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Mark FINDLAY

Singapore Management University, markfindlay@smu.edu.sg

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Mark Findlay, NSW Bureau of Crime Statistics

Organised crime as terrorism

In a somewhat belated incursion into the international debate about the threat of organised crime, Federal and State governments in Australia have chosen to represent the 'menace' as an attack on the institution of the state as much as a physical and financial danger to society! This is consistent with the approaches of governments in the United States and Italy in constructing the reality of the Mafia.

As a general rule the state will choose to simplify and stereotype the threat of organised crime in a manner which corresponds with its response to terrorism. It will reduce the nature and complexity of its existence and operations into terms which would seem to merit a simple ideological response. But the parallels between the state's response to organised crime and to terrorism do not end here. By concentrating on the violent and intimidatory characteristics of some forms of collective behaviour said to be hallmarks of organised crime, the consequent propensity to engender terror throughout the community is usually appreciated as justification for a unique response to the phenomena. When the criminal sanction is a central feature of this response, the usual guarantees nominally attendant on its administration are often compromised for the sake of controlling such a radical and all pervasive menace.

Organised crime, like terrorism, can be seen as antipathetic to good government. The state's involvement with or fostering of organised crime (as with state based terrorism) can be ignored or obscured through the representation of the 'Mr Bigs' as subversive of legitimate commerce, democratic institutions and public security. The state on the other hand is presumed to act as the natural defender of these by being placed opposite to the threat of organised crime.

The 'goodies and the baddies' will be outside dispute. The fact that organised, syndicated or capitalised crime may be better conceived of as a product of the deep contradictions which exist within certain cultures, will rarely merit debate. Therefore prior to any rational critique of the mystique of the Mafia in the US, the public's preferred perception of organised crime was to imagine exotic and dangerous enemies in their midst, and went no further to understand the social significance of organised crime which the Godfathers were said to monopolise. The media is happy to conspire in such a non-problematic representation of organised crime to a degree where the public appetite for images of the Mafia fantasy is abundantly accommodated.

As with terrorists and terrorism, the image of organised crime has been produced in Australia through a mixture of real events and media reporting, and through the efforts of 'official' horrormongers who needed to create super criminals to account for the state's failure to control the criminal activity such persons were said to organise, and to justify further expansion of the crime control mechanism to achieve future success.

Smith is one of the recent rationalist writers on the significance of the Mafia in the US. It is his view (1975), and one I share, that organised crime is the product of forces that threaten values, not the cause of them. In this regard if society or the state countenances violence, considers personal gain to be more important than equity, and is willing to see the law distorted in the pursuit of wealth and power, then such a society or state itself will always be receptive to illicit enterprise whether condoned, ignored or condemned. Such enterprise will become a reality whenever a group of people are willing to take advantage of entrepreneurial opportunities that entail selective law enforcement, violence and corruption in order to achieve commercial gain.

For a government to entertain a similar view of the origins of organised crime, however, it would need to examine as part of its control process the manner in which its own bureaucracies and officials facilitate such enterprise. Except in very selective incidents where obvious corruption has demanded investigation, this has not been the chosen course of governments in Australia. In fact through their process of defining the nature of organised crime, representing the threat which it poses and constructing a unique control response to it, they have chosen to remove themselves from any consideration of its development. Again in this respect the parallels with terrorism are strong.

The purpose of this paper is to examine the ways in which organised crime and terrorism are collapsed into a similar image of social/state threat. To do this I will discuss the various representations of organised crime in terms of the common ground which exists with representations of terrorism. Further, the similarities of state response to such phenomena through the application of distorted crime control mechanisms will be analysed.

Representations of the organised crime threat

When analysing the 'official account' of organised crime in the USA, Italy and Australia, it is interesting to discover certain consistency in imagery. In fact the preferred state position on such a phenomenon will fall within one or all of the following classifications no matter which jurisdiction is examined.

Organised crime as:

- (i) the fifth estate
- (ii) the merchants of terror working toward the theft of the nation
- (iii) the 'bankers' for terrorism or
- (iv) the corruptors of morality and the 'quarter to midnight' menace.

