

THE UNIVERSITY OF CHICAGO

THOSE WHO ARE AFRAID DIE EVERY DAY: THE POLITICS OF DEVELOPING LEGAL
INSTITUTIONS TO COMBAT ORGANIZED CRIME

A DISSERTATION SUBMITTED TO
THE FACULTY OF THE DIVISION OF THE SOCIAL SCIENCES
IN CANDIDACY FOR THE DEGREE OF
DOCTOR OF PHILOSOPHY

DEPARTMENT OF POLITICAL SCIENCE

BY

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CHICAGO, ILLINOIS

JUNE 2022

*Chi ha paura muore ogni giorno
Chi non ha paura muore una volta sola*

Those who are afraid die every day
Those who are unafraid die only once

--Paolo Borsellino, Antimafia Magistrate

Acknowledgments

I am deeply grateful to so many people who have made this dissertation possible through their support, guidance, and insight. I would like to thank the Pearson Institute for the Study and Resolution of Global Conflicts, the Harvard Law School Winter Term International Travel Grant Program, the Fulbright Foundation, the Fondazione Falcone, and the National Italian-American Foundation for their generous support of the field research needed to develop this project.

In the course of my time at the University of Chicago, I have been privileged to meet many individuals who have generously given their time and energy to help me at every stage of the research process, from deciding on a question to reading my final drafts. First of all, I would like to thank the members of my committee--Paul Staniland, Mike Albertus, Austin Carson, and Ben Lessing--for consistently supporting me in an admittedly unconventional academic path. I am deeply grateful for your insights, patience, and encouragement at every step of this process. I am also grateful to professors at Harvard Law School who supported me in carrying out my research during my time in law school, particularly Gabriella Blum and Matthew Stephenson. I also thank participants in the Political Violence Working Group, the Comparative Politics Workshop, and the Workshop on International Politics for their comments on various iterations of this project.

I could not have made it through this dissertation without the support of so many amazing friends who have been there for me in every way possible. I am particularly grateful to Andrea Bartoletti, Andres Uribe, Bogdan Popescu, Evgenia Olimpieva, Minju Kim, and Alexandra Chinchilla, who read more drafts of this project than I can count, and who made the PhD experience more joyful than I had any right to expect. I am also grateful to my amazing law school friends, particularly Michael Guggenheim, Shira Shamir, Chase Browndorf, and Annika

Boone, who have always encouraged me, both as a law student and as a researcher. Thank you for making sure that I had a home in Cambridge as well as Hyde Park. Thank you to Ryan Stahl for never failing to be there when I needed someone to talk with, for helping me keep things in perspective, and for always helping me find something to laugh about.

I have been very fortunate to conduct research in a beautiful place, among amazing and inspirational people. I am profoundly grateful to the members of the legal and antimafia communities in Rome and Sicily that have welcomed me into their lives and shared their stories with me. I have been repeatedly amazed and humbled by their experiences. I am especially grateful to the Comitato Addiopizzo, not only for how much they have taught me, but for the amazing community of friends they provided during my time in Palermo. I would particularly like to thank Noemi Di Franco, Nico Cuneo, Dario Catalano, Linda Vetrano, and Arianna Villardita for their friendship and support.

Finally, I would like to thank my family for their unwavering support during the dissertation process. Mom, Dad, Sam, and Shannon, you have been my anchor throughout all this work, and I could not have finished without you. Thank you for being there when it was exciting and when it was terrifying, and for believing in me no matter what. Thank you also for never letting me forget why I started on this path and why it was worth finishing. I love you so much and I'll never have the words to tell you how much I appreciate everything you do for me.

I would also like to thank my grandparents--Sam and Lora Sparacio; and Jim and Marion Cremin. They didn't get to see this dissertation, but it wouldn't be here without them.

Abstract

This dissertation explains when democracies will begin to develop legal institutions to combat organized crime as well as the extensiveness to which they will develop such institutions. I identify two types of institutions that are particularly important for countries looking to establish a robust anti-organized crime legal infrastructure: permissive laws and competent enforcers. *Permissive laws* allow law enforcement to target organized criminal entities as coherent groups. *Competent enforcers* are law enforcement bodies that are specialized in the investigation or prosecution of organized crime. I argue that such institutions are generally difficult to develop, as they inherently enhance the power of the national government. Anti-organized crime institutional development occurs when reformist leaders convince the public that organized crime poses a national, rather than a local, threat. This shift in public perception is necessary to put pressure on neutral and anti-reform decisionmakers to accept significant changes. Institutional development will be extended if the public's sense of threat is maintained over time, which is most likely to occur when organized crime is portrayed as relatively cohesive.

I conduct a plausibility probe of my theory regarding the onset of institutional reform on a sample of seven democratic nations which diverge on several theoretically significant dimensions. I find strong evidence of the mechanisms of the theory in a variety of different political and criminal contexts. I then conduct an in-depth comparative historical analysis of reform in Italy and the United States, both of which have developed particularly robust legal infrastructure to combat organized crime. I rely on a combination of archival, media, and interview data to closely trace the establishment of anti-organized crime legal institutions in these two countries.

This dissertation makes three main contributions. First, it identifies an important outcome of interest, namely anti-organized crime legal institutions. Second, it combines the insights of comparative politics with legal analysis to explain the establishment of these institutions in democracies. Third, this project improves our understanding of the role of the state in the field of criminal politics. The domestic legal system is generally democratic states' first tool for repressing crime. By demonstrating how states develop their legal responses to such groups, this dissertation attempts to improve our understanding of the ways in which internal political forces may lead democratic governments to crack down on criminal organizations.

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Chapter I: Conceptualizing Anti-Organized Crime Reform

I. Introduction

a. *The American Puzzle*

The Roaring Twenties are famous for a few things: flappers, the Charleston, and organized crime. With the enactment of the Eighteenth Amendment in 1920, the United States began its experiment in outlawing alcohol.¹ Yet Americans, who had a long tradition of imbibing, were not interested in foregoing their favorite vice. Instead, Prohibition merely served to create a new market in illicit alcohol, a market which would soon be filled by criminal organizations. Over the course of the 1920s and early 1930s, Prohibition would give rise to a series of complex and increasingly sophisticated criminal organizations, particularly in major cities like New York and Chicago. It would also make the American gangster a figure of notoriety, with names such as Charles “Lucky” Luciano, Meyer Lansky, George Clarence “Bugs” Moran and Alphonse “Al” Capone remaining firmly ensconced in the American imagination.

The Prohibition gangsters were infamous in their own time. Not only did they transport and sell illegal liquor, but they were often engaged in extensive corruption and in some cases, high-profile acts of violence. Murders such as the infamous St. Valentine’s Day Massacre were the subject of considerable press attention and public outrage.² Prominent public figures,

¹ U.S. CONST. amend. XVIII.

² See e.g., R.L. Duffus, *Following Massacre of Seven on St. Valentine’s Day, After Nearly 500 Gang Murders in Ten Years, The City Drives the Underworld to Cover, and the ‘Most Drastic’ Police Order Strikes at Resorts*, N.Y. TIMES, Feb. 24, 1929, at 133; *Chicago Crime ‘Cleanup’ Looms*, BOS. GLOBE, Feb. 17, 1929, at A1; *Enraged Chicago Clears Decks for Crime Drive*, L.A. TIMES, Feb. 17, 1929, at 1

including members of law enforcement, the media, and even academia, condemned the growing violence and advocated for the repression of the gangs.³ Some even suggested that the government develop robust new federal laws to adequately target the gangsters.⁴ Yet despite the prevalence and violence of criminal syndicates during this period, very little change was adopted at the federal level.⁵

Following the repeal of the 18th Amendment, the illicit trade in liquor was no longer a viable market for an enterprising gangster. The Tommy-gun wielding mob figure of the Prohibition Era largely faded from public view for several decades. However, organized crime reemerged as a source of major public concern in the early 1950s, largely as a result of televised congressional hearings. Beginning in 1950, Estes Kefauver, a freshman Democrat Senator from Tennessee, held a series of hearings to investigate the prevalence of organized crime in America's major cities. The Kefauver Committee, which operated for 15 months in 14 major cities, produced evidence of organized criminal activity across the United States, from Las Vegas to Miami and from Kansas City to New York. Broadcasts featured the questioning of a panoply of nefarious underworld figures, including Tony Accardo, Frank Costello, and Virginia Hill.⁶

The Kefauver Committee did not immediately lead to significant legislation. However, in reintroducing organized crime into America's popular discourse, it began the process of establishing an anti-organized crime policy platform within the federal government that would

³ See e.g., S.J. Duncan-Clark, *Chicago, Appalled, Fights for Decency*, N.Y. TIMES, Feb. 24 1929, at 51; *Chicago Crime 'Cleanup' Looms*, BOS. GLOBE, Feb. 17, 1929, at A1; *Racket War Strategy Mapped By 17. S., State, Counties and City*, N.Y. HERALD TRIB., Jan. 12, 1934, at 12; *Dewey's Outline of Racket Inquiry Aims and Appeal for Public Aid*, N.Y. HERALD TRIB., July 31, 1935, at 12; *Hibben Urges Fight on Organized Crime*, N.Y. TIMES, April 24, 1932, at 26

⁴ See e.g., *Single Crime Code is Urged by Lawes*, N.Y. TIMES, Aug. 14, 1933, at 30; John L. Coontz, *Rubbing Out the Gangster*, THE WASH. POST, Aug 27, 1933, at SM1; *Federal Racket Laws Urged at Senate Hearing*, N.Y. HERALD TRIB., Oct. 24, 1933, at 3.

⁵ For a lengthier discussion of the federal government's response, see Chapter VI

⁶ *Special Committee on Organized Crime in Interstate Commerce*, UNITED STATES SENATE, <https://www.senate.gov/about/powers-procedures/investigations/kefauver.htm> (accessed 24 Feb. 2022).

lead to the development of robust anti-organized crime institutions over the course of the next twenty years, ultimately culminating in the Organized Crime Control Act (OCCA) of 1970. The OCCA was most notable for the Racketeer Influenced Corrupt Organization (RICO) statute, a provision which would allow federal attorneys to systematically prosecute members of organized criminal groups. By the 1980s, the US had gone from being apathetic about the presence of mobsters to waging a concerted campaign to dismantle one of the world's most infamous criminal syndicates, the American Mafia.

