

“Three Tales / Two Threats”.

Prosecutors in Italy, England and the United States narrate national and transnational organised crime

Anna Sergi¹

Introduction

The past years have seen an increase in legislations and policies to regulate manifestations of organised crime at both the national and transnational level, as if these two levels correspond to two different threats. This work will present the narrative used by public prosecutors when defining, re-defining and adjusting their conceptualisations of organised crime. Because the job of prosecutors is ideally placed between the interpretation of the law and the consideration for public interest, their conceptualisation of organised crime can influence the way policies meet criminal justice needs. This work is therefore exploring to what extent the conceptualisations of (transnational) organised crime in policies inform the work of practitioners at the prosecution stage.

As laws are not prescriptions and are the result of evolving concepts and political negotiations, they leave latitude for interpretations, which are determined by working environment and own views of law enforcement officers and courts. These interpretations are formed on the basis of “conceptualisations”, which are important for developments in the administration of (criminal) justice, whether juvenile crime or serious organised crime. As each country presents a different social and legal working environment, differences are to be expected. The underlying conceptual grounds remain usually implicit and to a certain extent individual. However, as conceptualisations of this sort influence to a certain extent the interpretation of the law, it is important to let them come to the surface. One of the ways to do this is to help practitioners bring these conceptualisations to the surface themselves by “narrating” their own practice with a “think-aloud” method.

By relying on interviews with prosecutors conducted in England, Italy and the USA, this paper uses narrative criminological approaches – enriched by comparative research methods – to follow how the ‘label’ of organised crime is received and how it changes to fit the needs of prosecution and pre-trial phases. It is crucial to remember that, beyond criminal law labels (the crime of organised crime or the

¹ Lecturer in Criminology, Department of Sociology, University of Essex;
asergi@essex.ac.uk.

crime of conspiracy for example), each national state necessary has its own political concept of organised crime to which the law follows. Geographical differences in the interpretation of organised crime, therefore, are certainly political but will have a practical dimension.

This work – through the words of law enforcement practitioners – will explore similarities and differences among individual interpretations of public prosecutors in three countries when asked to conceptualise organised crime for the purposes of their investigations and their daily practice. For the purposes of this work, organised crime is left undefined, to allow free associations of ideas and concepts to emerge from the discourse without setting *a priori* categorised. Through these lenses, this work questioned what is meant by organised crime in the three jurisdictions, whether there is a difference when the adjective ‘transnational’ is associated to the label of organised crime and to what extent these differences might result in a tension among interpretations.

Context and background

Organised crime is one of the most debated concepts in criminology, political sciences and in international relations studies. There is consensus in uncertainty, whereas scholars seem to agree that it is inappropriate and often counterproductive to share over-inclusive definitions. The concept periodically undergoes revisions and updates in policy and law especially at national level. On the other side, investigators, prosecutors and in general law enforcement agents, need to translate the concept into criminal procedures.

Among the most debated terminologies in the field of study of organised crime, is transnational organised crime, as label and categorisation that has been harshly criticised by scholars for its abstract character and its empty connotation (Van Duyne, 2011; Van Duyne and Nelemans, 2012; Hobbs, 2013). However contested, the *rhetoric* of transnational organised crime is a successful one, as field of research and as alleged security threat at both national and international levels (Edwards and Gill, 2003). Whereas on one side ‘organised crime’ evokes old and consolidated images from popular culture, the adjective ‘transnational’ has been often presented as an added value of a concept that seemed obsolete in today’s globalised world together with other cross borders security risks. The immediate consequence of this has been the penetration of security connotations into criminal law (with the UN Palermo Convention classifying organised crime as a transnational threat for example).

This study departs from these considerations to evaluate terminologies and overlapping narratives in criminal procedure and law from the perspectives of pub-

lic prosecutors when it comes to cases broadly labelled as organised crime cases. The main question this study addresses is how prosecutors in the three different countries conceptualise organised crime, what influences their concepts, their differences and similarities. While doing so, this study will necessarily enquire about the differences, at the stage of prosecution, between organised crime as category of criminal law and organised crime as security threat.

Data collection and analysis

This study adopted a qualitative methodology through interviews with those who in practice lead criminal investigations to trial and therefore implement legal requirements of criminalisation of organised crime depending on specific requirements of each jurisdiction. Three sets of in-depth interviews with high profile public prosecutors have been compared, for a total of 24:

- 8 in Italy (between Reggio Calabria and Rome, Direzione Nazionale Anti-mafia and Direzione Distrettuale Anti-mafia, coded I-1 to I-8);
- 8 in London (barristers working with the Crown Prosecution Service, coded E-1 to E-8)
- and 8 in New York City (between the Organised Crime Task Force and the District Attorney Office in Manhattan, carried out between mid-2012 and early 2014, coded NY-1 to NY-8).

Interviewees have been contacted on a non-random basis based on their specific expertise as specialist prosecutors working in organised crime divisions/units within prosecuting agencies. They have been contacted directly, via email. Response rate has been high, with 33 people contacted in total and 24 respondents. Each conversation has lasted an average of 50 minutes, during which we spanned across various topics related to the procedures of prosecuting organised criminals, defined as they wished to define them and not pre-defined in the study. The interviews have been recorded but not transcribed; thanks to the use of note-to-speech software, I have taken notes directly linked to specific portions of the conversation for ease of access to the audio files.