Each such representation involves a mixture of the following:

- (a) subversion of state interests
- (b) degrees of organised criminal behaviour
- (c) a potential for violence

- (d) a deviant counter culture in terms of morality and collective endeavour
- (e) commercial power and influence both in the licit and illicit sense
- (f) a threat, whether immediate or long term, to the security of the individual or the peace and good order of the community.

It is not stretching the comparison to suggest that the state's representation of terrorism may accord with the majority of those postulated above for organised crime. Of closer significance are the elements which are said to comprise the terrorist and organised crime phenomena. On a more simplistic level the state may even wish to expose the activities and purposes of organised criminals and terrorist groups as synonymous. Thus in the wake of the killing of Aldo Moro the Italian authorities were at pains to emphasise the intricate connections between mafiosi and the red brigades.

Criminalisation

When organised crime or acts of terrorism are deemed to be challenges to the legitimacy of the state, governments will move to counter the challenge by neutralising the ideological impetus of the opposition, as much as it will attempt to neutralise the active threat posed by it. A central device in this process of neutralisation is to define the actions of the opposition as criminal. In so doing the state can cloak its control response behind the rule of law, while enjoying the potency of the criminal sanction as a function for control. There are certain dangers, however, inherent in this masking function (see Findlay, 1984(a)). As Habermas warns (1976: 10):

This means that the technical legal form alone, pure legality, will not be able to guarantee recognition in the long run, if the system of authority cannot be legitimated independently of the legal form of existing authority. . . . Moreover the organizations which are responsible for making and applying the law are in no way legitimated by the *legality* of the modes of procedure (or vice versa) but likewise by general interpretation which supports the system of authority as a whole. (emphasis added)

The control equation becomes more complicated when the state, realising the unique nature of the threat, but not wishing to place it outside the rhetoric of criminality, chooses to compromise and distort the usual processes of criminal justice in extraordinary ways. This is not difficult to do because as McBarnett indicates 'Deviation from legality is institutionalised in the law itself' (1979: 39). The ideology of the rule of law is used by the state not solely to make ulterior injustice, but further to mystify and confuse the reality of the injustice, partially and selectively in the eyes of the community. The situation becomes further obfuscated when the opposite to the rule of law (such as preventive detention, confiscation of property without trial, denial of the presumption of innocence, guilt by association etc.) are institutionalised through the 'new' administration of criminal justice. (For examples of such processes in both the States of Ireland see Findlay, 1984(b); 1981.) In addition, the state does not choose to substitute the law for the exercise of force. Force and Law are recognised as complementary for social control.

The utility of the criminal sanction as a legitimate source of control rests on the presumption that the radical modifications to the system through which it is imposed will be viewed by the community as an acceptable feature of

proper government and a necessary response to a threat so defined. The only criticism of these measures which is accepted as legitimate by the respective governments relates to whether or not such measures are justifiable in terms of the potential for success in achieving their objectives. However, the real question is: 'Whether those modifications may become so "normalized" that the original objective of relying on the ordinary criminal process will itself become unobtainable' (Boyle, Hayden, and Hillyard, 1979: 6).

Having discussed the representation of the threat and the response through criminalisation, it may be useful to examine some of these representations and the responses which they elicit, in more detail.

(1) *The 'fifth estate'*

In a recent press article concerning the mass trials of Mafia suspects in Palermo, the journalist observed that 'The Dalla Chiasa killing has had as much to do as anything with the Mafia's current troubles. This along with the murder of the Palermo prosecutor, Mr Rocco Chinnici, a year later, convinced the Italian judicial and executive authorities that they were dealing with a fully-fledged challenge to the authority of the Italian state'. ('*Sicilian Mafia falls on tough times*', *The Sydney Morning Herald*, 16 June 1986.)

There couldn't be a better explanation for the current spate of Mafia show trials in Italy. Since the creation of the Italian confederation, the government in Rome has only been inclined to launching a concerted attack on the principal Mafia 'regions' or prominent mafiosi, when the latter have publicly challenged the appearance of state control.

For example, the introduction of special laws and the pitiless repression carried out under the direction of the ruthless prefect Mori in 1925 was part of the fascist plan to crush separatist power in the south.