While it may seem intuitive that the United States would eventually take steps to eradicate a powerful criminal organization, the timing of American anti-organized legal reform is puzzling. This reform did not occur at the height of the mob's visibility, when gangsters in major urban areas were carrying out massacres and corrupting public officials. Instead, it occurred during a period of relative quiet on the part of organized criminal groups and required a concerted effort by congressional leaders to build public support. In this context, America's sudden midcentury commitment to fighting organized crime remains puzzling.

b. Organized Crime in Global Perspective

Organized crime is generally seen as a socially undesirable phenomenon in most developed states, and one that it is government's duty to regulate. At the same time, the nearly universal demand for illicit goods and services ensures that organized crime is also a transnational phenomenon. According to UNODC, organized crime generates around \$870 billion per year, and is responsible for roughly 7% of global merchandise exports.⁷ Given the association of organized criminal groups (OCGs) with violence, corruption, and economic distortion, we might expect considerable demand for states to exercise their law enforcement

⁷ Elizabeth Matsangou, *Organised Crime: The Economic Underbelly*, WORLD FIN. (2017), <https://www.worldfinance.com/wealth-management/organised-crime-the-economic-underbelly>.

functions against them. Furthermore, we might expect politicians, particularly in democratic societies, to find campaigning against such organizations to be a useful political strategy. If this were true, we would expect the establishment of anti-organized crime legal institutions to be nearly universal and to largely emerge in response to public awareness of organized crime as a social problem. Yet in many countries, powerful criminal groups function with relative impunity for extended periods of time. This may occur even when the groups are highly visible, and in some contexts, even when they engage in violence. What explains nations' decision to adopt legal measures to combat organized crime?

While variation in institutional development exists among states, it must be acknowledged there has been at least some trend towards the development of legal tools to target organized crime. In 2000, the UN adopted the Convention Against Transnational Organized Crime (UNTOC) in order to help countries more effectively coordinate their legal responses to the global threat of organized criminal activity. 143 countries signed the UNTOC and 190 have become parties to it.⁸ The UNTOC includes many requirements for signatories, including that they recognize crimes of criminal association in their penal codes;⁹ establish money laundering offenses;¹⁰ and develop regulatory capabilities to prosecute criminal offenses and seize illicitly gained assets.¹¹ The European Union has also passed legislation to coordinate the criminal justice responses of member states to organized crime, requiring members to implement legislation to

⁸ United Nations Treaty Collection Depository, Chapter XVIII, Penal Matters, United Nations Convention Against Transnational Organized Crime and the Protocols Thereto (Nov. 15, 2000), https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&clang=en (accessed 3 Mar. 2022).

⁹ United Nations Convention Against Transnational Organized Crime and the Protocols Thereto art. 5, §1 (Nov. 15, 2000).

¹⁰ United Nations Convention Against Transnational Organized Crime and the Protocols Thereto art. 6, §1 (Nov. 15, 2000).

¹¹ United Nations Convention Against Transnational Organized Crime and the Protocols Thereto art. 11-12 (Nov. 15, 2000).

facilitate the prosecution of members of OCGs, and even providing guidance on the minimal lengths of penalties.¹² Since the fall of the Soviet Union, the United States has consistently established the targeting of organized crime as a key national security goal,¹³ and has exerted pressure on allies around the world to take steps to aid in this objective.¹⁴

These events suggest a growing consensus about the global scope of the problem of organized crime and the need for a coordinated response among nation-states. Moreover, many of the countries that were early movers in combatting organized crime, including the United States and Italy, have developed extensive and highly specialized legal regimes dedicated to this type of criminality. One might therefore expect states responding to organized crime in later years to converge on their approach to the problem by implementing similar legal responses. Yet there is considerable variation, even within democratic legal systems, regarding the establishment of legal institutions to prosecute organized crime. Though some states have followed the American or Italian model of building robust anti-organized crime legal frameworks, others have only implemented partial reforms, instead relying largely on ordinary instruments of criminal law to prosecute organized crime. What explains the extensiveness to which states adopt anti-organized crime legal institutions?

¹² Joint Action 98/733/JHA of 21 December 1998 Adopted by the Council on the Basis of Article K.3 of the Treaty on European Union, on Making it a Criminal Offence to Participate in a Criminal Organisation in the Member States of the European Union (L 351); Council Framework Decision 2008/841/JHA of 24 October 2008 on the Fight Against Organised Crime, art 2-3 (L 300/42).

¹³ See e.g., U.S. WHITE HOUSE OFFICE, Presidential Decision Directive/NSC-42, *International Organized Crime* (Oct. 21, 1995); U.S. WHITE HOUSE OFFICE, *A National Security Strategy for a New Century*, at 15-16 (1999); NAT'L. SECURITY COUNCIL, *Strategy to Combat Transnational Organized Crime* (2011); U.S. WHITE HOUSE OFFICE *National Security Strategy of the United States of America*, at 11-12 (Dec. 2017). This focus waned somewhat during the Bush administration as the United States turned its focus to the War on Terror, but re-emerged during the Obama and Trump presidencies.

¹⁴ Examples of this will be discussed at greater length in Chapter III.

c. The Dissertation

This dissertation seeks to explain when democratic states will begin to develop legal institutions designed to combat organized crime as well as the extensiveness to which they ultimately develop those institutions. The contribution of this project is threefold. First, it identifies an important outcome of interest, namely anti-organized crime legal institutions. Though legal scholars and political scientists have certainly studied the impacts of laws and legal institutions on various aspects of organized crime, there has been little sustained work defining the key institutions that allow states to combat organized crime or exploring how these institutions come into being. This dissertation seeks to fill that gap by presenting a theoretical argument for identifying the institutions needed to combat organized crime. It also provides an explanation for the difficulty of establishing these institutions. Much like laws designed to combat terrorism and corruption, anti-organized crime institutions often represent significant changes to the legal systems of states that establish them. They may drastically increase the power of the government and provide law enforcement with powerful tools to investigate and prosecute citizens. Such powers, once granted, can fundamentally alter the criminal justice landscape, and are often very difficult to roll back. Understanding the circumstances which permit the development of such institutions is therefore an important project for those interested in various aspects of state-building and the growth of government power.

Second, this dissertation offers an interdisciplinary approach to explaining the establishment of anti-organized crime legal institutions. Rather than take anti-organized crime laws as given, it explores the challenges of establishing them and the ways in which they are products of competing interests, at both the elite and popular levels. As such, this dissertation offers an explanation for the development of anti-organized crime institutions that is inherently

political. At the same time, this project is also deeply rooted in the law, and seeks to understand the reforms to legal codes and law enforcement systems adopted across a diverse set of national contexts. This interdisciplinary perspective allows me to explain not only the political processes by which institutions come into existence, but also to present and analyze the diverse legal mechanisms that countries may adopt in combating organized crime.

Third, this project improves our understanding of the role of the state in the field of criminal politics. The domestic legal system is generally democratic states' first tool for repressing crime. By demonstrating how states develop their legal responses to such groups, this dissertation attempts to improve our understanding of the ways in which internal political forces may lead democratic governments to crack down on criminal organizations. Moreover, it enhances and complexifies our understanding of the role of the state in the politics of organized crime by recognizing state repression as the product of contestation between competing forces within the national leadership.

This chapter will proceed as follows: Section II provides an overview of the literature; Section III presents the theory in brief, Section IV introduces the key concepts that will inform the theory chapter; Section V addresses scope conditions; Section VI discusses the implications and broader significance of the theory; Section VII discusses the case selection and methodological approach of the dissertation; Section VIII concludes with the chapter plan of the dissertation.

II. Literature Review

The role of criminals as political actors is a growing area of focus in political science. This burgeoning literature has laid the foundations for a closer examination of the role of the legal system in cases of organized criminal conflict.

a. *Organized Crime and the State*

Scholars historically have tended to focus on organized criminal groups as socio-economic actors, distinguishable from other subnational armed groups primarily because of their focus on the pursuit of profit (Schelling 1971; Gambetta 1996; Skaperdas 2001; Kalyvas 2015).¹⁵ Even though they may seek to control territory or exercise political functions to facilitate their economic activities, criminals generally do not seek to capture the state. This distinguishes them from political insurgents (Kalyvas 2006; Kalyvas 2015). Indeed, it is the state's definition of what is legal and illegal that defines the opportunities for illicit trade. In addition to creating the markets in which these actors operate, states can be important sources of protection for criminal groups (Snyder and Durán-Martínez 2009). As such, in a real sense, criminals need the state to exist (Schelling 1967). Moreover, violence against the state is generally costly, so the groups would prefer to work with/corrupt public officials if possible, rather than combat them (Schelling 1967; Bailey and Taylor 2009). To the extent that criminals do combat the state, they generally do so to constrain it rather than conquer it (Lessing 2017b).¹⁶

State actors have many incentives to work with criminals. Indeed, states or individual state actors may maintain cooperative relationships with criminal groups (Barnes 2017; Arias 2017; Albarracín 2018). In corrupt systems, they may extract rents (Snyder and Durán-Martínez 2009; Cruz and Durán-Martínez, 2016). They may also make arrangements whereby criminals minimize violence in exchange for state minimization of repression (Lessing 2017b). Criminal groups very often take on a symbiotic relationship with the state, even fulfilling some of governing roles of the state itself (Arias 2020; Lessing and Willis 2019; Lessing 2021). In this

¹⁵ Recent work (Lessing and Willis 2019; Lessing 2021) has complicated this understanding by pointing to ways in which criminal groups may pursue governance objectives, even at the risk of not maximizing profits.

¹⁶ When OCGs experience unconditional state repression, they may be willing to engage in heightened levels of violence to combat it (Lessing 2017b).

way, the complex relationships of criminal organizations with the state are critical to understanding important aspects of the groups' behavior, including their criminal activities, political engagement, and use of violence (Arias 2006; Lessing 2017b).

Such relationships may incentivize criminal groups to minimize their public presence and/or to develop strong ties to the communities in which they are strongest (Blume 2021). Visible violence is dangerous for political leaders as it may undermine stability and lead to popular unrest.¹⁷ Though violence is an unavoidable part of many criminal enterprises, it may be limited to those who are in the criminal groups or in communities dominated by the criminal groups (Moro and Sberna 2018). It may also be used to influence politics directly, whether by shifting electoral results or pressuring political leaders to pursue policies favorable to the group's interests (Sberna and Olivieri 2014; Daniele and Dipoppa 2017; De Feo and De Luca 2017; Albarracín 2018; Alesina et al 2019; Trejo and Ley 2021). However, where members of the public as a whole feel at risk of victimization by criminal violence, the violence may challenge the legitimacy of the government. In cases of visible violence, leaders may be particularly likely to feel pressure to combat criminal groups (Romero et. al 2016). As such, leaders that enter into deals with criminal groups should do so conditional on a minimization of visibility.

