by a member of the Sicilian mafia, I examine the ways in which their counter discourse challenges the authorisation discourse of the Italian State.

Sovereignty as practices of boundary drawing: private/public and politics/economics

Contemporary literature on the Italian mafia, which as previously seen is extremely relevant for the contemporary definition of organised crime, uncritically reproduces statist understandings of the authorisation of politics. Indeed, it defines the mafia as a form of organised crime that challenges the State's monopoly of violence, by selling a specific good: *private* protection⁶ (Gambetta, 1996; Varese, 2001; Varese, 2013). This interpretation understands States and mafias as sovereign competitors on the market for protection, i.e. competing sovereigns, although one is "public" and the other is "private", in other words, as autonomous entities playing a zero-sum game. Put differently, this understanding uncritically reproduces the dichotomy between private and public. By doing so, it contributes to and uncritically reflects the statist discourse which Patricia Owens has already identified elsewhere in the literature: '[it] accepts an ideological construct as real... on the basis of a misunderstanding about what the public-private distinction actually is in modern society—an exercise in political legitimation underpinned by an ideology' (2008: 979, emphasis added). By contrast, approaching state and non-state as mutually reproduced de-naturalises sovereign claims and enables investigation of the way state and non-state are relationally constituted; this perspective understands sovereignty as working by drawing boundaries between dichotomous categories through which a statist order is reproduced (Ashley and Walker, 1990: 264). State sovereignty has been understood as practices that 'give places their meaning and value and create the boundaries that separate activities' (Shapiro and Neubauer, 1990:97), which means that "sovereignty is constituted as that which can constitute." (Neal, 2009: 96) The present investigation is thus underpinned by a wider question: how do 'the practices of state sovereignty - the disciplining of boundaries' (Walker, 1990: 160) - simultaneously reproduce state and non-state? Following Derrida, this means investigating how the 'above the law' and the 'below the law' are mutually and relationally constituted, 'wherever there is a decision worthy of the name' (2009: 67).

This shift in logic makes possible the study of actors of 'private' violence in relation to the constitution of actors of 'public' violence. Along these lines, a growing literature has focused on the process through which some violence has been 'made public' and other violence has been 'made private' (Owens, 2008). However, so far this literature has focused on the public/private distinction while leaving the politics/economics distinction

⁶ Although the literature on the mafia includes alternative analyses and more complex paradigms, this interpretation is the dominant theoretical paradigm and also the one most frequently translated and reproduced in the Anglophone literature. Criticism of this theoretical model has been widely articulated: that it takes sovereignty for granted, without investigating how sovereignty is constituted and reproduced, and that it reduces the political to a market competition for protection. For a well-articulated critique of the reductionism of this understanding, see Santoro, 2007.

uninterrogated. The volume edited by Colàs and Mabee, *Mercenaries, Pirates, Bandits and Empires*, is a good example of this. In the introduction the authors claim that, "Whilst accepting that mafia-type criminal syndicates plainly represent one powerful form of private violence ...we do, however, wish to underscore...that pirates, bandits, mercenaries and warlords *are more than just criminals*" (2010: 7, emphasis added). The implication of this statement is that being more than '*just criminals*' creates subgroups of non-state actors: those who are merely criminal and those who are not merely criminal. What does this distinction imply? It transposes one of the constitutive distinctions of the modern political imagination, that between the political and the economic, to the realm of 'below the law'.

On one hand, the distinction between private and public implies a distinction between licit and illicit actors of organised violence, i.e. the States against anyone else, both terrorist organisations *and* criminal organisations. On the other, the politics/economics dichotomy establishes a distinction between different forms of illicit organised violence, namely terrorist *or* criminal. In very simplistic terms, a terrorist organisation is 'below the law' but still pursues an ideological aim, whereas a criminal organisation is non-ideological because it pursues economic gain. From this perspective, a terrorist organisation, despite being outlawed, is still on the same ontological level as the State, whereas a criminal organisation is not. This means, in the words of Carl Schmitt, that if 'all significant concepts of the modern theory of the state are secularised theological concepts' (1934:36), then the terrorist believes in the "wrong" religion⁷, but she/he is still a believer, whereas organised criminals are not, for they act only for personal gain. In reality, although this dichotomy is never reproduced quite so neatly, yet it continues to underpin the dominant imaginary. In the case of Al Qaeda, for instance, this emerges clearly for two reasons: first, highlighting the connections between Al Qaeda and organised crime has often been used as a way of delegitimising Al Qaeda's political claims (Makarenko, 2004; Wannenburg, 2003; Sanderson, 2004). Secondly, in the aftermath of 9/11 the dominant liberal argument denying Al Qaeda political status revolved not only around the immorality of its means (Pape, 2003) but also around the argument that its political objective (the Ummah) is irrational, unachievable and unreasonable.⁸ This shows that there is significant room to investigate statist claims to define what politics is through the analysis of how the politics/economics dichotomy is deployed to define 'organised crime'.