'Repression was accompanied and supported by a patriotic campaign aimed at exalting the virtues of the Sicilian people and contrasting them to the "noxious weed" of the Mafia. Laws were also passed aimed at agricultural reclamation and colonization of the large estates. But even though inspired by the idea of transforming the environment in which the Mafia had been created and developed, through splitting up the large estates, these efforts stopped at the surface. They were not accompanied by a genuine transformation of rural life, were not supported by the necessary public works (in particular, irrigation and roads), and in the end were abandoned because of the Ethiopian venture and the Second World War.

'In any case, the historians agree that fascism succeeded only in temporarily weakening the Mafia without eradicating it. This is because the social and economic conditions that gave rise to it remained unchanged, because it was mainly the brigands that infested the rural parishes and the countryside that had been affected and not the "powerful friends" in the cities, because a great and deep resentment had been created in all those, and their families, who felt themselves unjustly caught in the great repression. So the Mafia was able, for two decades of fascism, to keep the idea of a re-emergence still smouldering under the ashes.' (Vassali, 1974: 600-601)

It is interesting that the occasional recognition by successive Italian governments that the Mafia may act as a terrorist threat to the state, has not resulted in a more complex appreciation and representation of the mafiosi, by the state. The most the state will advance a political critique of the mafioso is that they are a residue of a lawless past. However, Blok (1974), like Barzini (1971) shows how inadequate is such a representation. His view is that the mafioso are an outgrowth of the particular process of state formation in Italy. 'The "mafia" grew up because national systems of power expanded without subsuming and obliterating local quasi-feudal systems of power. For long periods of time, various central governments in Italy had to work with the rural landlords and the Mafiosi whom they helped to create and patronize. The central government was continually compromised by the forces of traditional corruption and particularism. . . . What occurred in Sicily were in fact standard state-building processes: consolidation of control over the use of force, elimination of rivals, formation of coalitions, extensions of protection, and routine extraction of resources. If one network of mafiosi had been able to extend its control over all of Sicily, its actions would have become public instead of private, the national government would have had to deal with it, and insiders and outsiders alike would have begun to treat its chief as the legitimate authority. With the development of differentiated and centralized instruments of control, it would have become a state. The difficulty is that Sicily has many such proto-states. Sicily's problem is not a shortage, but a surfeit, of government.' (Blok, 1974: 28)

Yet the reservations which the state may have about entering into a detailed political critique of organised crime has not restrained it from instituting some of the most extraordinary criminal sanctions directed towards its control.

It would be difficult to justify the extension of police and court power to counteract the 'Mafia menace' in Italy if one were to focus on the Mafia, as having a 'philosophical attitude about the political power' it uses (see Lalunia, 1981). It is clear that irrespective of whether such a theoretical perspective is seriously considered by the Italian authorities they have chosen to locate the wrath of the criminal sanction, on representative individuals and organised criminal conspiracies. But not satisfied with the control potential of traditional criminal sanctions, they have engaged in a process of reshaping the power of agencies of criminal justice, so as to create a control network unconstrained by questions of guilt and resultant proportional punishment. They have new domain over restrictions of residence and movement, regulation of associations, and rationalisation of financial assets. And each new power can be activated on mere suspicion.

Anti Mafia legislation in both Italy and the USA would seem to indicate that the legislatures accepted Creasey's representation of the theft of a nation (1969), Bobby Kennedy's warnings about the enemy within (1960) or Bequais' predictions about the existence of a fifth estate (1979). Yet if the state were to confront and deconstruct the mafia stereotype, through some broader critical analysis of the social conditions necessary to change the perception of power

which is the Mafia, the heavy hand of criminalisation as the principal response to such organisations and enterprises would be exposed for what it is.

‘The Mafia basically does nothing but take advantage of the moral defects of a system in a more unscrupulous and menacing manner than other speculators eager for wealth. Only if those defects are eliminated from the framework of the entire national life can the problem of the fight against the Mafia be isolated and reduced to a fight against intimidating and violent methods.’ (Vassalli, 1974: 622)

(2) *The merchants of terror or the ‘bankers’ for terrorism*

In the 1970s the Italian public were faced with a stark increase in murders, kidnapping and terrorist attacks. These were sourced to criminal organisations and radical insurgent groups. Both terrorist groups and traditional criminal organisations diversified their area of enterprise, and shed their traditional connections with the philosophies and patronage of previous eras.