To avoid the costs of state repression, criminal groups should therefore generally be incentivized to avoid visibility. Nonetheless, both visibility by OCGs and severe repression by states take place and have driven much of the focus on criminal politics. Scholars have noted that structural factors within OCGs may explain some groups' willingness to engage in suboptimal violent behavior. For instance, internal fragmentation within the group may enhance the likelihood of using violence by weakening the control of more disciplined leaders or by creating

¹⁷ Visible violence is understood as violence directed against officials or against the public generally which criminal groups either publicly expose or claim credit for (Durán-Martínez 2015).

incentives for one group to try to bring government repression on the heads of another group (Durán-Martínez 2015, 2018; Calderón et. al., 2015; Arias 2017).

Yet while internal dynamics are important to understanding criminal violence, state behavior is also fundamental. Lessing (2017b) argues that state-criminal conflict should be most likely to occur where a state has taken steps to unconditionally repress the group in question. Trejo and Ley (2018, 2020), by contrast, contend that the conditions for criminal violence are laid when significant shifts in state power or policy change the nature of the state-criminal relationship, even when the government is not engaged in a proactive campaign of repression. Moro et al (2016) find that vote dispersal among a variety of parties reduces the likelihood of violence by giving criminal groups greater access to the political system. However, Durán-Martínez (2015, 2018) argues that criminal violence is in large part a response to the state security apparatus's structural ability to credibly commit to enforcing the law against criminal actors, or else protecting them. Although these arguments vary in their explanations for criminal violence, all of them note a connection between that outcome and the structures and activities of state actors. Yet while existing work has gone a long way towards establishing the importance of state-criminal relationships and explaining criminals' response to the state, the determinants of state behavior remain relatively under-explored. If, as the literature suggests, the actions of the state are crucial to determining the violence of OCGs, it is necessary to examine the state more closely.

Laws and legal institutions represent a critical, if not the central, mechanism by which most states address organized criminality. The very nature of the activity in which OCGs engage tends to subject them to the jurisdiction of individual nations, which generally counter their illicit activities with the regular law enforcement mechanisms of arrest and prosecution under the penal

code. However, the existing literature in political science has tended to focus on the comparatively rare engagement of states in militarized conflict with and repression of criminal organizations (Willis 2015; Lessing 2017b; Trejo and Ley 2021) thereby marginalizing, rather than centralizing the legal system as an actor.¹⁸ While such repression is certainly an important aspect of state-crime relations, considerable room remains to improve our understanding of other state apparatuses that often directly interact with organized crime, particularly courts, prosecutors, and investigators.¹⁹

b. Laws and Legal Institutions

I draw considerably on the work that has been done by legal scholars to outline the form and function of such institutions in practice. In general, scholars have tended to focus on particular laws dedicated to combating organized crime. Much of this work is highly functional, assessing the applicability of anti-organized crime laws to various potential criminal actors (Blakey and Gettings, 1980; Kaplan 1983; Dwyer and Kiely 1985; Fiandaca 1985; Blakey 2013), including those who are not members of OCGs (Wentzel 1994; Weiss 2010). Scholars have also focused on demonstrating how such laws may be used in combination with other relevant legal mechanisms to enhance their prosecutorial power (Webb 2013). Still others have served a more descriptive purpose, explaining how investigative or prosecutorial bodies function in different contexts (Madeo and Cianchella 2018). In assessing the merits of particular approaches, scholars have made use of the variation in legal institutions to conduct comparative assessments of

¹⁸ This has not been universally true. Lessing (2017a) notes that in the case of prison gangs, regular law enforcement may serve to undermine state authority by enhancing the networks and power of the criminal organizations outside of the prisons.

¹⁹ In some cases, these actors may overlap. In 1980s Italy, for example, members of the judiciary functionally fulfilled the role of the prosecutor and led the investigations into the Mafia. In the United States, by contrast, the judicial, prosecutorial, and investigative roles are kept far more separated.

different tools (Wise 2000; Scotti 2002; Freedman 2006; Reilly 2014; Biggs and Festorazzi 2016).

In addition, considerable attention has been paid to the dangers of laws designed to target organized crime, both potential and realized (Goldsmith and Linderman 1990; Fiandaca and Visconti 2012). The threat of powerful anti-OCG laws to the civil rights of individuals has been the focus of considerable attention (Califa 1990; Maggio 2013). The possibility of anti-organized crime laws to grow beyond their original purposes has also been the subject of scholarly concern in various contexts (Lynch 1987a and 1987b; Scevi 2017; Pomanti 2017). This work has gone a long way towards highlighting the social implications of such laws, and the ways in which they may interact with other legal power structures. It also serves to explain the reticence of many to support the development of such instruments. Yet while the legal literature provides a wealth of detail about the form and function of the most critical legal institutions to combat organized crime, most scholarship has not deeply investigated their origin, leaving open the question of how such laws emerge in the first place.²⁰

c. Institutionalism

This dissertation aims to address these gaps. Building on the insights of institutionalist scholars, I aim to carefully trace the ways in which legal institutions develop. A robust literature in political science has noted the importance of institutions for securing a variety of political outcomes, from guiding legislative behavior to constraining great powers to securing economic development (Keohane 1984; North and Weingast 1989; Diermeier 1995; Slater 2010; Reenock et al 2013). Scholars have examined connections between the origins of institutions and the

²⁰ This is not to deny that some legal scholarship has investigated the origins and politics of legal institutions. For instance, Stuntz (2001) provides a strong political account of the breadth of criminal liability and harsh sentencing as a product of overlapping incentives among prosecutors, legislators, and courts. Likewise, Levin (2013) describes RICO as a means by which the state may marginalize economic and social activities that threaten state authority.

forms that they take, as well as their durability (North 1990; Thelen 1999; Thelen 2004; Streeck and Thelen 2005). At the same time, the often-enduring nature of institutions has made explanations of institutional change both challenging and fruitful (Mahoney and Thelen 2010). This project contributes to this literature by examining how state actors with relatively similar starting points may ultimately pursue very different institutional paths. At the same time, it leverages both exogenous shocks and endogenous processes to consider how contingent circumstance and perceived social outcomes may ultimately shape legal institutional development.

III. Theory

In this dissertation, I explain variation in the onset and extensiveness of the development of legal institutions dedicated to prosecuting organized crime. I argue that such institutions are often politically difficult to establish. As such, decisionmakers, particularly at the national level, generally will not create them unless there is considerable public demand that they ‘do something’ about the problem of organized crime. Although organized crime may be an issue that has national or even international implications, the criminal behavior associated with it (drug dealing, racketeering, extortion, prostitution, murder, etc.) is typically handled by the ordinary mechanisms of law enforcement, which are often grounded at the local level.²¹ It is only when public perception shifts regarding the appropriateness of the ordinary mechanisms of regulation that meaningful institutional reform will occur.

²¹ The degree to which law enforcement institutions are local vs. national-level institutions will vary depending on the structure of the government (i.e. federalist vs. unitary systems). However, even in unitary systems, the offenses associated with organized crime are still typically handled by ordinary mechanisms of criminal justice, rather than special nationalized institutions.

The occurrence of events that shift public perception of organized crime from a local problem to a national threat is necessary to produce the establishment of legal institutions that allow governments to target OCGs as groups. Although public attitudes towards organized crime may be impacted by the activities of criminal groups themselves, I argue that changes in the criminal groups' behavior are not necessary for this shift to occur. Elite decisionmakers who support the development of anti-organized crime institutions can significantly impact public perception by framing organized crime as a national threat, even if criminal visibility does not otherwise increase. I argue that two kinds of institutions are particularly important to this effort: permissive laws and competent enforcement organizations. Yet while perception-shifting events may lead to the establishment of either type of institution, this reform is often controversial and political decisionmakers initially may be hesitant to adopt more reform than is necessary.

The decision to develop beyond the first wave of reform is impacted by whether the threat perception of organized crime is sustained. I argue that the public's understanding of the threat is likely to be impacted by the nature of the group that drives their concern. Where the public perceives the threat of organized crime to emerge from a relatively cohesive group or groups, reformers are more likely to be able to sustain the motivation to establish strong legal institutions beyond the original reform. By contrast, where the criminal group to which the state initially responds is relatively decentralized, partial reform is likely. Although cohesive criminal groups are not necessarily the most violent criminal organizations, they are bigger targets, which can be conveyed to the public by pro-reform leaders as particularly threatening to the function and autonomy of the state.

Finally, I argue that institutions are likely to be rolled back under two conditions. First, where the visibility of the criminal organization declines considerably, public interest in anti-

organized crime efforts is likely to wane, and counter-reformers may be able to undermine existing institutions, either through repealing them, or allowing them to atrophy. Second, where organized crime continues to be seen as a significant threat, institutions may be rolled back if they pose a greater threat to politicians than the risk of being seen as soft on crime.

IV. Conceptualizing Legal Institutions

In this section, I describe the legal institutions that are my outcome of interest. By anti-organized crime legal institutions, I refer to laws or law enforcement bodies that are designed specifically to target organized criminal groups as a whole, or to facilitate the punishment of crimes that are particularly associated with organized crime (i.e. racketeering, human trafficking, arms smuggling). I am interested in identifying the particular kinds of legal institutions that directly provide law enforcement actors with the tools to target criminal groups. Variation in legal structures and practices complicates the comparison of viable legal strategies across countries. Accordingly, I define the legal institutions themselves capaciously, allowing them to capture a considerable amount of variation in design and to be broadly applicable across jurisdictions. I identify two particular categories of institutions that are important for the goal of targeting OCGs: the adoption of permissive laws, particularly those that make difficult-to-target members of the group subject to prosecution and competent enforcers who are specialized in the investigation and/or prosecution of organized criminal groups.

a. Permissive Laws

Permissive laws are laws that allow prosecutors to target a criminal group's key assets in a systematic, large-scale way. The most basic asset on which all criminal groups rely is manpower. Few, if any, criminal groups can operate without a significant percentage of its

membership free to engage in the group's illicit trade.²² Membership liability laws, which render the majority of a criminal group's members subject to prosecution therefore threaten to undermine the group's ability to function effectively. It is particularly important that such laws threaten top-level bosses, in addition to the rank-and-file.