Far from proposing to offer an exhaustive discussion of the problem of sovereignty, this section aims to show that one aspect of the claim to state sovereignty is constructed through border-drawing practices whose objective is to authorise politics (Walker, 2010). Specifically, in the present case, this border-drawing practice underlines the understanding of organised crime as an entity that has economic aims but that, unlike terrorism, is not driven by ideology.

To summarise, I have argued that the politics/economics dichotomy underpins the conceptualisation of the difference between terrorism and organised crime; it does so through a further boundary-drawing practice which creates an opposition between what is political and ideological, and what is non-ideological and exclusively profit-driven. This dichotomy has been overlooked up until now by the literature, which has focused instead on the private/public violence distinction. Consequently, the following empirical analysis examines the

⁷ For reasons of space, this contribution cannot address the various and complex ways in which "terrorist" violence is conceptualised and delegitimised by statist approaches. See for instance R. Jackson, M.B. Smyth, J. Gunning, 2009

⁸ For an incisive analysis of such argumentation and a counter argument see Andreas Behnke, 2004

way this specific dichotomy between politics and economics is deployed and what this allows, but also the ways in which it is resisted. Indeed, authors such as Costas Constantineou have highlighted the contested nature of the statist representation, arguing that, 'the state [...] comes into being by suppressing another authorial voice or authorizing narrative' (2004: 6). The second part of the empirical analysis considers the ways in which another authorial voice can emerge in relation to the politics/economics dichotomy.

The Italian State and the regime of special imprisonment for the mafiosi

To introduce my empirical work, a brief illustration of the historical context from which the analysis emerges is required. In order to explore the politics/economics dichotomy, I shall focus on two emergency decree-laws issued by the Italian government and later converted into laws by Parliament between 1991 and 1992. These two measures belong to a long series of emergency bills (more than 113) Although these decree-laws were initially issued as emergency measures, they were subsequently modified in later years and are still in force today.⁹

The two measures are respectively Decree-law No. 8 of 15 January 1991, which focused on the 'protection of individuals who decide to cooperate with justice' (decree-law 8/1991 available at <http://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:1991:8>, accessed on 10/09/2013) and No. 306 of 8 June 1992 regarding 'urgent changes to the new criminal law and measures to fight organised crime'/decree law 396/1992, available at <http://www.normattiva.it/urires/N2Ls?urn:nir:stato:decreto.legge:1992:306>, accessed on 10/09/2013). These executive decrees, converted into laws by Parliament, on one hand institutionalised an exceptional regime of imprisonment for the mafiosi, the so-called *41 bis*, and on the other a special system of protection offered to those who decided to cooperate with the judiciary, the so-called *pentiti*. Both these measures had their precedents in the antiterrorist laws of the 1970s aimed at the Red Brigades, but were then modified and adapted to fight the mafia.

My analysis will show that the specific ways in which the mafia is understood, as both organised and non-ideological, allow democratic constitutional guarantees to be breached more readily than in the case of combating terrorism. These specificities concern both the mafia as a particular organisation located outside civil society, and the single individual, the mafioso, who is constituted as a specific kind of subject. The analysis will then focus on two aspects: the special regime for trying mafiosi which differentiates mafia trials from any other form of trial and the special prison regime, the so-called *41 bis*, by examining the parliamentary debates around the conversion of Decree-law No. 306 into law. I have also combined this analysis with research conducted between 1985-1986 by the Specialised Training School for the Police Forces (Scuola di Perfezionamento per le Forze di Polizia - SPF). It investigated whether and under what circumstances it would be appropriate to extend the special antiterrorist legislation which rewards those who decide to cooperate with the judiciary to "common organised crime" (i.e. the mafia) as well.