For the purposes of this work, mainly the first part of the interviews, which specifically touches upon conceptualisations of organised crime, has been used. In fact, given the exploratory nature of the study, qualitative research on the work of prosecutors has essentially focused on the way the talk about their work. The quotes presented below are intended as representative of the analysis of narratives. Even though the sample is limited, the aim of the study is to explore narratives and therefore is not concerned with generalisability; subjectivity is the core of an analysis of narratives. The topics covered during the interviews spanned from specific

characteristics of respective national criminal procedures, to historical aspects preceding the enactment of laws and to general conceptualisations of organised crime in their jurisdiction and its manifestations in the country of interest and beyond.

As previously said, the interviewees have been approached for their involvement with high profile organised crime investigations as part of their work as prosecutors and/or investigative magistrates/lawyers depending on the jurisdiction. Some of them had also been involved in judging cases of organised crime or in defending clients charged with crimes related to organised crime. Their expertise and knowledge of the juridical aspects as well as the phenomena their criminal justice systems target, therefore, is composite and rich.

Lastly, this is a comparative study and as such it is aligned to methods of research in comparative criminology and criminal justice. Studies in comparative criminology and criminal justice are essentially aimed at intertwining crime, justice and culture (Nelken, 1994) to go beyond stereotypes and to improve reflexivity on a given aspect of the criminal justice process (Nelken, 2000). Comparative criminal justice is both a method of research and an exercise of legal skills (Hodgson, 2000; Legrand, 1995) and it demands the researcher to *infiltrate* the culture of different countries, as an anthropologist or a sociologist would do. The attempt to permeate another culture “*at the very least to understand its institutional structures, laws and procedures*” (Hodgson, 2000: 140) means engaging with “*its languages, customs, ideologies, legal cultures and practices*” (Hodgson, 2000: 141). In this penetration of cultures and ideologies lies the connection with using narratives. When focusing on narratives, the production of discourse becomes intrinsic to data collection while rejecting a preconceived idea of ‘reality’ and/or ‘truth’ (Pressers, 2009). The focal point of research is therefore to build the story, the narration, rather than finding out whether there is truthfulness or reliability in its factual content. Indeed, as clarified in literature (Pressers, 2013; Pressers, 2012; Sandberg, 2013), the accuracy of stories is not a concern of narrative criminology; the narrative itself that holds meaning and reveals not simply opinions, but rather constructions of discourse. In this sense, it is obvious how narratives can be very revealing of the interpretations of policy categories among their users.

The combination of a focus on narratives and comparative criminal justice approaches, therefore, offers an analysis based on story-telling of criminal procedures. Comparative criminal justice research between Italy and England has already revealed how to divergent policy approaches to organised crime correspond nevertheless convergences in policing approaches (Sergi, 2015a). On the other side, Edwards and Gill (2002: 247) have already demonstrated how policies to control transnational organised crime – within the realms of criminal justice, policing, as well as security – are essentially ‘*governmental savoirs*’, and as such they need to rationalise the crime to find its solution.

The narratives collected are essentially stories about how organised crime fits in the boxes of criminal justice and prosecution in different jurisdictions. These stories are an added value to comparative approaches, which are often limited to textual analysis and interpretations of laws and policies. Indeed, it is possible, within the remit of this paper, to match narratives of prosecutorial practices with narratives on security and criminal policies of organised crime. It is in this exercise that convergences and differences emerge between the way national/local and transnational/international organised crime are perceived and described between policy and practice.

Organised crime and secrecy

Once upon a time, and especially following the extremely influential work of law enforcement and academics in the USA since the mid-1960s, organised crime meant only mafia, buried in the inhospitable fractures of Sicilian territories, rooted in Sicilian culture and migration to the US (Abadinsky, 1994; Cressey, 1971) The imagery of mafias – which still inevitably and successfully populates popular contextualisation of phenomena of organised crime – is probably linked to the undying fascination with affiliation rituals and to the secluded character of Sicily that reinforced the withdrawn character of criminal alliances (Di Forti, 1982). As one of the Italian prosecutors in Reggio Calabria (I-1) said:

“[as prosecutors] we were attracted by this phenomenon in an unknown reality, never properly investigated and most of all secret. The mythology of mafia, well I have always thought of it as a mythology of the secrecy of a reality to which everyone referred to, in politics, in society, even in literature - we are talking about the end of the 1970s - but eventually remained secret to the majority.

The secrecy of Italian mafias is the first emerging character in the notions of organised crime as shared by the interviewees. While on one side it feeds into that popular imagery of the phenomenon, giving a very distinct connotation also to geographical characteristics, secrecy in mafia-type groups ‘*is not binary*’ (Paoli, 2003: 102), in the sense that it existed once and then it ceased existing. Quite on the contrary, secrecy remains a quintessential feature of organised crime in Italy, it manifests itself at various degrees and it is intrinsically linked with the use of violence. As noticed by one of the interviewees (I-4):

“We only really know about what is going on within the clans when something happens, when there are gunshots. We wait for the manifestations of mafias in front of our eyes. However, to a closer look, we see that behind that manifesta-

tion is a world that uses gunshots only when needed, the rest of the time they choose to keep a low profile, why wouldn't they?"

Even in today's scenario, especially in Calabria where the 'Ndrangheta is today believed to run most of the underworld businesses among Italian mafias (DNA, 2014), secrecy appears still predominant in affiliation rituals and in the narcissistic recognition that members of the criminal organisations enjoy among each other. As noticed (I-2):

"The 'ndrangheta has strict regulations, rituals and sanctions, that they need to keep secret for the simple reason that they are a qualified minority that seeks to keep control".