Membership liability laws can take a variety of forms, but the key feature that they have in common is that they make it easier for law enforcement to prosecute individuals who cannot readily be linked to serious crimes existing in the criminal code. One of the most significant challenges for law enforcement actors seeking to dismantle criminal groups is proving cases against top leaders of the groups. These leaders may direct the commission of serious crimes, including extortion, trafficking, and murder, without engaging in illegal activity directly (Calderoni 2012). Of course, directing criminal activity is generally punishable in most conventional criminal codes. However, proving such crimes is very difficult, as criminal leaders maintain distance from underlings who directly carry out the crimes for which they can be charged. Moreover, the coded language and complex laws of silence for which the more sophisticated criminal groups are known further complicates the ability of investigators to bring conventional charges, as it can be very difficult to demonstrate in a court of law that a conspiracy ever took place.²³ At times, law enforcement officers have had success in targeting OCGs by charging leaders with lower-level crimes that are more readily provable.²⁴ While this may have led to some successful prosecutions, it tends to be fairly inefficient, securing short-term, ad hoc

²² Some groups are better able to withstand the imprisonment of significant portions of their membership. Certainly criminal gangs expect at least some of their members to go to prison at some point, and in many cases prison can be seen as a rite of passage for OCG members (Gambetta 2009). Prison gangs in particular are built around an incarcerated membership. In some cases, such as that of the Comando Vermelho or PCC in Brazil, these groups can wield considerable power. However, organized criminal groups that function primarily from prison are relatively rare, and I assume that most criminals would prefer to have more of their members outside prison than in it at any given time.

²³ For a discussion of criminals' use of coded language, see Gambetta, *CODES OF THE UNDERWORLD* (2009).

²⁴ The most famous example of this was the prosecution of Al Capone for tax evasion in 1931.

victories rather than dismantling entire criminal networks. Consequently, legal systems have developed crimes to address the of hidden activity of many criminal leaders. Membership liability laws reform the existing criminal code to make behavior that is intrinsic to participation in an organized criminal group more easily punishable, thereby reducing the challenge faced by prosecutors in incarcerating members of the organization.

Yet manpower is not the only asset on which criminal groups rely. Financial assets are also of paramount importance to these groups, and many states have made targeting money a central strategy in combating organized crime. Given the importance of profits to criminal groups' very existence,²⁵ targeting such groups' wealth can undermine their ability to survive. There is also evidence that criminal groups are particularly averse to efforts to confiscate their wealth. In the words of mafia boss Francesco Inzerillo, overheard on a wiretap, "[t]here is nothing worse than the confiscation of assets, it would be better to go away."²⁶ The seriousness with which organized criminals view asset confiscation is logical. Aggressively implemented asset confiscation laws can cut into criminal groups' profit margin and hamper their ability to operate effectively. Accordingly, in addition to laws targeting criminal group's membership, I consider as permissive those laws that allow the state to seize and confiscate the assets²⁷ of suspected criminals, particularly if they allow the state to do so prior to conviction.²⁸

Of course, these are not the only laws that states may adopt to facilitate the prosecution of organized crime. Indeed, there are a variety of instruments that states have found to be incredibly

²⁵ See e.g., Schelling 1971; Gambetta 1996; Skaperdas 2001; Kalyvas 2015

²⁶ (*Cosa più brutta della confisca dei beni non c'è, la cosa migliore è andarsene*). GIORGIO FRASCHINI AND CHIARA PUTATURO, TRANSPARENCY INTERNATIONAL ITALIA, ILLICIT ASSETS RECOVERY IN ITALY: ENHANCING INTEGRITY AND EFFECTIVENESS OF ILLEGAL ASSET CONFISCATION 4 (Dec. 2013).

²⁷ This definition includes all assets relevant to organized criminal profitability, including cash/bank accounts, real estate, legitimate enterprises, etc.

²⁸ In many states asset forfeiture can be achieved with a much lower standard of evidence than is needed in criminal convictions, allowing investigators to seize assets preemptively.

useful in targeting OCGs. These include enhanced sentencing, liberalized wiretapping laws, adjusted standards of evidence, anonymous judges, and preventive detention. Any of these legal mechanisms may be important to combating organized crime, and all have been adopted in various contexts. However, these tactics are largely supplemental to the institutions that I focus on, rather than foundational in and of themselves. These laws make it easier for prosecutors to gather evidence and present their cases, but they do not provide the charges themselves that can threaten criminal groups. While I discuss some of these reforms in my empirical chapters and consider their effects in strengthening states' ability to combat organized crime, they are secondary, rather than core reforms.

It is worth noting that laws themselves can only say so much about what a state achieves in practice. Two very similar statutes may exist in different jurisdictions but function very differently. Judicial interpretation, especially in the common law context, may have a significant impact on the tools to which law enforcement officers in fact have access. Case law often plays a critical role in defining terms that may be unclear in the law itself, and in determining the applicable scope of a given statute. In some cases, laws may even be established through judicial mechanisms.²⁹ In considering legal tools, I take jurisprudence seriously, and discuss some case law in my analysis. However, it is worth remembering that in most jurisdictions the legislature is the key actor producing provisions of criminal law, and that the judiciary generally responds to the legislation which the legislature passes. As such, statutes remain the starting point for analyzing a state's approach to permissive laws.

²⁹ An example is the creation of the crime of *concorso esterno* (external association) by the Italian judiciary. This judicially created law combines article 416-bis c.p. and article 110 c.p. to create a new crime of providing external support to a mafia organization. The result has been effectively to expand the crime of mafia association to include individuals who are not members of a mafia organization but merely external associates.

b. Competent enforcers

Competent enforcers are the second critical institution I consider. These are units of investigators or prosecutors who specialize in the pursuit of organized crime.³⁰ Such law enforcement bodies are critical for several reasons. First, prosecutions of OCGs are often highly complex. Evidence must be gathered against multiple defendants, and in many cases these investigations rely on specialized skill sets. For example, investigators or attorneys may need to be able to conduct highly technical financial investigations or may need to be well versed in complicated legal standards. Developing these skills can take years, and often requires training and extensive supervision from more experienced law enforcement officers.

Institutions devoted to the prosecution of organized crime are likely to produce law enforcement officials who are competent in the relevant skills, both because they will select for them and because they will train officials after hiring. Of course, developing expertise sufficient to make these law enforcement bodies truly effective takes time. To some degree, the time necessary to develop a formidable specialized agency may be reduced if leaders are able to recruit individuals who already have expertise in adjacent areas, such as narcotics, corruption, and financial crime. However, it is also possible that early members will be recruited primarily for interest and intellect and will be trained to specialize over time.

In addition, such organizations incentivize the pursuit of organized crime. By ensuring professional rewards, prestige, and advancement on the basis of success against organized crime, specialized enforcement entities create pressure on law enforcement to pursue OCGs.

Particularly where such rewards are regular and substantial, they may undermine the ability of

³⁰ I include both investigators and prosecutors since the investigative role is critical to the success of prosecution, but states vary in the degree to which investigation is separate from prosecution itself.

criminals to bribe their way out of prosecution.³¹ Finally, these organizations can create a sense of professional identity that is tied to prosecutorial success. Establishing a unit in which law enforcement officials define themselves particularly by their role in targeting organized crime may help to create a sense of cohesiveness and *esprit de corps* that can help to motivate anti-organized crime prosecution (Huntington 1957). Moreover, such organizations may in some cases be particularly difficult to corrupt, especially if officials are monitored for attempts to bribe or threaten them, or if they are selected for their particularly strong resistance to corruption.³²

I include both investigative and prosecutorial bodies in my analysis of competent enforcers. Building cases against organized crime is typically an extensive effort, requiring the skills of several parties. In order to make effective use of permissive laws, a jurisdiction must be able to implement the resources to carry out the investigations necessary to gain evidence and must have the ability to use evidence gathered to successfully bring charges in court. Jurisdictions vary considerably in terms of where they place these resources. In some contexts, prosecutors and even judges have considerable investigative powers. Prosecutorial and investigative work may be effectively bound together.³³ In other jurisdictions, investigation and prosecution may be more separated. Police may take a far greater role in gathering evidence and prosecutors may be more reliant on them to build cases.³⁴ In order to accommodate a global set

³¹ This is drawn from Snyder and Durán-Martínez's (2009) argument regarding criminals' incentive to drive down the cost of state protection. However, Foltz and Opoku-Agyemang (2015) find that increased police salaries are related to higher levels of petty bribery.

³² There are certainly many examples of competent enforcers being bribed and/or threatened. This is not a theoretically necessary component of such organizations, but may exist in some contexts, further contributing to the usefulness of such enforcement.

³³ This was to some extent true of Italy in the 1980s, where members of the judiciary functionally fulfilled the role of prosecutors and led investigations into the Mafia. Though they were certainly aided by police, the investigative role was far more concentrated in the judicial branch than in other jurisdictions.

³⁴ This is true of the United States, for instance, where police officers carry out investigations, albeit with considerable cooperation from prosecutors. The judiciary is kept largely separate from the process of building cases.

of cases, I consider as competent enforcers specialists in both the investigative and prosecutorial spheres, which may encompass police, lawyers, and judges.

Since they target particularly dangerous criminals, competent enforcers may seek greater resources and powers than regular law enforcement.³⁵ Depending on the laws passed in a given state, competent enforcers sometimes enjoy the ability to conduct surveillance and utilize interception technologies that other law enforcement agencies are not able to employ. They may be given greater leeway to conduct undercover operations or to use confidential informants, or they may be required to reveal less about their investigations to oversight bodies than other law enforcement actors.³⁶ Consequently, the establishment of such enforcement agencies may enhance the power of the state vis-à-vis its citizens considerably. Moreover, these units are in a sense the direct beneficiaries of the passage of any permissive laws, since they are the forces most directly empowered to utilize the provisions of those laws. Consequently, their impact on the domestic legal environment has the potential to be substantial. Many states impose limitations on competent enforcers' actions in order to ensure that they do not abuse their powers, but these powers often remain controversial nonetheless.

V. Scope Conditions

It is worth explicitly discussing some important limitations on the applicability of this theory. First, I focus exclusively on democratic states. While organized crime is prevalent in societies all over the world, democracies and non-democracies are likely to have legal regimes that function in fundamentally different ways (Clague et al 1996; Solomon 2007; Ríos-Figueroa

³⁵ This may bring competent enforcers into conflict with pre-existing law enforcement bodies and such conflict may be a source of bureaucratic resistance to these institutions.