⁹ The Italian antimafia legislation can be seen as an instance of the normalisation of exceptional and emergency measures. See Andrew Neal, *Exceptionalism and the Politics of Counterterrorism. Liberty, Security, and the War on Terror*, Routledge, London and New York, 2009.

The organisational nature of the mafia and the limits of the private/public dichotomy

After the assassination of prosecutor Giovanni Falcone by the Mafia, Decree-law No. 306 was issued on the 8 June 1992 as an emergency law. This decree-law introduced a series of new rules which significantly changed the Italian penal code. Specifically, Decree-law No. 306 instituted differentiations between procedures for the trial of those accused of mafia-type criminal association and all other trials, adopting a logic of the so-called 'dual track'. At the same time, a special prison regime, the 41 bis, was envisaged for the mafiosi. In this section, I will show that the dichotomy between private and public organised violence was then translated by these exceptional measures into, respectively, 'above' and 'below' the law, simultaneously reproducing the Italian State and the mafia; yet this dichotomy only partially exposes the discursive logics underpinning the special measures. In order to arrive at a more complex understanding, one must also look at how the dichotomy between politically-motivated terrorism and economically-motivated organised crime plays out.

'Substantially, a distinction has been introduced between trials for organised crime and all other trials', explained a representative of the Italian government when illustrating the decree-law to Parliament (PA: 1992a: 2310). What is interesting for the present analysis is that the specificity of these regimes was articulated and justified only partly on the basis of the *organisational nature* of the mafia, but additionally by *the peculiar nature of its organisation* and of the individuals taking part in it.

The organisational argument relies on the distinction between licit and illicit users of violence, based on the private/public dichotomy, which I discussed in the previous sections. In the words of the then Minister for Justice, Claudio Martelli, 'Its organisational nature... creates an imbalance...it is evident that the rights of an individual citizen are one thing...; a very different matter is... prosecuting a criminal association...such as the Sicilian Mafia, the Neapolitan Camorra and the 'Ndrangheta or the Sacra Corona Unita' (PA:1992b:2419). On this basis, it is the organisational nature of the mafia as an illicit violent actor that licenses its different treatment; this argument is then taken to the extreme of actually excluding the mafia from civil society. The premise of the argument is perhaps better illustrated by the words of two Italian law professors cited in Parliament as the pronouncement of "persons of secure democratic faith" (PA:1992b:2368)¹⁰:

If a group of criminals, i.e. the mafia, positions itself outside and against the State, if they willingly cease to be citizens and become enemies, [*then*] any obligation of the State towards them ends (*La Repubblica*, 23/07/1992).

In other words, the mafiosi willingly break the 'social contract' that lies at the core of the Constitution and the State and thereby lose the rights that these should guarantee. The understanding of the mafia as an organised illicit form of violence thrusts it outside of civil society and allows the State to break the 'social contract': an action justified by the rationale that the mafia, by perpetrating organised violence, did it first.

Yet this is only one part of the argument. In order to go further, one must look at how special measures can be justified through a specific understanding of the type of organisation the mafia is and the kind of subjects the

¹⁰ These were Gustavo Zagrebelski, Professor of Constitutional Law, and Guido Neppi Modona, Professor of Penal Law. Both were appointed judges of the Constitutional Court by the Head of State, respectively in 1995 and in 1996 (REFERENCE NEEDED).

mafiosi are. This becomes clear from the statements of parliamentarian Angelo La Russa in support of the governmental legislation: 'This organisation.. is *not motivated by idealism* of any kind: it is an association of people who want to make money, and it is ready to kill and to commit any form of crime' (PA:1992c:1963, emphasis added). The non-ideological character of the mafia suddenly becomes central to the call for emergency measures and special regimes. In this sense, it is the absence of any idealistic commitment that makes the mafia the most dangerous of organisations. The extent to which this character assumes importance becomes evident when we examine the special prison regime known as the "41 bis".