When we leave Italy, the echo of Italian mafias and their symbolism is still powerful. One of the prosecutors in New York City (NY-2) held:

"As soon as we started looking at the enterprise that produces the criminal activity, we had to start thinking at the way organised crime worked and I think there were misconceptions because, apart from a few *pentiti*, we didn't have much of an insight into organised crime except that it was perceived as a secret crime-producing machine and that somehow we had to get to that machine."

The secrecy of criminal organisations, while on one side not surprising – crime is, after all, not something that usually receives publicity by criminals themselves – remains both the fascination and the challenge of organised crime, whether intended as mafia-type or other type of criminal association. While this remains true for national manifestations of organised crime, it seems to lose supremacy when describing the characteristics of transnational forms of organised crime. Indeed, whereas at the national level secrecy of organised crime is paired with a certain power over the territory of influence – and it acquires at times very symbolic and mythological dimensions – the same cannot always be said of forms of organised crime activities across borders. These are described as complex criminal activities mostly concerned with trafficking of illicit goods and/or services that can either include members of structured criminal networks or occasional criminals instead (Kleemans, 2014), that encompass all criminal activities that are complex, serious and across borders and involves more than 3 people (UNODC, 2012). As noticed by one interviewee in London (E-5):

"There are over 30 languages spoken daily in the streets of London and some of them are not easy or common languages. You can get away with what you need to do in terms of criminal activities just by speaking a language that others around you don't understand. There is no secret, no mystery apart from obviously being cautious about what you are doing. But by the time we [investiga-

tors] manage to understand what criminals are saying, if we happen to intercept them, they have come and gone with their crimes, they moved.”

What, therefore, seems to be the other side of the coin of secrecy is *recognition*. At national/local level, where there is commonality in language, this naturally brings recognition among offenders. Secrecy, intended as exclusion of non-affiliates, is, therefore, a tool to reinforce mutual recognition. In transnational activities, instead, language is the tool of recognition, as arguably language is a stronger barrier to international trafficking than to local criminal activities. In transnational activities, secrecy becomes less of a reinforcement of affiliation and it is used as cautionary method to hide the criminal nature of the activities. The link between recognition and secrecy is valid also for online activities. when they overcome the boundaries of national jurisdictions. As noticed (E-6):

“Even when you know or foresee online criminal activities going on in New York City, even if you go as far as predicting victims will be in Manhattan, if it is internet crime then one or more elements, the investors, the perpetrators, the goods, the server will be based in other jurisdictions. Apart from legal issues, this also requires the ability of criminals in sharing and diffusing their own language across platforms. It’s a secret language, you see? The way they speak online it’s a secret code, it’s the language that reinforces recognition, it’s the language that ensures secrecy”.

In the narratives of prosecutors across three jurisdictions, the way organised crime links to secrecy is not only on a gradient but it also depends on the use of language for purposes of recognition. From local mafia-type organised crime to cross-border activities both on the ground and online, criminals need recognition among each other, either through qualified affiliation and oaths on secret codes or through language.

Organised crime, ‘the self’ & ‘the others’

Conceptualisations of organised crime, between national and transnational connotations, mirror in policing approaches, investigative powers and legal provisions adopted for countering purposes (Sergi, 2015a). The way prosecutors speak of organised crime is often interlinked with cultural outlooks to certain phenomena in specific locations and countries. In other words, the way prosecutors in Italy, in London, in New York City see their practice against organised crime and evaluate policing approaches, is influenced by their concept of organised crime. This implies, for example, different attitudes to the various criminal phenomena approached from more or less emotional points of view. That organised crime carries

an ‘emotional kick’ (Levi, 1998: 336) is understandable in the light of what is previously said about secrecy and recognition. This emotional kick, however, can persist in prosecutors’ attitudes towards the phenomena at certain latitudes. At national level, when discussing local forms of organised crime, we find an alternation between national pride and national curse. In an abstract spectrum from pride to curse, Italian prosecutors would oscillate between both categories, while English prosecutors would be placed on the national curse side and Americans would be in the middle.

When it comes to Italians, it is obviously a *negative pride*, coming not only from decades of primacy of Italian organised crime in public perceptions, but also a *positive* one resulting from the realisation that the Italian Anti-Mafia system does serve as one of the model legislations against organised crime around the world (UNODC, 2012; UNODC, 2004). As exemplified in one of the interviews, while talking about the Calabrian mafia, the ‘ndrangheta (I-8):

“Obviously the best way to capitalise is by reinforcing your routes for drug trafficking. In this market, and not only in Italy, the ‘ndrangheta is unchallenged and, because of that, because of this supremacy – if it is not a monopoly of the market it is definitely at least an oligarchy – it has become the only credible financial subject in a very depressed area such as this one [Calabria] and in other areas in Italy”.

In order to face this criminal oligarchy prosecutors rely on the capacity of criminal law to embrace the complexity and historical impact of mafia crimes. This is echoed in discussing criminal procedure against mafias and organised crime in Italy (I-7):

“Italy has a legislation, a legal, juridical sensibility, in theory and in practice, which no one else has, which is obvious. This enhanced sensibility to certain phenomena follows an enhanced knowledge of those phenomena. We have felt them on our skin”.

In the Italian context to a deep knowledge of the phenomenon of mafias and organised crime, which sounds like a national (negative) pride, is also paired a feeling of *isolation* in the fight against this curse Italy is burdened with. The reality portrayed by Italian prosecutors is one of solitude in understanding the phenomenon and frustration in handling international cooperation when it comes to Italian criminals abroad, especially in the rest of Europe. Says one of the interviewees (I-3):

“Europe is not paying attention. You hear all sorts of policies and agreements are in place, but truth is that half of the time European countries don’t know what they are dealing with. They don’t see the gunshots and they think all is quiet; they don’t understand the new faces of mafias. It is disrespectful to Italy when other countries choose to look the other way”.