³⁶ Of course, the degree to which these investigative tools are restricted is jurisdiction-specific. Some states may be more comfortable with these tactics in policing than others, and so their use in society may be more or less controversial.

and Aguilar 2018). Though autocratic regimes may have courts and prosecutors that resemble those found in democratic regimes in many ways, such legal institutions are subject to the control of the central leadership, whether that is an individual leader, a military junta or a ruling party. In such contexts, it is highly unlikely that legal instruments can function with the same independence as their democratic counterparts over the long term (Helmke 2002; Moustafa 2007³⁷; Shen-Bayh 2018). I am interested in explaining the development of legal institutions that function in the context of relatively autonomous criminal justice systems. Since the possibility of such development is likely to be different in democratic and non-democratic regimes, I do not attempt to compare them and explicitly limit my analysis to democratic states.³⁸

Furthermore, I am interested in the development of legal institutions, specifically those associated with prosecution. Organized criminal groups, unlike some sub-state violent actors, such as insurgents or terrorists, are generally seen as a problem of law and order, to be handled by the state's police and judicial system.³⁹ Needless to say, this is an ideal that is not always met, as many states facing highly violent and powerful criminal groups have been forced to rely on extralegal tools such as militaries, paramilitaries and even other countries' law enforcement. In some contexts, states' relationships with organized criminals looks far more similar to their relationship with insurgent groups than with regular crime. I acknowledge that extralegal repression is an outcome that occurs in some states' efforts to combat organized crime, and I discuss it in the theory, but it is not my main focus. Instead, as it is generally assumed that courts

³⁷ Moustafa traces the history of the Egyptian Supreme Constitutional Court, which was given a considerable degree of independence by the authoritarian government for some time. However, as the Court's decisions became antagonistic to the government, that independence was curtailed

³⁸ Defining democracy is, of course, a difficult task which has been the subject of a rich literature. I utilize the Polity IV to identify countries that were democratic throughout the period of study. I included as democratic any country with a score of 6 or above in the Polity IV dataset during the period of institutional development.

³⁹ This is not to deny that terrorism may sometimes be handled by the judicial system. The trials of prominent terrorists in the US, such as Dzokhar Tsarnaev or Dylann Roof, are examples. However, terrorism is not *inherently* a problem of the courts, and especially in recent years, has come to be seen increasingly as a military issue.

will handle crime most of the time, I choose to focus on legal institutions. As such, I generally do not focus on the repressive aspects of policing, though I do consider police as actors to the extent that they serve as the main investigators in building legal cases. As discussed, in some contexts, police agencies are primarily responsible for investigations while in others, prosecutors or judges lead investigations and act as the main coordinators of the work that police do. In order to adequately capture this key aspect of building legal cases, I therefore consider the investigative role of police.

In addition, I am interested in assessing the development of institutions at the national level. As such, I do not theorize the development of subnational legal institutions.⁴⁰ In some cases, particularly in federalist systems, such institutions may represent important tools to combat organized criminal groups. However, reliance on subnational laws also has real strategic weaknesses. Where there is variation in the harshness of legal institutions at the subnational level, criminal groups may choose the jurisdictions in which they operate accordingly. National institutions, which operate uniformly across the state, eliminate such jurisdictional choice for criminal groups. For this reason, national laws have been the focus of many reform efforts, and particular focus is due to them in a study of the development of anti-organized crime institutions.

Two additional limitations to this study are worth noting. First, this dissertation aims to explain the development of legal institutions. Although both the theory and empirical cases provide some insight into how states may successfully combat organized crime, this theory does not seek to provide an explanation for institutional effectiveness. Many variables go into determining the ability of the state to dismantle a criminal group. The group may adapt to state repression, increase operations from prison, or relocate to less repressive jurisdictions.

⁴⁰ Examples would be state-level specialized prosecutorial agencies or provincial laws designed to facilitate the prosecution of organized crime.

Institutions may also be corrupted over time or lose public favor before they are able to destroy a criminal organization. As such, my theory is limited in its ability to explain whether a criminal group is or is not effectively dismantled in the long term. It instead explains when states have the critical legal tools to pursue that outcome.

Second, this theory is deliberately non-normative. I am agnostic as to the advisability of the institutions discussed in this theory. Robust legal institutions designed to prosecute organized crime may be important and useful tools for addressing serious social problems. Establishing such institutions may be vital to improving the well-being of communities that have been plagued by organized crime. At the same time, such institutions have generated serious debates about the risks of increased government power and abuses of individual civil liberties and rights to due process. While fruitful debates on these topics have taken place across the globe, the question of whether the benefits outweigh the costs of reform is likely highly context-dependent and remains outside the scope of this dissertation.

VI. Implications

This project sits at the intersection of comparative politics, comparative criminal law, and comparative legal institutions. Taking a self-consciously legal approach, it speaks to the mechanisms that are available to combat organized crime. In addition to providing scholars with cross-national perspective into the legal mechanisms that are available to combat organized crime, it also offers an explanation for the contexts in which we should expect such institutions to actually emerge. At the same time, it takes seriously the dangers of such institutions, and provides an explanation for why states may choose to eschew them. This may be useful in helping those who are interested in advocating for meaningful institutional reform in contexts of

high levels of organized crime to craft responses that are designed to mitigate the risks posed by strong institutions.

In addition, this project provides a framework for understanding how social threats may drive previously unthinkable political change under certain conditions. As discussed, legal institutions designed to combat organized crime are significant because of the power they give governments to combat domestic organizations that are considered dangerous. Focusing on organized crime allows me to explore the ways in which states may respond to an issue that is quintessentially within the purview of its domestic legal system. Nevertheless, the mechanisms that this theory identifies are likely to have broader applicability. Dynamics similar to those assessed in the context of organized crime may very well impact responses to other large-scale perceived threats, such as terrorism and corruption. As such, this project may provide insight into the development of legal institutions designed to respond to such issues. In doing so, it may contribute to our understanding of various aspects of democratic state strengthening and centralization of power. Moreover, it may provide broader insights into how democracies manage domestic crises and public perception of social threat. Consequently, this theory may be of interest to scholars who focus on an array of areas outside of the realm of organized crime or comparative legal institutions.

In addition, this project takes public opinion seriously as a political force that may create opportunities for political decisionmakers to establish controversial institutions. The timing of states' adoptions of legal institutions to combat organized crime suggests that public opinion and threat perception play an important role in determining what choices elites can make and when they can make them, at least in a democratic context. I argue that public perception of changing social threat may create opportunities for reformers in government to expand the power of the

state in lasting ways, even when they could not do so under pre-existing conditions. At the same time, the lack of public perception of threat may prevent reformers from making even those changes they see as necessary to secure public safety. As such, this project contributes to a broader conceptualization of the role of publics in policymaking and the constraints and opportunities that public opinion provides political decisionmakers. Such pressures are likely to impact political decision-making in a variety of contexts, particularly where controversial expansions of government power are involved.

Finally, this project may improve our understanding of the dynamics of state-criminal conflict. This field has become a growing area of interest, and while the incentives of criminal groups vis-à-vis the state are increasingly well understood, the response of the state to organized crime remains an area ripe for exploration. Addressing this gap in the literature is important, since criminals are generally understood to act largely in response to the state itself. In particular, the ability and willingness of the state to repress organized crime has been linked to the violence of groups, as well as their control of civilian populations. This project seeks to improve our understanding of the central mechanism by which democratic states engage in the repression of OCGs, namely the legal system. By improving our understanding of how systems of state repression emerge and develop, this project may help us to better understand the conditions under which the most concerning criminal responses to the state are likely to arise.

VII. Case Selection and Methodology

a. Case Selection

The central empirical analysis of the project is built around a comparison of the Italian and US cases. These cases are chosen in accordance with the principle of ‘most different systems design,’ which attempts to rule out systemic explanations for outcomes by closely analyzing

cases whose systems are as different as possible (Mill 1874; Przeworski and Teune 1970; Meckstroth 1975; Seawright and Gerring 2008). While in an ideal world, cases would vary on every conceivable dimension which might provide an explanatory variable, in practice such an ideal is very difficult to achieve. I therefore supplement the differences between cases by leveraging within-case variation in these cases. In addition to addressing some of the weaknesses of the ‘most different system’ approach, considering within-case variation allows me avoid the pitfalls of selecting on the dependent variable (Lijphart 1971; Geddes 1990; Collier 1993).

i. Outcome Similarity

Italy and the United States are two of the countries with the longest histories of established institutions to combat organized crime in the democratic world. The strength and longevity of these institutions make them particularly important and offer the historic perspective necessary to assess the processes of institutional development. In addition, while both Italy and the United States cases have developed robust legal systems designed to combat organized crime, they have also experienced periods in which institutional development did not occur despite the presence and rising visibility of powerful criminal groups. As such, it is possible to assess both institutional development and non-development within these cases.

Both countries have undergone strong legal reform, according to the terms of my theory.⁴¹ Italy and the United States each have strong permissive laws that have allowed them to systematically target organized crime by facilitating the prosecution of large swathes of criminal groups as well as high-level bosses. These include the Rognoni-La Torre Law in Italy and the Organized Crime Control Act, (which includes the RICO statute) in the US. Both laws also

⁴¹ By this, I mean they have at least one unit of competent enforcement as well as membership liability laws and asset forfeiture systems. This is discussed at greater length in Chapter II

include robust asset forfeiture provisions. Furthermore, both countries have developed strong law enforcement agencies that specialize in the prosecution of organized crime. These include prosecutorial units in the United States Department of Justice known as the Organized Crime and Racketeering Section.⁴² In Italy, the antimafia pool in Palermo was a starting point for the development of the Direzione Nazionale Antimafia, a national prosecutorial body which coordinates the operations of district-level antimafia prosecutors (Direzione Distrettuale Antimafia). In addition, the country has established specialized antimafia investigators, the Direzione Investigativa Antimafia.

ii. Institutional Differences

Despite their similar outcomes, these countries are fundamentally different in many ways that are theoretically important to control. First, the political institutions of the two nations at the times of institutional development were substantially different. Italy had a unitary government with a parliamentary system that had been dominated by the centrist Christian Democrat party for most of the post-World War II era. The Christian Democrats relied on coalitional politics, and much of the variation in Italian party politics came from the nature of alliances formed among parties. The United States, by contrast, had a federalist presidential system with a robust two-party system, in which both parties regularly rotated control of government. Federalism in particular is theoretically important, as it is likely to affect the type of national institutions that will be considered acceptable within the prevailing government structure as well as a possible locus of political resistance to reform.⁴³

⁴² Now the Organized Crime and Gang Section

⁴³ The difference in party structure has less clear-cut ramifications. On the one hand, the US system's regular rotations in power between the parties might make it easier for one party to seize the mantle of law-and-order politics and implement a reformist agenda. However, even within the Italian system there are significant factional divisions within the major parties. Moreover, the importance of coalition partners presents significant opportunities for political shifting even within the Christian Democrat-dominant context.