A senior officer of the Ministry for Justice represented these developments as follows:

‘The Red Brigades wove a network of contacts with other like-minded groups, such as the “Prima Linea” (Front Line) and the “Nuclei Armati Proletari” (Armed Proletarian Nuclei). These organisations were responsible for the ferocious murder of dozens of politicians, judges, journalists, lawyers, labor unionists, and the kidnapping and assassination of Aldo Moro, which was the culmination and the most tragic episode in their assault “at the heart of the State”.

‘Over that period, organized common crime increased sharply as it extended its links and as the traditional criminal organizations tended to merge. Little by little, they shed any vestiges of what positive—albeit deviant—values they might earlier have had, as they abandoned the poor sector of the agricultural economy and made inroads into the richer private and public building construction and industrial sectors. Drug trafficking and protection rackets became full-scale industries that spread nationwide, while preserving all their efficiency through intimidation, and the iron rule of connivance and sealed lips (“omerta”).

‘Sardinian banditism exported the knowhow of kidnapping to the mainland. Personal and objective contacts were forged between organized common crime and political criminals as they increasingly resorted to common crime to finance their activities, and as the ideological “conversions” of common criminals proliferated, particularly in the prisons, as a result of the political proselytizing campaigns.

‘Organized crime, now that there was no longer a clearcut distinction between “mobsters” and terrorists, penetrated and spread throughout the richest sectors of the Italian economy, and revenues soared as they infiltrated the whole of the economic fabric by recycling their money through the banks, gaming houses, and by importing and exporting currency.

‘The underworld seemed to have undergone a sort of metastasis now that it was no longer confined to local pockets, and was attacking the whole of civil society everywhere and at every level.’ (Carramazza, 1983)

Having established this image that an emergency situation was developing through the 1970s, in the form of collaboration between the Mafia and the red brigades, the Italian government proposed radical control measures, the severity of which was to be consonant with the difficulties of the moment.

The Constitution of the Republic prohibited the formation of secret societies. In 1956 (Law 1423) and 1965 (Law 575) provision was made for internal exile for persons endangering public security and public morality and for persons *accused* of belonging to Mafia style societies (N.B. the similar laws in both states of Ireland which penalise suspected membership of proscribed organisations—Findlay, 1984(b)). The main intention of such legislation was to uproot the ‘dangerous’ individual from his own territory in order to break up the local organisation and then eradicate it.

In the early ’70s a wave of legislation was brought down to deal with the new organised crime/terrorism threat.² Without examining the details of these provisions, it is sufficient to note that they covered:

- increased police powers to detain and search suspects even if not caught in the act of committing a crime. Also the powers to search and confiscate whole blocks of buildings under certain circumstances
- extension of periods of preventive detention
- denial of parole
- the creation of new criminal offences such as ‘the subversion of democratic order’
- increase in certain criminal penalties
- creation of new mitigating circumstances such as ‘dissociation’ and ‘repentance’ for persons turning state’s evidence.

On 13 September 1982 the Italian authorities enacted law No. 646, just a few days after the assassination at Palermo, of General Della Chiesa, who had been sent to Sicily by the government, to fight the Mafia. The La Torre Law³ which represents one of the most recent legislative assaults by the Italian parliament, on the Mafia, includes two fundamental innovations,

- (i) the introduction into the criminal law, of a new crime, being ‘the Mafia conspiracy’, and
- (ii) the creation of the potential for the courts to seize and confiscate the goods of persons belonging to such a ‘Mafia conspiracy’, as well as those of relatives, partners and co-inhabitants who in the previous five years prior to the court order, played a ‘front man’ role in helping covering up original Mafia activities.

The provisions of the new law were intended to attack the accumulation of wealth by the mafiosi, which is perceived by the authorities as the principal motivating force for their criminal activity on a large scale. In this respect the philosophy from which the legislation emanated, had two significant concerns:

- (i) that the law should concentrate on the consequences of assumed criminality, rather than the particular instances of criminal behaviour, and

- (ii) that by concentrating on the motives for criminal enterprise, both past and future, the individual and general deterrent potential of the criminal law would be significantly increased.