On the other side of Italian isolation is the rhetoric of *otherness*, made of *contagion* or *heritage*, which can be found in American and English narratives. In this regards, specifically linked to the Italian sense of self and ownership of the issue of mafias, is the American vocabulary on “the mob”, which still permeates conceptualisations of organised crime, as heritage of Sicilian migration to the US (NY-4).

“We used to joke about it, you know, about the Godfather. If you think in terms of the joke, mythology, culture and you think of, let’s say England, you think, I don’t know, of Robin Hood and Richard Lion-hearted! Here, it’s cowboys, Indians and the Italian mob! We’ve grown up with that, it was forced, out of historical circumstances, on what is now our DNA”.

Furthermore in England, the narrative of organised crime is based both on an attribution of certain behaviours to others and on a preservation of an identity of what organised crime looks like in the country. Specifically, organised crime is often equated to gang crime and as such distanced from mafias and their seriousness or dangerousness (E-1):

“When we talk about organised crime what we really mean is serious criminal activities. Almost invariably, if you witness serious criminal activities, they are going to be organised, planned, anyway sophisticated. We don’t have any religious belief or faith on what organised crime is or was or it is supposed to be, some crimes obviously are organised in a gang style, you know, some aren’t. There are various types of gangs, we don’t have that type of organisations that Italy has. In this sense our organised crime is potentially less threatening but more fluid too.”

On the other side, however, the English narrative of organised crime is also rooted in the *otherness*, in the *contagion*, in alignment with very well-known alien conspiracy theories (Woodiwiss and Hobbs, 2009), as very visible in the interviews (E-4):

“There are other organised crime gangs, of Turks, Kurds, Eastern European groups that act in mafia style in their countries and they bring their mafia-style activities, their mafia style allegiances, their mafia style feuds to London. We had a period when there were serious feuds between Kosovar and Albanian groups, you know, executions in the streets, people shot at traffic lights and these were feuds which had partially to do with criminal activities here, like gun smuggling or drugs, but also with feuds that were going on elsewhere. There is a subset of mafia style criminal activity but it tends to be from incomers.”

A narration of mafia activities as inherited from others, from *incomers*, is clearly linked to migration of certain ethnic groups, but also it refers to the realisation that organised crime can have different manifestations and as such, calls for different

counter measures. This is especially true for prosecutors in New York, who recall the experience of setting up the Racketeer Influenced Corruption Organisations Act 1970 as a specific response to the dangers posed by Sicilian Cosa Nostra, on the basis of what was the alien conspiracy theory (Cressey, 1969; Paoli, 2002) (NY-3):

“When they rolled up their sleeves to draft it in a way that was specifically against Cosa Nostra – without mentioning it though – it was an anomalous approach fuelled by the belief that the big problem was organised crime infiltrating legitimate business in the state. This produced the RICO statute, which was then fixed by case law. If you can prove that someone participated in the affairs of Cosa Nostra, engaging in a pattern of racketeering activities, then you have a high sentence, it was ideal. But we had to learn what these activities were or could be. It was an exercise from both common law and statute”.

The tension between syndromes of *pride* and *isolation* and syndromes of *contagion/otherness* across jurisdictions does not seem to change when prosecutors move from analysis of national manifestations of organised crime to transnational criminal activities, with the exception of organised forms of cyber-crimes. This is indication of two trends: first, prosecutors tend to merge national experiences and local conceptualisations of organised crime and/or mafias with transnational ones. An understanding of organised crime groups as cross-border threats characterises both countries where manifestations of organised crime have always been culturally national and local (such as Italy) and those systems, which relied upon alien conspiracy and ‘otherness’ to shape their policies of organised crime (such as the US in the 1970s and the UK more recently). In brief, the conceptualisation of organised crime as threat that can be transnational is shared both by countries with a strong identity of local/national organised crime and those who claim organised crime is linked to aliens. Basically, organised crime today is transnational anyway. Indeed, this can be understood from two complementary sides. On one side, local/national organised crime groups committing cross-border criminal activities - and/or migrating to commit criminal activities - are seen as incomers from the point of view of the destination/arrival countries. On the other side, these groups are seen as exporters of criminal activities, therefore transnational criminals, from the origin countries. As identified by an Italian prosecutor (I-7):

“Some groups, like mafia groups, in their territory have certain possibilities and they move in certain ways. Out of their territory, they have other possibilities. Arguably their scope is always to boost their profits through criminal activities abroad. It seems obvious that the more they move outside their territory, from local to national to transnational, the more they resemble networks, which are solely criminal, enterprises of crime that move according to specific necessities.

The farther they go from their territory the more they lose their cultural, that is their social connotation”.

Whichever the point of view on transnational crimes, however, prosecutors are aware that the remit of their work is first and foremost at the national/local level, even though it is not unusual, and actually, it is often the case, that even national/local criminal groups need to be understood by looking at their or others’ international projections and/or cross-border activities. As confirmed by an English prosecutor (E-8):

“Organised criminals are above chaotic offenders; there are different types of organised crime groups and they are categorised by geography, type of criminality, online or offline reach. Most of all, we classify them for scale of the harm. We have territorially-based policing; we deal with local levels of criminality. Organised criminal groups, which go beyond the local territory, when they go international, it’s because they have a higher degree of sophistication, at that level we need more specialised officers and more equipment, but we still see them within the territories where police forces are active, if we are talking about prosecutions”.