Second, the two countries had very different legal systems. Italy had an inquisitorial, civil law legal system. Under this system, members of the judiciary act as investigators of crimes as well as the ultimate decisionmakers at trial.⁴⁴ Within this context, judges were deeply involved in ascertaining the truth of the events in question.⁴⁵ The US, by contrast, has an adversarial, common-law system in which prosecutors, as part of the executive branch and representatives of the government, are kept separate from the judiciary. In the context of a trial, prosecutors generally present evidence against the defendant,⁴⁶ while defense attorneys represent the interests of the accused.⁴⁷ In this system, judges are expected to act as neutral arbiters who determine what evidence may be presented at trial, while the process of determining the truth of the events in question is left largely to the jury.⁴⁸ The Italian judiciary is also kept rigidly separate from the political process. It is self-governing, and promotion is based on a combination of seniority and merit. The US system of checks and balances give political branches some say over the judicial system, largely through the president's prerogative to appoint federal judges, and the Senate's

⁴⁴ The judges who conduct investigations are, however, separate from those who actually hear the case at trial.

⁴⁵ William T. Pizzi & Mariangela Montagna, *The Battle to Establish an Adversarial Trial System in Italy*, 25 MICH. J. OF INT'L L., 429 (2004); Julia Grace Mirabella, *Scales of Justice: Assessing Italian Criminal Procedure Through the Amanda Knox Trial*, 30 BOS. U. INT'L L. J. 229 (2012). It should be noted that later reforms to the Italian system have led to the adoption of many features of the adversarial system, so the two legal systems are less different today than they were at the time their institutions are developed.

⁴⁶ This is not to deny that American prosecutors are expected to act as truth-seekers. For instance, US federal prosecutors "should not include in an information, or recommend in an indictment, charges that he/she cannot reasonably expect to prove beyond a reasonable doubt by legally sufficient and admissible evidence at trial." THE U.S. DEP'T OF JUSTICE, PRINCIPLES OF FEDERAL PROSECUTION, 9-27.300, Comment (updated Feb. 2018), <https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution> (accessed 11 Feb. 2022). According to the American Bar Association, the "primary duty of the prosecutor is to seek justice within the bounds of the law, not merely to convict." AMERICAN BAR ASSOCIATION, CRIMINAL JUSTICE STANDARDS: PROSECUTION FUNCTION, 3-1.2 (2017), americanbar.org/groups/criminal_justice/standards/ProsecutionFunctionFourthEdition/ (accessed 11 Feb. 2022).

⁴⁷ AMERICAN BAR ASSOCIATION, CRIMINAL JUSTICE STANDARDS: DEFENSE FUNCTIONS, 4-1.2 (2017), https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition/ (accessed 11 Feb. 2022).

⁴⁸ Julia Grace Mirabella, *Scales of Justice: Assessing Italian Criminal Procedure Through the Amanda Knox Trial*, 30 BOS. U. INT'L L. J. 229 (2012); U.S. DEP'T OF JUSTICE, OFFICE OF THE U.S. ATTORNEYS, TRIAL, <https://www.justice.gov/usao/justice-101/trial#:~:text=In%20a%20trial%2C%20the%20judge.entire%20process%20is%20played%20fairly> (accessed 11 Feb. 2022).

ability to confirm them.⁴⁹ In addition, because prosecutors are part of the executive branch, they are institutionally more subject to executive political pressure than their Italian counterparts, who are part of the judiciary.

Third, the countries have very different social and political relationships with organized crime. Italy's history of mafia-style organized crime can be traced back to at least the 1860s, and criminal groups became deeply embedded in local society, particularly in the South. These groups developed strong ties with the centrist Christian Democrat party, ties that existed at both the local and national levels. By contrast, left-wing parties, and particularly the Communist Party,⁵⁰ had a long history of antimafia activism. As such, policies towards organized crime had a significant partisan dynamic. In the United States, the establishment of strong, rigidly hierarchical organized crime dates only to the 1930s.⁵¹ Moreover, measures to combat organized crime were not clearly partisan. Both Democrats and Republicans supported anti-OCG efforts, and there is little evidence to suggest that organized criminals systematically sought ties to one party over the other.⁵²

iii. Medium-N Analysis

Despite the many theoretically important differences between the US and Italy, one major similarity between these cases must be noted. Both countries developed their anti-organized crime institutions largely in response to ethnically Southern Italian⁵³ mafia-style groups.⁵⁴

⁴⁹ At the state level, judges may be appointed or elected.

⁵⁰ The Communist Party acted as the main opposition party in the postwar Italian parliament.

⁵¹ Ethnically based gangs that engaged in illicit trade did have a longer history, stretching back to the waves of immigration in the nineteenth and early twentieth centuries.

⁵² Democrats may have had a slightly higher rate of corruption, simply because they tended to control the large cities where criminal groups were based. But there is little to suggest these ties were systematic at the national level.

⁵³ Of course, criminal groups of other origins were also targeted by these institutions. However, as the cases will show, Southern Italian (or in the US context, Italian-American) groups were the main focus.

⁵⁴ I define a mafia-style group as a group engaged in the business of private protection (Gambetta 1996) to distinguish it from groups that engage primarily in the sale of a particular illegal good or service. Of course, there is some overlap, as many mafia-style groups also engage in the provision of illegal goods and services. Nonetheless,

Although the American and Sicilian branches of Cosa Nostra are technically separate, they maintained ties with each other, engaged in roughly similar activities (extortion, racketeering, corruption, and some drug trafficking). Furthermore, the structure of the two groups was similar, in part because the Sicilian Mafia modeled its hierarchical command structure on the system developed by the American Mafia.⁵⁵ The connections between these groups were recognized by law enforcement at the time, and indeed Italian and American law enforcement personnel developed fairly strong relationships to coordinate their responses to these groups.⁵⁶ As such, my case selection cannot fully control for the possibility that institutional development in both countries was driven by their response to this particular brand of organized crime.

I address this by conducting a brief review of the development of institutions to combat organized crime in nations combating different groups in an abbreviated medium-n analysis. This includes the effort to combat biker gangs in Canada and Australia, drug cartels in Colombia, various ethnic criminal organizations in Germany, street gangs in South Africa and India, and non-Sicilian mafia-style groups in Japan. Of course, there are tradeoffs in this approach. In evaluating seven cases in very different national and legal contexts, I cannot do these case studies with the same level of depth that I utilize in my main case studies. Moreover, data and skill limitations prevent me from fully assessing the factors driving the extensiveness of institutional development in these cases. As such, these cases function as plausibility probes rather than full

there is considerable research establishing that mafia groups should be understood as distinct from other OCGs, and there remains a robust debate on the precise features that distinguish mafias from other OCGs (Sciarrone and Storti 2014; von Lampe 2016; Sergi 2017; Dagnes et al 2020; Sergi and Storti 2021).

⁵⁵ JOHN DICKIE, *COSA NOSTRA* 231, 236 (2004).

⁵⁶ This went so far as facilitating access to witnesses in each other's trials. Tommaso Buscetta, the famed "Boss of Two Worlds" whose testimony at the Maxiprocesso was largely responsible for bringing down the Sicilian Mafia, testified in the US as part of the "Pizza Connection" case being brought against members of the American Mafia. In order to ensure Buscetta's presence at both trials, he was given American citizenship, and he and his family were placed in Witness Protection in the US. This was seen as a necessary precaution, since Italy did not have a comparable program.

case analyses (Levy 2008). Nevertheless, this medium-n case review is important, as it allows me to test my theory in a broad set of national contexts while controlling for a theoretically significant variable that my main comparison cannot address.

b. Methodology

In conducting this analysis, I utilize a comparative historical approach (Mahoney and Rueschemeyer 2003; Mahoney 2007). I use a combination of primary and secondary sources to carefully process trace the development of institutions over time (Brady and Collier 2010; Mahoney 2010; Collier 2011). I draw on archival work conducted at 3 national archives in Rome, Italy⁵⁷ as well as one in the United States.⁵⁸ I draw on the private records of government ministries and political parties in order to assess the preferences of political decisionmakers as expressed outside of the public context. In addition, I consult an extensive array of publicly available government records, including legislative histories and political speeches in order to evaluate shifts in the ways in which decisionmakers publicly discussed the problem of organized crime. I do not assume that these statements are true representations of decisionmakers' preferences. Instead, I consider them as evidence of how these decisionmakers understood public attitudes towards organized crime, as well as a reflection of the rhetoric with which elites attempted to influence the public.

In order to assess public perception, I draw on public opinion data where possible. However, given the historical nature of my work, public opinion data on the topic of organized

⁵⁷ The archives consulted were the Fondazione Gramsci, the Istituto Luigi Sturzo, and the Archivio Centrale dello Stato.

⁵⁸ The papers of Senator John L. McClellan, housed at Ouachita Baptist University in Arkadelphia, Arkansas. Unfortunately, due to the onset of the Covid-19 pandemic, I was unable to consult other important archives in the United States, such as the papers of Robert Kennedy which are housed at the John F. Kennedy Presidential Library, prior to the completion of this dissertation. I hope to consult additional US-based sources in the future development of this project.

crime is not consistently available. Consequently, I consult newspaper records, particularly national newspapers, to provide insight into the informational landscape with which the public was presented, as well as evidence of public attitudes (i.e. protests, changes in public behavior, etc). Of course, it must be acknowledged that the media itself may play a significant role in shaping public opinion (Hoffman et al 2007; Hill et al 2012; Carmichael and Brulle 2017). I attempt to address this in part by drawing on a broad array of nationally circulated newspapers, reflecting diverse political and geographical perspectives. However, I acknowledge that these sources are not a perfect representation of public opinion.⁵⁹ I therefore further supplement media records with interview data, as well as primary and secondary source material, in order to gauge public opinion to the best of my ability.

I supplement archival material with data from open-ended interviews. One of the benefits of the Italian case in particular is that many of the events leading up to reform are sufficiently recent that participants in those events are still alive.⁶⁰ Over the course of two field research trips to Italy, I conducted interviews with legal and political practitioners who observed the process of institutional development in the 1980s and 1990s. I also interviewed contemporary antimafia prosecutors. Though not necessarily present during the period of institutional development, these individuals offered insights into the practical function of the institutions that I analyze, as well as their value in the prosecution of organized crime. In addition to those quoted in the chapters, I spoke to a series of individuals from a wide variety of perspectives, including those working as

⁵⁹ Kostakos (2018) has conducted a time-series analysis of internet users' search histories to assess public opinion on serious crime, including organized crime. While not available for the assessment of historical public opinion, this approach offers a promising means of assessing contemporary public opinion on such issues.

⁶⁰ This is true of the American case as well, though to a lesser extent. In this dissertation, I was only able to conduct a series of extensive interviews within the Italian context. Therefore, interview-based data is only found in those chapters.

judges, prosecutors, and defense attorneys; legal academics; and political activists.⁶¹ In doing so, I sought out individuals of diverse political persuasions in order to account for variations in ideological attitudes towards the reforms I consider. These individuals provided me with important practical and contextual information which informed the development of the theoretical argument presented in this dissertation.