“To arrive at the point of confiscation, the following procedure has been established: the District Attorney or the Chief of Police requests the police force to make enquiries into the standard of living, the financial status and the possession of property of the individuals who are suspected of belonging to criminal associations. Such investigations are directed toward finding out whether or not the property of the investigated person has been acquired legally. If sufficient circumstantial evidence indicates that the suspect’s property has been acquired illegally, such property will be proposed for seizure. The proposal for seizure is either accepted or rejected by the court set up to judge such cases, and if such a proposal is accepted, the property is seized. Within a year, the same court must conclude the case and decide either to release the property or to order its definite confiscation.’ (Arlacchi, 1984: 93)

The government’s interest in attacking the financial gains of illicit ‘Mafia’ enterprises was sensitised over the past two decades by the rapidly expanding concentration of such enterprises in the realm of drug trafficking. To facilitate their financial advantage and to expand their power over the drug market, Mafia firms developed a very high level of interrelations between the legal and illegal sectors of the economy. Labour, capital and methods of organisation of the illegal sector have been transferred without great difficulty to the legal sector of the economy, allowing Mafia ‘firms’ to apply illegally obtained capital sources to legitimate business, and therefore to greatly diversify their commercial capacity.

In this way the Mafia may not only be seen to be challenging the state by financially supporting terrorist activities or engaging in them for commercial gain, but also by undermining the free market ideology of the capitalist state.

Bearing in mind the financial consequences of the Mafia’s ability to straddle or drift between certain licit and illicit business endeavours, the confiscation provisions might be viewed not only as an extension of the criminal sanction but also as a financial regulation directed against unfair or restrictive commercial practices.

The La Torre Law was more far reaching than forfeiture provisions not previously unknown to the criminal law, with respect to illegally acquired property. Here the property may belong to *suspects* or their associates and may only be seen as generally arising from the enterprises organised out of certain general Mafia conspiracies. The property concerned is not simply the immediately identifiable product of some particular criminal offence, for which the originators have been convicted. In addition, unlike forfeiture, the confiscation provisions are aimed at doing more than merely depriving a criminal of certain ‘ill-gotten gains’. They are designed to present an actionable barrier between the illegal (or semi-legal) financial market and the legal sector of the economy. As such, it is intended to have the following general effects: it helps control the acquisition and re-investment of criminal wealth, and it reduces the amount of goods of illegal origin that become legitimate, and therefore

can be the subject of commercial transactions or be transferred through inheritance.

(3) *The 'Quarter to Midnight' panic*

In 1952 the then Chairman of a somewhat sensationalist, now rather discredited (Moore: 1974) Special Committee to Investigate Organized Crime, wrote of the USA: 'It is a fearful thing to contemplate how close we . . . have come to the saturation point of criminal and political corruption which may destroy our strength as a nation . . . I say we are dangerously close to that ruination point—if not right on it. However, although the hour is late it is not too late . . .'

In 1985 Australia, retired NSW Supreme Court Justice and one-time Royal Commissioner into the infiltration of organised crime into NSW registered clubs, Athol Moffit, took up the analogy in his book 'A Quarter to Midnight'. He placed his fear of organised crime in a somewhat global perspective:

The things I say about the escalation of organised crime, corruption and a decline in the independence of the institutions of justice will not be directly apparent to most people. History has shown that the decline of a nation is from within. It is not apparent from year to year to its citizens and mostly it is not apparent to leaders of the nation in decline. No doubt the citizens of Rome did not perceive the forces of decline pointed out by writers such as Gibbon. As I said in 1974, the organised crime which would come upon us would be unnoticed, as were those who came in the Trojan horse. If more is not done, decline to a point of no or near-impossible return will not be a notorious event which happens at a particular time or in a particular year. It will just be apparent to those who look at some not-distant future time that we have problems which are then intractable. It will be past midnight. (Moffit, 1985: 24)

A similar tone of impending doom was presented by Frank Costigan in his contribution to the Senate Organized Crime Seminar in June 1983. Costigan stated that if nothing were to be done to control the problem of organised crime, 'within five years this country will become a jungle. The wild animals will not bite everyone, but their presence will be known and feared'. (Costigan, 1984: 12)

Recently Royal Commissioners Woodward, Williams, Moffat and Costigan have represented themselves in the media somewhat like prophets crying in the wilderness. Woodward more recently implied that government intransigence in not moving to implement the recommendations of his Royal Commission, concerned with the control of organised crime, verges on complicity.