The conceptualisation of organised crime, as both local and transnational phenomenon, makes little or no difference at the practical level for prosecutors. Furthermore, the characterisation of transnational organised crime as threat to security seems not to affect the prosecutorial practice, which is still concerned and based on the application of criminal law, as discussed in the next section of this paper. Narratives of prosecutorial practices in the three jurisdictions, therefore, seem independent from conceptualisations of organised crime groups in terms self-identity or otherness, isolation, contagion or pride as explored before.

Organised crime and prosecutions

With a direct link with what previously discussed, prosecutors across the three jurisdictions do tend to differentiate between national/local forms of organised crime and transnational ones, essentially because their powers are often limited to act against the former rather than the latter. In particular, the question of who we prosecute, and how, is connected to both the conceptualisations of organised crime groups and their activities as well as to the results achieved and advertised to the public (Sergi, 2015a) together with considerations on budget and jurisprudence. As previously said, the narratives shared by prosecutors reveal how a differentiation between national and transnational organised crime exists in light of different social and historical perceptions of the threats, but it does not necessarily affect the

way manifestations of organised crime are seen during investigations and prosecutions in national/local jurisdictions. This remains true also when exploring the relationships between conceptualisations in organised crime narratives, both as criminal threat and as threat to security, and the actual procedures to prosecute organised crime. We find that national/local manifestations of organised crime are treated differently from transnational ones and that substantially the work of prosecutors is still, in any case, circumscribed and based on national procedural law. This does not surprise if we consider that whereas criminal procedure might be internationalised through cross-border policing and mutual assistance provisions, criminal law remains largely the realm of state sovereignty.

Additionally, in terms of classification of the threat, prosecutors' understanding of organised crime is very clearly linked to the actual possibility to criminalise activities. In particular, whereas national/local forms of organised crime might be threats against public order, competition, health and communities in general, depending on the jurisdiction, transnational forms of organised crime are confirmed as threats to democracies and national safety. This however, falls beyond the scope of national prosecutors. As noticed in England (E-2):

“It is obviously the case that we target criminals for crimes committed across a range of activities and a range of locations. However, we need to collect evidence and charge offenders with something they have committed and we can prove they have committed. Clearly, if you are charging someone with conspiracy to sell drugs in a neighbourhood in London or across England is different from charging someone because they trafficked the drugs from abroad. I mean, the first is a damage to the community, the second is a damage to both England and the other countries this individual or group touched; it is a problem for border controls as well.”

The link between the seriousness of the threat, the transnationality of activities and security of borders and countries is again confirmed as predominant in narratives, but it is not influential when applying criminal law at national/local level. In fact, in terms of criminalisation of activities of organised crime, the way prosecutors have framed their understanding of organised crime is largely dependent upon the legal frameworks they work with. For example, both Italian and US-based prosecutors share a clear characterisation of organised crime as a crime of collective responsibility, where the danger is represented by the criminal structure or the criminal enterprise. The higher the power of the criminal structure, the more dangerous the crime. Conversely, English prosecutors link their understanding and conceptualisation of organised crime as serious crimes, which are organised, therefore dangerous. It is the seriousness of the criminal activity rather than the structure committing it that brings the dangerousness. This is in line with Structure and Activity models already identified in Italy and in the UK (Sergi, 2015a; Sergi, 2014b). Nec-

essarily, aspects such as individual or collective criminal responsibility come into play when exploring the narratives both in terms of local and transnational organised criminal activities. When speaking of national organised crime, an Italian prosecutor says (I-4):

“The crime of membership in a criminal association has a symbolic meaning first and foremost. Even though sometimes it is much easier and convenient to prove the substantial crime, the association gives an idea of the strength of a group people, it is something more than simply achieving a good result in trials. Obviously when you don’t have a manifested crime, the association crime is your only option.”

This does sound similar to what said by a NYC-based prosecutor, explaining the shift in mentality that brought to the RICO legislation (NY-1):

“The recognition of the mob as syndicated criminal activities brought us to think in terms of an organisation and there were charts of the hearing conducted, all the families in various cities. It became something not simply legal but also symbolic. We had movies about it. However, once you got to those complex conspiracies you reached an end point. You cannot put boundaries on criminal activities, in terms of time and typologies of crimes that appear to be connected but you cannot really prove how. This is why we got RICO, to respond to syndicated crimes, whereas the relationship between an individual and an organisation was not only deemed irrelevant but also prejudicial”.

Contrarily, in England (E-5):

“Organised crime in a court is different from other crimes. In practice, we associate it with certain species of serious crime or it has been set up in a more sophisticated way by a group of persons. We are mostly influenced by the background of these people, who they are, are they career criminals? And also, the way they are behaving, in terms of violence or corruption. For these reasons, conspiracy is quite useful as a tool, it focuses on the actual criminal conduct. Targeting the organisation, like in Europe or in the US, is alien to English law, we simply don’t do it”.