VIII. Chapter Plan

This dissertation will proceed as follows. Chapter 1 will present the theory, including a discussion of the outcome of interest, a discussion of institutional reform, and an explanation of what variation on the dependent variable looks like. In addition, this chapter will lay out the causal logic of my argument in detail and will present testable hypotheses. Chapter 2 will present a medium-n analysis of the development and non-development of anti-organized crime legal institutions in seven democratic countries around the world. The countries discussed in this chapter are selected to be as representative as possible, covering a wide range of global regions. These countries boast diverse political and legal structures and responded to very different organized criminal groups. In this chapter, I will test the plausibility of my theory while highlighting the diverse forms of institutions that countries may develop to address organized crime.

Chapter 4 will begin the Italian case study section of my dissertation. I analyze the onset of reform in Italy by evaluating the development of the 1982 Rognoni-La Torre Law, Italy's foundational antimafia legislation. Using careful process tracing, I will show that public perception of the threat posed by Cosa Nostra increased as a result of a series of murders

⁶¹ Activists are particularly relevant in the Italian case. Civil society activism is an important part of the Italian antimafia movement, and activists often work closely with judges and law enforcement to aid in the prosecution of criminals and the socially beneficial distribution of confiscated assets.

conducted in the 1970s and 1980s. I will show that the murder of *carabiniere* general Carlo Alberta Dalla Chiesa served as the key turning point shifting public perception of organized crime from a problem rooted in the South of Italy to a national threat. This murder created an opening to establish strong national-level anti-organized crime institutions. Chapter 5 will complete the Italian case study by assessing the extensiveness of Italian reform. I discuss the development of the Direzione Nazionale Antimafia⁶² and Direzione Investigativa Antimafia, Italy's antimafia prosecution and investigation agencies. I will show how the strength and cohesiveness of Cosa Nostra, as demonstrated by Italian prosecutors in the Maxiprocesso trial, combined with the advocacy of several prominent political and judicial leaders, allowed for the establishment of these organizations despite serious resistance from many jurists and lawmakers.

Chapter 6 will present the American case study. I show that the revelation of a nationally unified, hierarchical organization at the 1957 Apalachin Meeting, combined with high-profile testimony at the Kefauver and McClellan hearings, enabled the creation of specialized prosecutorial bodies in the Department of Justice. I further show how the media and politicians' emphasis of the hierarchical nature of Cosa Nostra, combined with generalized public fear of crime in the late 1960s, contributed to a demand for strong law-and-order measures. This ultimately led Congress to pass the 1970 Organized Crime Control Act. The RICO statute, which was included in the OCCA, would become the key tool of federal organized crime prosecutors for decades to come.

⁶² The assessment of the Direzione Nazionale Antimafia will also include a discussion of the Direzioni Distrettuali Antimafia, the district-level prosecutorial bodies that carry out investigations, and whose work is coordinated by the Direzione Nazionale Antimafia.

Chapter 7 concludes with a discussion of the findings as well as their implications for current questions in the social sciences. It also considers alternative explanations and possible extensions of my theory.

Chapter II: A Theory of Reform

I. Introduction

What explains variation in the development of legal institutions to prosecute organized crime? I argue that two institutions are particularly important in states' efforts to combat organized crime: 1) *permissive laws* that allow law enforcement to target organized criminal entities as coherent groups and 2) *competent enforcers* that are specialized in the investigation or prosecution of such groups. The development of these institutions constitutes my main outcome of interest. Accordingly, this theory will seek to explain the onset of initial institutional development as well as the extensiveness of a state's ultimate reform.

This argument proceeds in two parts. First, I argue that the development of legal institutions to combat organized crime is often politically difficult. Bureaucratic resistance, concerns about civil liberties and government power, and corrupt ties to criminal groups are a few factors that may prevent the development of robust institutions of criminal prosecution. Overcoming these pressures depends on a *shift in public perception from viewing the criminal group as a local law enforcement problem to a national threat*.

Second, assuming that such a shift in perception takes place, the extensiveness to which a country develops an anti-organized crime legal apparatus depends on the degree to which the public perception of a national threat from organized crime can be sustained. I argue that *institutional development is likely to be most extensive when it emerges in response to criminal groups that are perceived by the public as being relatively cohesive and unified*. Because such groups are most able to pose a threat to national governmental institutions, both publics and elite decisionmakers are relatively likely to be willing to accept significant changes to the legal

landscape in order to combat them. By contrast, criminal groups that are organized in more cellular structures may lead the public to perceive organized crime as a threat, but are unlikely to drive extensive institutional reform.

This theory relies on certain key assumptions. First, I assume that political decisionmakers are primarily motivated by a desire to retain their offices and are therefore responsive to public pressure (Burstein 2003). This is partly a result of my decision to restrict my analysis to functioning democracies, in which public pressure is a key driver of the political system. At the same time, decisionmakers are risk-averse, and would generally prefer not to implement a policy that proves to be unpopular. Of course, many factors may impact public pressure on elected representatives to take an anti-crime stance (Furstenberg 1971; Shaw 2002; Jennings et al 2017). Where pressure is brought to bear on the government, however, I expect political leaders to be responsive. I do not assume the presence or absence of corruption among decisionmakers, though I do consider corruption's possible impact in the theory.

Second, I assume that law enforcement actors are primarily self-interested, and are interested in the strength of the institution to which they belong at least insofar as it benefits their career prospects. Thus, all else equal, they would prefer their institutions have larger budgets, greater prestige, and higher levels of remuneration than not (Niskanen 1994; Moesen and Van Cauwenberge 2000). I do not assume that law enforcement officials are *inherently* interested in actively pursuing organized crime. While many certainly are, the prevalence of corruption in a variety of institutional settings suggests that such an assumption would be unreasonable. Pervasive corruption may also undermine the strength of law enforcement preferences with regards to the functioning of their institutions by providing an additional source of income to officers, or by making it less likely that vigorous pursuit of organized crime will lead to

promotion. These realities are not inconsistent with my theory, but instead underscore my emphasis on bureaucratic self-interest.

This chapter will proceed as follows. In Section II, I define my outcome of interest. In Section III, I explain the initiation of institutional reform. In Section IV, I explain the extensiveness of institutional reform. Section V presents possible alternative logics and extensions of my theory. Section VI concludes.

II. Outcome of Interest: Level of Institutional Reform

The introductory chapter presents a conceptual overview of anti-organized crime legal institutions and explores variations in institutional design that may be observed across jurisdictions. In this chapter, I discuss indicia of institutional reform and present my measurement of the dependent variable.

This dissertation aims to explain the degree to which different states develop legal institutions designed to effectively prosecute organized criminal groups (OCGs). In this context, I define a state's ability to effectively prosecute organized crime as its ability to target OCGs as groups, rather than as isolated individuals. Though targeting specific members of a criminal group may be sufficient in some cases to seriously damage an organization, this approach is likely to be ineffective if the group has established mechanisms of succession. It may even be counterproductive, resulting in the creation of power vacuums and increased violence (Calderón et al 2015). Particularly in the context of relatively hierarchical organizations, the most powerful members of criminal organizations may be relatively unlikely to directly engage in the sort of crime of which it is possible to convict them in a court of law (Kenney 2007; Immordino et al

2020).¹ These individuals frequently delegate the crimes that leave the most obvious trails of evidence, such as murder, to underlings. Of course, such delegation of crimes is itself a criminal act in most jurisdictions. The problem is generally one of proof—those who are in a position to offer evidence against such leaders are frequently unwilling to do so, whether due to fear or loyalty. As such, in considering the kinds of laws that are most likely to be successful in combating organized criminal groups, it is useful to establish the instruments that can target groups as a coherent whole, and particularly those that allow for the capture and conviction of high-level bosses.

As discussed in the Introduction, I consider two types of legal institutions as foundational to overall reform: permissive laws and competent enforcers. Of course, these are not the only reforms that countries may adopt in seeking to develop robust systems to counter organized crime. For instance, states may provide law enforcement with tools to facilitate investigations into organized crime, such as wiretaps and the ability to engage in undercover investigations. They may reduce the standards of proof that prosecutors need to meet in certain aspects of criminal trials. They may set up data-sharing centers to facilitate the tracking of criminal activity. They may enhance punishments in cases of organized crime. They may also provide enhanced protection to witnesses who are willing to testify against criminal organizations.

Such reforms are important and may greatly enhance the ability of law enforcement officials to conduct investigations into organized criminal groups and to remove members of these groups from society. Yet as impactful as these tools may be, they rely on prosecutors' ability to present charges that will ultimately result in conviction. Therefore, as a starting point

¹ Of course, criminal groups are not always hierarchically structured and leaders cannot always rely on effective delegation. Calderoni (2014) and Calderoni and Superchi (2019) have pointed to the limitations of delegation among criminal groups.

for considering anti-organized crime reform, I argue that states must have laws on the books that make members of organized criminal groups, and particularly leaders, susceptible to prosecution. In addition, given the reliance of criminal groups on profit as a central *raison d'être* (Schelling 1971; Gambetta 1996; Skaperdas 2001; Kalyvas 2015), states may target groups via laws facilitating the seizure of criminal financial assets. In addition, I argue that the ability of states to implement the legal tools needed to combat OCGs relies heavily on the presence of law enforcement who are trained in targeting group crime. As such, states seeking to develop institutions of effective prosecution of organized crime must have specialized units of law enforcement officials who are trained in the techniques needed to investigate and prosecute these groups.

a. Permissive Laws

Permissive laws are laws that allow prosecutors to target a criminal group's key assets in a systematic, large-scale way. Of course, at some level, virtually all criminal justice systems have laws on the books that allow for this. This dissertation seeks to identify the changes that go beyond the norms of existing criminal law. As such, I consider as permissive laws those reforms that enhance the scope of existing criminal offenses to target individuals for the crimes committed by groups. As mentioned in the Introduction, I consider efforts to target the manpower of criminal organizations as well as their assets. I consider a law to be permissive where it reforms the criminal code either by expanding the charges prosecutors can bring against organized criminal defendants or seriously reduces the burden of proving existing crimes designed to target criminal associations. I term laws which primarily target members of the criminal group for incarceration *membership liability laws*, while those which target the finances of the group are *asset forfeiture laws*.