Those with the privileged and undisclosed insight into organised crime⁴ claim greater legitimacy and significance for their warnings because they are, like jury verdicts, absolute and incontrovertible. We are told on the one hand that many of their most powerful discoveries are, for a variety of reasons, not appropriate for public information, and that we must take their warnings on trust. In addition we are asked to further accept these undisclosed revelations of doom as the justification for significant inroads into the personal liberties of the individual citizen, for the greater good.

Costigan, for example, in his final reports, recommends these as a selection of new control powers:

—the establishment of linked public information systems to facilitate the pursuit of the 'paper trail'

- the appointment of special prosecutors
- the establishment of specialised ‘quasi police’ investigation agencies
- the use of public disclosure as a sanction
- the power for committees and commissioners to compulsorily require appearance before them, production of documents and the supply of answers to all questions whether they be self incriminating or not.

And what of the serious risk to civil liberties which it could be argued these initiatives might pose? Again we are taken back to the warnings and fear imagery.

We are entitled to expect the assistance of the State to protect us from the activities of the so-called ordinary criminal; and we do not receive such assistance.

We are equally entitled to expect that the State will step in to counter the far more sophisticated and dangerous activities of organized national and international crime. If criminal organizations are allowed to operate unhindered, the citizens of this country will suffer a major loss of freedom. This right to remain free of the impact of organized crime, and the right to have this infringement controlled, are just as legitimate civil liberties as those we value so highly and so properly, vis-a-vis the State. (Costigan, 1984:18)

Conclusion

In his essays to ANZAAS on organised crime (1983), Doug Meagher QC, then senior counsel assisting the Costigan Royal Commission, drew direct comparisons between organised crime and terrorism. He established these comparisons in terms of the behavioural elements which defined such phenomena, the threat they posed to society and the nature of an appropriate response by the state for their control.

‘(The Baader-Meinhof) is, of course, a terrorist group rather than simply a criminal group. However, it meets all my criteria and so far as I am concerned creates problems of the same order as do sophisticated criminal organizations. The circumstances that the criminal activities of a terrorist group are designed to achieve (sic) ultimately some political end rather than financial, does not seem to me to make the existence or the operations of the group less pernicious, nor to create any less difficulty for law enforcement agencies in the discharge of their duties.’ (Meagher, 1983: 21-22)

By concentrating on the representations of organised crime and terrorism, as well as the state response through criminalisation I have endeavoured to indicate that from a state perspective it seems to matter little what the unique characteristics of the behaviour may be, or what are the somewhat distorted features of the criminal justice response. What is important, both with terrorism and organised crime, is the state’s desire to distance itself from the dynamics of the phenomena concerned. By universalising the social threat and objectifying the ‘rule of law response’, the state can portray itself as the impartial protector of civil peace no matter what form a challenge to its existence may take.

Footnotes

¹ Spokesmen from both the Fraser and Hawke governments have embraced the moral panic rhetoric when referring in particular to the drug trade examples of organised crime.

- ² Law 497/1974 was called the 'New Provisions against Crime' Act; Law 152/1975 and law 533/1977 was the 'Protection of Public Order' Act, while the Statutory Instrument 625/1979 (enacted as Law 15/1980) was for 'The Defense of the Democratic Order', and Law 646/1982 was the 'Defence of the Constitutional Order' Act.
- ³ This law is popularly known at the 'La Torre Law' named after one of its promoters, Pio La Torre, a member of parliament who was also assassinated at Palermo by the Mafia, five months prior to Dalla Chiesa.
- ⁴ Costigan has implied that perhaps 'it is *only* those who have served on Commissions of Inquiry, touching on such matters (as organised crime) who have been able to describe authoritatively the nature and extent of organised crime in Australia'. He goes on to advocate that this select group should continue to have the opportunity to do so (Costigan, F. X. (1983) Interim Report No. 5 Vol. 1, Royal Commission into the Activities of the Federated Ship Painters and Dockers Union (Chapt. II)).

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