In other words, targets change according to how the law works. It seems clear that, behind a criminal law choice – and behind criminal procedure – lays the question of ‘who do we prosecute’. A crime of membership targets the dangerousness of the organisation, intended as “*a dangerous entity corrupting society*” (Italian prosecutor), while a crime of conspiracy targets “*professional criminals, who are dangerous for the whole country*” (English prosecutor). As this paper proposes narratives, it shall not question the effectiveness of these approaches, which, however, are part of other investigations (Sergi, 2014a; Sergi, 2015b). In any case, the question of

‘who do we prosecute’ seems to be the core issue for prosecutors and does reflect different conceptualisations of organised crime together with opportunity considerations. In particular, to a membership and/or enterprise offence, in Italy and in the US, corresponds a net-widening approach that not only targets criminal organisations, but also their ramifications into the legal world. As noticed by an Italian Prosecutor (I-6):

“In the criminal typology of organised crime we also consider the external participation to mafia affairs, those people who benefit or support the acts of the criminal groups but that are not officially affiliated for obvious reasons, the grey area as it is known, politicians, lawyers, entrepreneurs, businessmen. The offence of mafia association is still abstract, but it allows targeting the real nature of the offending and that includes externals. ”

Similarly, the ramification of organised crime groups beyond criminal activities represents one of the main reasons RICO was passed in the US, as identified by one of the prosecutors in New York (NY-7):

“Let’s say you have a syndicate of people committing crimes for profits. These profits obviously go to those who engage in the activities, but they also go into legitimate businesses. These legitimate businesses, with illegal profits, cannot be run legitimately, so criminals need to resort to various other criminal activities. This is a pattern in RICO, from the corruption of legitimate businesses to the commission of subsequent criminal activities.”

The necessity to move from simple conspiracies and substantial crimes to crimes of membership in unlawful association has been affirmed in the US, as well as in Italy, thanks to the peculiar characterisation of local organised crime groups and their modus operandi in the criminal and extra-criminal world. This is not the same tale told in England (E-5):

“Individuals who repeatedly appear in court are professional criminals, not just because they don’t do anything else but because they are consistently involved in high value, serious crimes, they have a criminal record, a criminal background. There might be different people within these groups, some of which might or might not have important contacts at high levels, others might provide just lower support, but this is occasional, which is why it is difficult to counteract, these are fluid networks.”

The way organised crime is narrated, therefore, influences the way it is prosecuted, and this, again, should not surprise. To a narrative of organised crime as criminal conspiracies and opportunistic networks corresponds a prosecution narrative based on capturing the loose character of organised crime; this is the English experience, largely based and focused on individuals, as professional organised criminals. On

the other side, and this is the experience of Italy and the US, to a narrative of organised crime as criminal syndicates and enterprise corresponds a prosecution narrative based and focused on criminal groups. Criminal law has to adjust to the manifestations of organised crime in different jurisdictions. The limits of criminal law and its stretching beyond individual penal responsibility, in the US as in Italy, does not come without problems, especially when it comes to moving from the national/local to the transnational dimension of criminal activities. As previously said, transnationality is a sign of seriousness of the threat and it is often thought of as an aggravating factor to organised crime activities at national level and in criminal law. As specified by an Italian prosecutor (I-3):

“The globalisation, the delocalisation of mafias has brought us to overcome our own national criminal law, article 416bis² for example, which is based on the link with the territory. We have been supported by the notion of transnational crime, from the Palermo Convention of 2000. The concept of transnational crime group is arguably wider than the one of association, it indicates yet another level of serious danger.”

And this is true also for an English Prosecutor (E-4):

“It’s always a matter of how sophisticated the criminal activity is. In our threat assessment we need to see first and foremost if there are transnational ramifications of the criminal activities under investigation. If there are then we need to make use of other types of tools, there is no way we can cover everything under national law, some things simply are beyond national powers”.

While it is confirmed that the focus of prosecutors is and remains anchored to national powers, their narratives show how organised crime is perceived differently and narrated differently when it comes to prosecuting national criminals in transnational activities. There is a perception, confirmed across narratives in the three jurisdictions, that the transnationality of organised crime implies more sophistication in crime, and an increased seriousness whether it is an individual professional of the underworld, or a criminal enterprise.

Discussion: three tales of two threats

The interviews show both similarities and differences across the three jurisdictions. In particular, the way organised crime is constructed and narrated by these prosecutors mirrors their work practice and also represents the intersection between perceptions of criminal phenomena with criminal policies. In other words, the way

² Crime of Mafia-type association

organised crime and its manifestations are narrated by these prosecutors can be considered directly dependent upon the way their justice system understands and integrates conceptualisations of organised crime in law and procedures. A number of inferences can be made out of these interviews and their analysis.

First, there is indeed a difference between the way organised crime is seen at local/national level and as a transnational phenomenon. In particular, while on one side prosecutors focus their practice on their own jurisdiction, the notion of transnational criminal activity populates criminal policies and descriptions of the phenomenon of organised crime, oscillating between a threat to communities and a threat to state borders. It seems, however, that transnationality is not autonomously part of substantial criminal law. There is obviously the concept of organised crime activities and organised criminals crossing borders; these activities and these criminals are however either more sophisticated versions of local activities/individuals or yet another manifestation of local criminality. In Italian narratives, prosecutors link delocalisation and migration of criminal groups to the radicalisation of mafia power in a given territory. In their discourse, mafia groups are able to migrate and commit cross-border crimes *because* they are rooted and in control of their territory. Conversely, in the English narrative, prosecutors see the criminal groups committing transnational crimes *in addition to* their being also present at the local level, that is, independently from their local presence. The idea of transit crimes (Kleemans and de Poot, 2008; Kleemans, 2007) as crimes that touch upon various territories but do not belong to the country of reference, but is embedded in English narratives of organised crime while alien to Italian ones. What is missing in England is the perception of organised crime as clearly identified British phenomenon. There is, instead, a constant need to compare English criminal groups with common perceptions of mafia groups, by way of justification and mirroring. Statements like “*English organised crime is not like the mafia you have in Italy or the New York families*” show how the concept is split in prosecutors’ perceptions: on one side, there are local forms of organised crime, which are not as organised as mafia is supposed to be; on the other side, transnational manifestations of organised crime, are very different from any traditional forms of organised crime (including mafia, again). These transnational activities are the ones that prosecutors characterise as the most serious and sophisticated, but fall often beyond the scope of their daily work. In this respect, New York’s experience is in the middle, as the prosecutors’ words narrate how the system incorporates a perception of organised crime as local phenomenon inherited from abroad, the knowledge of the pervasiveness of certain phenomena in local affairs, as well as the awareness of the complexity of transit crimes and transnational criminal activities, which might or might not be linked to local groups and their strengths on the national territory.