The Impenitent Informer, the 41 bis¹¹ and the politics/economics dichotomy

The Decree-law No. 306 of 1992 significantly altered the preceding law (No. 354, 1975) regulating 'the penitentiary system and the execution of measures regarding the deprivation and limitation of freedom'. Most importantly, it extended a specific prison regime known as the "41 bis", which had initially been introduced in 1986 for cases of 'serious danger to public order and security' (Article 41b, paragraph 1 of the Prison Administration Act), to prisoners accused of being part of a mafia-type criminal organisation.¹² In *Discipline and Punish* (1975) Michel Foucault described the institution of prisons as a new form of disciplinary power, together with other institutions such as schools, barracks and workhouses, which aimed to discipline bodies and souls rather than simply punish them. By contrast, the 41 bis regime eludes this model for it is very much centred on punishment¹³ and excludes any attempt to shape the conduct of those in prison for the purposes of re-education. This special regime of imprisonment for mafiosi limits any form of rehabilitation or alternative ways of expiating the period of detention and introduces a series of very strict and limiting rules on conduct within the prison.¹⁴ For instance, the number and modalities of visits and the receipt of goods from outside are severely restricted, there are rigorous limitations on the time prisoners can spend outside their cells and external correspondence is heavily censored.

The Decree-law No. 306 of 1992 established that this special regime of imprisonment for those who belong to a mafia-type criminal association may be interrupted 'only if and when', according to Article 4bis, 'they decide to *cooperate with the judiciary*' (paragraph 4b of the law 354/75 as modified by the decree law 306/92). This introduced a principle by which 'only cooperation with the authorities can serve to demonstrate that the mafioso has abandoned organised crime.' (Riolo, 2006:10). This condition of cooperating with the judiciary in order to obtain better treatment during detention recalls another decree-law which needs to be read in relation to the first one if we are to understand how relevant the politics/economics dichotomy is. This decree established a specific regime of protection for those who cooperated with the judiciary (Decree-law No. 8, 15 January 1991).

The possibility of cooperating with the judiciary had originally been created by the antiterrorism law, No. 304 of

¹¹ Despite the fact that for reasons of space I will reproduce only a very limited account of the debate around the 41 bis, since this special regime of imprisonment was instituted, many voices have been raised from opposite positions in criticism of it. See for instance the work of Francesca de Carolis who has collected different stories from those who are currently detainees under this regime: Francesca de Carolis, (2013)

¹² For the text of the law see: 26/07/1975 with updated amendments, http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/14/0850_2007_07_09_legge_354_1975_religioni.pdf

¹³ For another analysis of the predominance of punishing logics rather than disciplining, see Noguera (2003).

¹⁴ For a detailed analysis see Ardita (2007).

29 May 1982, as a means of fighting the Red Brigades. According to this law, terrorists could decide to dissociate themselves from their actions and their organisations, and also to cooperate with the judiciary against the organisation of which they had been part. In both cases they would receive (different degrees of) remission of their prison sentence. This law created two new categories of subject: the so-called "*dissociato*", who had severed ties with his/her group, and the *pentito*, literally, the penitent:

The *dissociato* has abandoned and repudiated armed struggle, most probably because he has realised it is useless; although he admits his own responsibilities, he does not cooperate [*with the judiciary*], he does not inform on his comrades. The *pentito*, on the other hand, has not only rejected armed struggle, but contributes to the identification of his comrades and the dismantling the organisation (SPF,1985-1986,76).

In the present context, it is interesting to see how this law was discussed and adopted in the case of the mafiosi. The logic underwriting all these provisions is the specific nature of the mafioso. From the analysis of the Parliamentary Debates, the mafioso, or '*homo mafiosus*', emerges as a subject for whom the mafia '*is not an ideology which can be proven wrong or isolated, but a widespread way of life*' (PA:1992b:2414-2418, emphasis added). This '*widespread way of life*' also incarnates a widespread mode of being. The mafioso, then, is always animated by feelings opposed to those of the political being, not just to a liberal democrat but even to a terrorist. This opposition is reproduced through the politics/economics dichotomy. This discursive opposition underlies the decision to deny the mafioso the possibility of dissociating himself, i.e. to confess his own role without giving any other information about the organisation. The reason for this is that, unlike the terrorist, the mafioso can never be a *dissociato*; since he is non-ideological and a-political by nature, it would cost him nothing to betray the organisation:

The terrorist becomes a *pentito* for ideological reasons, quite differently from the mafioso – [*who becomes a pentito*] for psychological reasons related to conflicts within the organisation, or out of a desire for revenge because he has been treated badly, or else simply because he has compared the likely outcome of the trial and the sentence he would receive for the crimes of which he is accused to the less serious consequences if he were to cooperate effectively with the judiciary (SFP, 1985-1986: 83-84).

This discourse is very influential even today, as for instance when Gian Carlo Caselli, the former Chief Public Prosecutor in Palermo, stated that, '*dissociation is a typical phenomenon which exclusively concerns terrorism. For the mafia it is simply out of the question, because their actions are merely the product of vicious criminality, with no ideological-political character*' (2009:121). Indeed, although the terrorist is portrayed as an ideological extremist, he is simultaneously considered quite capable of having a political agenda. By contrast, the mafioso is seen as driven by an uncontrollable desire (as the word *vicious* indicates) for economic gain and/or revenge, concealing a pathological perversion which paradoxically renders the mafioso both irrational and extremely calculating at one and the same time. Thus the first distinction is between the public and ideological motivation of the terrorist, which makes him political, and the private motivation of the mafioso. This non-ideological dimension has only two possible drivers: irrational revenge and rational, cynical profit. This makes moral

redemption impossible for the mafioso. Indeed, even if he were to decide to cooperate with justice, he would simply confirm that he was one of the two, or both: vindictive and/or absolutely rational and calculating.

The Italian word '*pentito*' derives from the religious concept of penitence, which implies the confession of, and *regret* for, one's sins, and allows the individual to re-enter the body of Christendom. From a secularised perspective, this means that his conversion to the "religion" of the Italian State places the *mafioso pentito* in an aporetic position. It is impossible for the mafioso to convert to the Italian State's secular faith. Indeed, the word "pentito" itself requires a certain level of spirituality, which is accorded to the terrorist, but not to the mafioso. This reveals the impossibility of being a mafia *pentito*, because under all circumstances he acts only for personal gain.

The recognition of such an impossibility has led Alessandra Dino to argue that 'the term "pentito" implies a serious basic misunderstanding' (2008:138). More widely, the specialised scholarship insists on using the technical term 'collaboratori di giustizia'- collaborators with justice (the judiciary), or witnesses who have turned state's evidence (Dino, 2006)

Therefore the only way for a mafioso to escape the 41 bis is to become "useful" by contributing actively to judicial investigations. The relation of the Italian State to the mafioso under the 41 bis is articulated precisely in terms of an 'exchange of utility' (Dino, 2008: 138-142). As in the hell of Dante Alighieri, the mafiosi are punished by the Italian State according to the principle of *contrapasso*¹⁵, their punishment resembling their lives which are presumed to be guided only by the desire for economic gain. After their 'civil death' at the hands of the 41 bis, their only path to redemption lies in becoming useful commodities for the Italian State, i.e. sources of information.

To conclude, we have seen how the Italian State (re)produces its claim to sovereignty through the deployment of the opposition between politics and economics, symbolised on one hand by the terrorist and on the other by the organised criminal. This dichotomy allows far more drastic measures to be implemented vis à vis organised crime than against terrorists. Discourse analysis has disclosed the aporetic situation of the mafioso, whose excessive rationality and irrationality are always 'unreasonable' and therefore indicating that which is non-human - i.e. the beast. This is the specific way in which the mafioso is below the law. In contrast, a 'reasonable' sovereign is constituted as 'above the law' by the very act of authorising politics through the exceptional decision to exclude the mafioso.