Second, linked to this dichotomy between national/local and transnational/cross-border organised criminal activities is also the discourse around the com-

plexity of organised crime investigations because of its secretive features alongside the complication of language barriers. As previously seen, the perception of organised crime as a set of secret relationships and secret activities is linked to the complexity associated to organised crime and the necessity to minimise the risks for offenders. Both national and transnational organised crime are perceived as protected by secrecy. However, in national forms of organised crime, as confirmed by Italian and American prosecutors, secrecy serves also a symbolic purpose – to maintain the criminal associations as elitarian hidden realities. In cases of cross-border crimes, because of the necessity to differentiate prosecutorial tasks, the element of secrecy is not prominent symbolically, but rather is visible in the advantage that prosecutors recognise to criminals who can disguise their contacts and activities also thanks to language differences and geographical distances. On the investigation side this fits within a national security categorisation: threats to national safety fall within the remits of criminal intelligence and therefore, naturally, carry a degree of secrecy and hidden character (Carley, 2013).

Third, the origin of organised crime as criminal policy category also plays a part across jurisdictions and across systems. Indeed, the existence of a national identity, to which organised crime activities and networks are conducive, has a twofold effect: on one side organised crime becomes integral to society and, on the other side, society is permeable to organised crime infiltration. This is indeed more perceptible in the words of Italian and, to a less extent, American prosecutors, who describe organised crime as national product in what we called a form of national pride. Basically, where organised crime is Italian or American organised crime, or Italian or American mafia, it follows a feeling of familiarity in the recognition in the phenomenon, which still is a burden to carry, but it is, nevertheless, a national burden and, as such, it has characteristics that can only be understood and shared in light of national cultures and specifics. Hence, the narratives of pride, isolation and misunderstanding that characterise Italian practice when talking about practices abroad. Where, instead, organised crime does not carry a national identity, like in the English case, a discourse of (negative) pride cannot apply. Rather, conceptualisations of organised crime as alien threat to national safety seem to be logical consequences and link in with discourses on the foreignness of organised crime as contagion or infection of society's values from incomers. The American case in this sense is an interesting and composite one. In fact, in the US we have the birth of the alien conspiracy theory applied to organised crime of foreign (Sicilian) origin. This was progressively abandoned when the phenomena linked to organised crime rooted into American society and criminal markets, to create a very distinct, and predominant worldwide, national identity of organised crime.

The alternation between pride and curse – which depends on the existence and/or establishment of a national identity of the phenomenon of organised crime in common perception – also mirrors in the way justice systems label organised

crime as a matter of criminal policies. The question on “who to target” for counter-ing and policing organised crime remains anchored to what is the identification of organised criminals. The differentiation between local/national forms of organised crime and its transnational manifestations, come into play here as well. While national/local organised crime forms can be treated differently according to national perceptions and requirements – which might mean different focuses on criminal conspiracy or unlawful association – the idea of transnational organised crime evokes sophistication and ‘more’ seriousness of criminal activities in all three jurisdictions. In the rhetoric of transnational organised crime the practice of prosecutors appears, however, secondary as their work is bound to national criminal law. Eventually, transnational crimes become relevant only when they touch local grounds. The security dimension that transnational organised crime has acquired in the recent years, in fact, remains precisely that: a security dimension at a higher more abstract policy level. Transnational organised crime, as criminal law threat, does not exist in prosecution practices unless it drops that transnational adjective.

Conclusion

This study has focused on narratives collected through interviews with 24 prosecutors in three countries (Reggio Calabria and Rome in Italy, New York City and London) discussing conceptualisations of organised crime and investigative practices and approaches to counter manifestations of organised crime. The analysis has focused on converging themes for discussion and has portrayed how terminologies and discourses on organised crime impact upon practice and criminal procedures. This work has explored whether the conceptualisations of (transnational) organised crime in policies affect the work of practitioners at the prosecution stage. From another point of view, the analysis has evaluated whether organised crime as category of national criminal law and justice is independent from the discourse of transnational organised crime, as threat to security. The study has confirmed that each national criminal law dimension of organised crime exists independently from the security dimension of transnational organised crime. In the daily practice of bringing offenders to justice, the transnational dimension of organised crime groups remains at the background of prosecutorial practice as something the law cannot do much about. Prosecutors across the three jurisdictions in this study agree that, because of the need to root their work in national/local jurisdictions, the transnational character of certain activities necessarily becomes no more than an aggravating factor in building cases, when it does not represent a different criminal category altogether.

If this is the case, as said across this paper, the conceptualisation of organised crime as security threat which is so popular in criminal policy, might create an unjustified overlapping between local and national threats falling within the 'organised crime' definition. On the other side, it can place undesirable expectations on law enforcement in delivering results that do reflect upon national security strategies as well as on criminal justice successes. Certainly, considering that a part of the conceptualisation of organised crime is actually the criminal component, it can be argued that it is this component that should be regarded as primary. Indeed, until criminal law remains a domain of national sovereignty, with criminal procedures having the sole possibility to be object of mutual legal assistance cross-border, it seems that a over-inclusive transnational dimension of organised crime is not beneficial and out of focus when it comes to the work of law enforcement. This paper has argued that the transnational characterisation of organised crime so dear to policy-makers not only does not apply in daily application of criminal law but certainly is not embedded in daily conceptualisations of organised by prosecutors applying the law. This, at the very least, should redirect the focus to organised crime in the local and, afterwards, redirect resources to a better coordination between the local and the national.

References

- Abadinsky, H., *Organized crime*, Chicago: Nelson-Hall, 1994
- Carley, R., *Spy agencies, intelligence operations, and the people behind them*, New York: Britannica Educational Publishing, 2013
- Cressey, D.R., *Theft of the nation: the structure and operations of organized crime in America*, New York: Harper & Row, 1969
- Cressey, D.R., *Organized crime and criminal organizations*, Cambridge, W. Heffer and Sons Ltd, 1971
- Di Forti, F., *Per una psicoanalisi della mafia: radici, fantasmi, territorio e politica*, Verona: G. Bertani, 1982
- DNA., *Relazione annuale sulle attività svolte dal Procuratore Nazionale Antimafia e dalla Direzione Nazionale Antimafia nonché sulle dinamiche e strategie della criminalità organizzata di tipo mafioso*. Rome, Direzione Nazionale Antimafia, 2014
- Edwards, A. and P. Gill, Crime as enterprise? - The case of "transnational organised crime, *Crime Law and Social Change*, 2002, 37(3): 203-223

- Edwards, A. and P. Gill, *Transnational organised crime: perspectives on global security*, London; New York: Routledge, 2003
- Hobbs, D., *Lush life: Constructing organized crime in the UK*, Oxford: Oxford University Press, 2013
- Hodgson, J., Comparing legal cultures: the comparativist as participant observer. In: D. Nelken (ed.) *Contrasting criminal justice. Getting from here to there*. Aldershot: Ashgate, 2000
- Kleemans, E.R. (2007) Organized crime, transit crime and racketeering. *Crime & Justice*, 2007, 35: 163-215.
- Kleemans, E.R., Theoretical Perspectives on Organized Crime. In: L. Paoli (ed.) *Oxford Handbook of Organized Crime*. Oxford: Oxford University Press, 2014
- Kleemans E.R. and C.J. de Poot, Criminal careers in organized crime and social opportunity structure. *European Journal of Criminology*, 2008, 5(1): 69-98
- Legrand P. Comparative Legal Studies and Commitment to Theory. *Modern Law Review* 1995, 58(2): 262-273.
- Nelken D. The Future of Comparative Criminology. In: Nelken D (ed) *The Futures of Criminology*. London: Sage, 1994
- Nelken D. Just Comparing. In: Nelken D (ed) *Contrasting Criminal Justice. Getting from here to there*. Aldershot: Ashgate, 2000
- Paoli L. The paradoxes of organized crime. *Crime, Law and Social Change*, 2000, 37(1): 51-97.
- Paoli L. *Mafia brotherhoods: organized crime, Italian style*, New York ; Oxford: Oxford University Press, 2003
- Pressers L. The narratives of offenders. *Theoretical Criminology*, 2009, 13: 177-200.
- Pressers L. Getting on top through mass murder: Narrative, metaphor, and violence. *Crime, Media, Culture*, 2012, 8(1): 3-21.
- Pressers L. *Why We Harm*, New Brunswick, NJ: Rutgers University Press, 2013.
- Sandberg S. What can “lies” tell us about life? Notes towards a framework of narrative criminology. *Journal of Criminal Justice Education*, 2010, 21(4): 447-465.
- Sandberg S. Are self-narratives unified or fragmented, strategic or determined? Reading Breivik’s manifesto in light of narrative criminology. *Acta Sociologica*, 2013, 56(1): 69-83.
- Sergi A. Organised Crime in Criminal Law. Conspiracy and Membership Offences in Italian, English and international frameworks. *King’s Law Journal*, 2014a, 25(2): 185-200.

Sergi A. Structure versus Activity. Policing Organized Crime in Italy and in the UK, Distance and Convergence. *Policing, A Journal of Policy and Practice*, 2014b, 8(1): 69-78.

Sergi A. (2015a) Divergent Mind-sets, Convergent Policies. Policing Models against Organised Crime in Italy and in England within International Frameworks. *European Journal of Criminology*, 2015a, 12(6): 658-680

Sergi A. Organised crime in English criminal law: Lessons from the United States on conspiracy and criminal enterprise. *Journal of Money Laundering Control*, 2015b, 18(2): 182-201.

UNODC. *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocol Thereto*. New York: United Nations Office on Drugs and Crime, 2004.

UNODC. *Model Legislative Provisions against Organized Crime*. New York: United Nations Office for Drugs and Crime, 2012.

Van Der Beken T. *Measuring organised crime in Europe: a feasibility study of a risk-based methodology across the European Union*, Antwerp: Maklu, 2004.

Van Duyne PC. *(Transnational) Organised Crime, Laundering and the Congregation of the Gullible* 14 March 2011. Tilburg University. Valedictory 14 March 2011

Woodiwiss M and Hobbs D. Organized Evil and the Atlantic Alliance. Moral Panics and the Rhetoric of Organized Crime Policing in America and Britain. *British Journal of Criminology* 49(1): 106-128, 2009.