The contestation of the dichotomy and its reproduction

The empirical material selected for analysis of the counter discourse is a series of letters written between the 1 December 2004 and the 28 June 2006 by Matteo Messina Denaro. Messina Denaro is considered the heir of Totò Riina and Bernardo Provenzano, two Sicilian Mafia bosses currently imprisoned under the 41 bis. Though hunted by the Italian State for years, he has still not been captured. His letters, signed with the pseudonym "Alessio", are addressed to Tonino Vaccarino, a friend of his father, yet they were intercepted by the Italian Police

¹⁵ In the *Divine Comedy*, Dante, while in hell, refers to *contrapasso* as 'the punishment of souls by a process either resembling or contrasting with the sin itself'. See Mark Musa, commentary notes in *The Divine Comedy Volume 1* (1998).

and recently published. These letters are of great importance for this study because they were written by a Mafia boss who has never agreed to cooperate with the State. Furthermore, they were written when the writer was neither subject to police interrogation, nor on trial, nor under arrest.

The Italian Police had already found a letter of Messina Denaro's in 1993 in which he declared, 'I am fighting for a cause which nowadays is incomprehensible...But one day it will be obvious who was on the right side' (2008:92). Indeed, Denaro's aim is to restore 'the truth of things' (2008: 60). This first statement already contests the understanding of the mafioso as a being devoid of any sort of ideological commitment and motivation. Instead, all the words Denaro uses invoke exactly the opposite: the act of fighting for a cause as well as the existence of a right and a wrong side, both of which are emblematic of this contestation. He even specifies the nature of the cause he is defending:

It's too easy for the Italian State to *relegate* the Sicilian phenomenon to [the actions of] a horde of delinquents or a gang of criminals; it's not like that, *we have a longer history than this Italian State*. ...If I'd been born two centuries ago, I would have started a revolution against this Italian State and I would have succeeded, too (Denaro, 2008: 60, emphasis added).

This text clearly shows that what he terms the 'Sicilian phenomenon' is anything but non-ideological and apolitical. On the contrary, Denaro claims that this 'phenomenon' has primacy over the Italian State, and designates the latter as illegitimate. To contest being characterised as a criminal, Denaro claims to be willing to start a revolution. By this contestation, Denaro on the one hand rejects the label of criminal, on the other, he reproduces the dichotomous opposition between economics and politics, between being a criminal and being a revolutionary. The same thing happens when he explains why this revolution has not yet taken place.

Nowadays, affluence, progress and globalisation have changed the world and my methods seem archaic (Denaro, 2008: 60).

Indeed, this passage shows how the idea of revolution has been arrested by the historical conjuncture to which Denaro claims to belong. Interestingly enough, the first element Messina Denaro mentions is *affluence*, which has become an obstacle to his revolution. In this context Denaro overturns yet again the State's representation. As we have seen, in the State's discourse the mafioso was different from the terrorist because he was entirely profit-oriented, so the desire for affluence was the cause of his perversion. By contrast, Denaro depicts the mafia as representative of a nostalgic world that is menaced by, and not the expression of, a globalised world which revolves around "affluence". This representation not only contests the Italian State discourse, but also rejects the process of globalisation which has made the entire world different to the world he desires. He thereby implicitly contests the contemporary discourse analysed in the UNODC document, which states that globalisation *represents an opportunity* for organised crime because of the possibilities it offers of enrichment on a global scale (2004:iii).

Instead, in Denaro's words, the quest for enrichment is exactly what delegitimises the Italian State and its representatives. Referring to the latter, Denaro writes: 'I do not see men, only spineless *opportunists*' (2008: 70 emphasis added) Again, his wording constructs a specular reality which precisely mirrors the discourse of the Italian State. Its representatives are characterised as driven only by the desire for personal gain and for this

reason lose their humanity - *they* become beasts. In order to support his claim, Denaro refers to the special prison regime analysed earlier. The contrast this produces between the Italian State, its representatives and their adversaries is striking: "They practiced and they still practice torture in prison...they introduced the 41 bis, let them make it twice as bad if they like, *there will always be men who will not sell their dignity...*" (Denaro, 61: 2008) In this last sentence, Denaro is referring directly to the emergency laws examined previously, and specifically to the special prison regime of the 41 bis, which he singles out by name. The illegitimacy of these laws delegitimises the Italian State even further, and he calls for open resistance against it by those who, contrary to the State's representatives, are not driven by the desire for economic gain but by a desire to defend their dignity. The word "dignity" in itself recalls a secularised religious concept which forms part of the contemporary Western understanding of justice and politics (Gilbert, 2007: 81). Those who resist become men, or in other words, sovereigns. Thus, the politics/economics dichotomy works to reproduce the beast and the sovereign, but in a form which totally inverts the discourse of the Italian State.

As this analysis shows, Denaro contests the statist claim that the mafioso is non-ideological and apolitical. First, he defends the political nature of his battle and, secondly, he inverts the terms of the discourse: his cause is political, whereas the motivations of the Italian State are merely criminal and economic. By means of this inversion, however, the validity of the dichotomy in constructing the 'real' is reasserted. In fact, although Denaro's discourse aims to create an alternative truth, he does so by reproducing the politics/economics dichotomy. The mafia's truth mirrors the statist authorisation of what is politics and what is economics, what is ideological and what is non-ideological. Consequently, although the mafia contests the Italian State's claim to sovereignty, in the process of doing so it reproduces the boundary-making practices through which the states' claims to sovereignty are reauthorised.

Conclusions

The aim of the present paper was to contribute to an understanding of how state sovereignty is reauthorised and reproduced, as well as the ways in which it has been challenged by those non-state actors labelled "organised crime". My examination has focused on the dichotomy between politics and economics, which I consider to be part of the practices of drawing boundaries that reproduce sovereign claims. After analysing the Italian antimafia legislation of the 1990s, I contended that this dichotomy, alongside the private/public violence distinction, contributes to our understanding of the way specific forms of subjectivisation are constituted, and of how these allow special regimes to be implemented and legitimised (in this case, prison regimes). I then looked at the way in which the mafia has responded to the discourse of the Italian State. I argued that if, on one hand, this counter discourse inverts the accusations of the Italian State by characterising it and its officials as profit-driven opportunists, on the other, it reproduces the statist categorisation of authorising and bordering the "political" by using the politics/economics dichotomy to make sense of the world.

To return to Derrida once again, the modes of being outside the law, which mutually constitute the organised criminal and the sovereign state, cannot be captured in their complexity by relying solely on the dichotomy public/private violence. As my analysis has shown, the politics/economy dichotomy reproduces the mafioso as

below the law in a very specific way, a way which allows sovereign narratives defining what 'proper political life' is to be reproduced. Through the representation of the mafioso as unreasonable, always simultaneously too rational and too irrational (the beast), he is constituted as that form of life which needs to be 'subjected, dominated, domesticated, mastered' (Derrida, 2009: 66). On the other hand, the contestation of the Italian State representation, which I analysed in the mafia discourse, reproduces the same dichotomy but inverts its terms: the Italian State becomes the beast and the Mafia the sovereign voice. This reversibility is quite revealing about the nature of both discourse because, as Foucault has claimed, 'the tactical reversibility of the discourse is, in other words, directly proportional to the homogeneity of the field in which it is formed'(1997: 209). As my empirical analysis has shown, 'the opposed terms claim to "exhaust interpretative possibilities"' (Ashley, 1988: 239) and impose a choice between one of the two: to become a beast or a sovereign. In this sense, they oppose each other but also need each other in order to exist; in Derrida's words: 'there is not sovereignty or the sovereign. There is not THE Beast and THE sovereign. There are different and sometimes antagonistic forms of sovereignty, and it is always in the name of one that one attacks the other' (Derrida, 2009: 76). This means that the mafia in its contestation of the statist discourse still reproduces the terms upon which this is constituted, i.e. sovereignty. Both sovereign narratives are reproduced through the dichotomy between politics and economics which constitutes both the State and the Mafia as simultaneously below and above the law, both of them simultaneously sovereign and beast.

In conclusion, since the identity of these non-state actors has shifted from being "national" to being "transnational" or "global", it is worth reflecting on what this analysis tells us about the reproduction of the categories of State sovereignty in relation to international law and international institutions. In the case of violent non-state actors, it seems to emerge that the knowledge and the measures used to fight organised crime have traditionally been "fabricated" and legitimised domestically, then transferred to international law and institutions. The first (2004) UNODC convention analysed earlier is an example of this. Indeed, when considering issues for future research which could enhance investigation of the growing role of violent non-state actors in shaping the world in which "we" live, my analysis suggests that the realms of the international and the state need to be approached in terms of their mutual constitution (Walker (a), 1993; Walker, 2010).

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