In ascertaining whether a country has adopted a permissive law aimed at incarcerating members of the group, I look for laws explicitly aimed at organized crime. I am interested in the institutions designed to combat organized crime, and therefore I do not focus on institutions that have been repurposed from addressing other social problems. For instance, if a state started prosecuting members of organized crime under terrorism statutes without passing any legislative amendments, that would not be categorized as a permissive law under my theory.

i. Conspiracy

The three main models of membership liability laws are conspiracy, criminal enterprise, and criminal association.² Conspiracy offenses are generally found in common law jurisdictions,³ and can be applied to a variety of crimes. At its root, a conspiracy offense must involve 1) an agreement 2) between two or more persons to commit a crime.⁴ In addition, some overt act in furtherance of the conspiracy is often, though not always, required.⁵ Conspiracy statutes may make all individual members of a conspiracy liable for the foreseeable consequences of group members' actions taken in furtherance of the agreement.⁶ In some contexts, participation in a criminal conspiracy may be punished as harshly as commission of a crime itself.⁷ Criminal

² Japan presents a possible third approach, as it has achieved success against the yakuza primarily using administrative (rather than criminal) law. This is a highly unusual approach that has not been adopted in other contexts. The Japanese relationship to organized crime is fairly idiosyncratic, and while it will be discussed, I do not present it as one of the main approaches to permissive laws.

³ Though I speak of the general tendencies of one type of jurisdiction or another to adopt certain types of laws, this is by no means absolute. Countries have increasingly experimented with the legal statutes of other jurisdictions and many have statutes that are a hybrid of the conspiracy and criminal association approaches.

⁴ CHARLES DOYLE, CONGRESSIONAL RESEARCH SERVICE, FEDERAL CONSPIRACY LAW: A BRIEF OVERVIEW, 2, (2020)

⁵ For instance, within the United States, many conspiracy statutes include an overt act requirement, but some do not. Determinations of the existence of an implicit overt act requirement occur on a statute-by-statute basis, often with some disagreement among courts. CHARLES DOYLE, CONGRESSIONAL RESEARCH SERVICE, FEDERAL CONSPIRACY LAW: A BRIEF OVERVIEW, 2, 8 (2020). *See also* Mitchell McBride, *Federal Criminal Conspiracy*, 57 AM. CRIM. L. REV. 759, 768 (2020).

⁶ CHARLES DOYLE, CONGRESSIONAL RESEARCH SERVICE, FEDERAL CONSPIRACY LAW: A BRIEF OVERVIEW, 2, Service (2020)

⁷ For a discussion of the crime of conspiracy in the United States, *see* Mitchell McBride, *Federal Criminal Conspiracy*, 57 AM. CRIM. L. REV. 759 (2020); *see also* Leo Katz, *The General Part: Accomplice, Attempt and*

conspiracy laws can be powerful legal instruments to target criminal groups, but they may be limited in their effectiveness against large and complex groups. Prosecutors must prove that an individual entered into an agreement, and where criminal networks are particularly complex, it may not be possible to prove that one member of a group, including a leader, agreed to a crime committed by a distant subsidiary.⁸

Anti-organized crime reformers, particularly in common law jurisdictions, may seek to facilitate the prosecution of organized crime by broadening the conspiracy codes or closing perceived loopholes of conspiracy statutes. For instance, they may create a presumption that an individual who can be shown to be a member of a conspiracy has aided and abetted all crimes in furtherance of that conspiracy.⁹ They may also adjust the *mens rea* requirement of a conspiracy statute where organized crime is involved. *Mens rea*, or guilty mind, is the intent component of criminal law. Proving that an individual acted with some intent to commit a crime is required in most criminal prosecutions.¹⁰ To facilitate conspiracy prosecutions, statutes may be written to require prosecutors to prove a lower level of intent in order to hold an individual criminally liable for participation in a conspiracy. Such changes to the criminal code bring the crime of conspiracy closer to an association offense by reducing the actions a prosecutor needs to prove against an individual in order to hold him liable for crimes of a group.

Conspiracy Liability in FOUNDATIONS OF CRIMINAL LAW (Katz et al eds., 1999); Peter Buscemi, *Conspiracy: Statutory Reform since the Model Penal Code*, 75 COLUM. L. REV., 1122 (1975).

⁸ D.C.H., *Elliot v. United States: Conspiracy Law and the Judicial Pursuit of Organized Crime Through RICO*, 65 VA. L. REV. 109 (1979).

⁹ This is similar to the Pinkerton liability in American criminal law. Pinkerton liability is a judicially created doctrine that holds that members of a group are liable for all acts of other members of the group taken in furtherance of a criminal conspiracy. This doctrine has been used at the federal level to combat organized crime. It is controversial, however. It was rejected by drafters of the Model Penal Code, and its adoption at the state level has varied considerably. See Susan W. Brenner, *Of Conspiracy and Enterprise Criminality: Applying Pinkerton to RICO Actions*, 56 MO. L. REV. 931 (1991); Andrew Ingram, *Pinkerton Short-Circuits the Model Penal Code*, 64 VILL. L. REV. 71 (2019).

¹⁰ There are some exceptions to this rule, such as strict liability crimes. However, these are relatively rare.

ii. Criminal Enterprise

A similar but more expansive legal approach is the criminal enterprise statute.¹¹ These laws seek to avoid the limitations of conspiracy statutes by identifying a criminal group as an illegal enterprise. Criminal enterprise statutes aim to subject an entire criminal organization *as an organization* to prosecution by treating it as a single enterprise. Typically, where a group is engaged in a pattern of underlying crimes from which it profits, criminal enterprise statutes define the group as a single body and allow prosecutors to hold leaders of the organization accountable for actions committed by any of their subordinates.¹² Unlike conspiracy laws, these often-complex statutes have frequently been developed specifically in response to organized crime.¹³ Anti-organized crime reformers may therefore seek to adopt criminal enterprise statutes as a means of facilitating the prosecution of large criminal organizations.

iii. Criminal Association

Criminal association offenses are most common in civil law systems and are functionally analogous to conspiracy statutes. These laws act directly upon organized criminal groups by making membership in a group that exists for criminal purposes illegal.¹⁴ Like criminal conspiracy laws, association laws can be very powerful weapons against OCGs. However, they have faced serious difficulties in combating sophisticated criminal networks. One of the main difficulties is that complex OCGs often rely on legal front organizations. Without extensive

¹¹ *Organized Crime Module 2 Key Issues: Criminal Organizations & Enterprise Laws*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, <https://www.unodc.org/e4j/en/organized-crime/module-2/key-issues/criminal-organizations-and-enterprise-laws.html> (accessed 13 Feb. 2022).

¹² G. Robert Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts - Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009 (1980).

¹³ The first criminal enterprise statute was the RICO statute, which was passed in response to the growth of the American Mafia and drew heavily on principles of antitrust law.

¹⁴ *Organized Crime Module 2 Key Issues: Criminal Association*, UNITED NATIONS OFFICE ON DRUGS AND CRIME, <https://www.unodc.org/e4j/en/organized-crime/module-2/key-issues/criminal-association.html> (accessed 13 Feb. 2022).

penetration of a group, it may be very difficult to prove the necessary criminal activity to charge members of the organization. Reformers seeking to establish criminal association laws have looked to strengthen their regimes by developing definitions of organized crime that will allow them to prosecute individual members of these groups based only a showing that the person is a member of a group that meets the definition of being an organized criminal group.¹⁵ As with conspiracy laws, reforms to criminal association laws may also lower the *mens rea* required to convict individuals of criminal association.¹⁶

iv. [Asset Forfeiture](#)

In addition to laws targeting membership in criminal organizations, I also consider reforms to forfeiture laws. Under asset forfeiture laws, those suspected of maintaining illegal income are subject to having that income seized by the state, at least temporarily. Asset forfeiture laws may be civil, rather than criminal, measures, which generally means that the government faces a much lower burden of proof than it would in securing a criminal conviction.¹⁷ In many cases, the burden falls on the accused individual to prove that his or her property was not illegally obtained.¹⁸ I consider as permissive laws those that either introduce asset forfeiture measures for offenses related to organized crime or that shift the burden of proof where organized criminal cases are involved.¹⁹ Asset forfeiture laws, particularly those imposed under

¹⁵ These definitions may vary according to the national context. For instance, Italy's mafia association law explicitly defines and criminalizes mafia-type groups and is therefore not applicable to all forms of organized crime.

¹⁶ For example, New Zealand requires that an individual knowingly or recklessly participate in a criminal organization. The reckless standard is a lower standard of intent than the more widely applied knowing standard.

¹⁷ THEODORE S. GREENBERG ET AL., WORLD BANK, *STOLEN ASSET RECOVERY: A GOOD PRACTICES GUIDE FOR NON-CONVICTION BASED ASSET FORFEITURE* 14 (2009). Asset forfeiture can also occur under criminal provisions, but the standards of evidence tend to be more demanding in those cases.

¹⁸ Luis Suarez, *Guilty Until Proven Innocent: Rethinking Civil Asset Forfeiture and the Innocent Owner Defense*, 5 TEX. A&M J. PROP. L. 1001, 1015 (2019); Michele Simonato, *Confiscation and Fundamental Rights Across Criminal and Non-criminal Domains*, 18 ERA F. 365 (2017)

¹⁹ In the US, this approach is based off of the legal fiction that the property itself (rather than its owner) is criminal, and subject to state action. Asset forfeiture is often controversial, as the reversed burden of proof can make it very difficult, not to mention prohibitively expensive, for even innocent suspects to regain their property.

civil measures, are often controversial, as they allow the government to seize private property, in many cases without the full procedural protections guaranteed in criminal law.²⁰ Reformers have sought to facilitate the seizure and confiscation of assets in cases of organized crime. The power of these laws lies in the ability that they give law enforcement officials to act relatively quickly to deprive criminal organizations of financial assets, even without the full procedure of a trial.

b. Competent enforcers

The second outcome that I consider is the creation of law enforcement bodies dedicated specifically to combating organized crime. As discussed in the Introduction, differences in investigative and prosecutorial practices across jurisdictions make it difficult to point to a single kind of law enforcement body that is necessary for effective enforcement of laws against organized criminals globally. In order to build legal cases against a criminal group, states generally must have both investigative and prosecutorial capabilities competent to target organized crime. These may be closely intertwined, if, for example, prosecutors maintain their own investigative capabilities. They may also be institutionally separated, with police agencies responsible for investigation and prosecutors responsible for conducting trials. Jurisdictions may also vary in terms of the degree of specialization required at each stage of law enforcement. For instance, in systems where police do considerable work to build cases, the role of the prosecutor may be relatively small, and specialization of the prosecutor's office may not be required for enforcement to be effective.

I consider a nation to have competent enforcers if it has established either a specialized investigative or prosecutorial unit dedicated to combating organized crime at the national level.

²⁰ *How Crime Pays: The Unconstitutionality of Modern Civil Asset Forfeiture as a Tool of Criminal Law Enforcement*, 131 Harv. L. Rev. 2387 (2018): 2387-2388; Sarah Stillman, *Taken*, THE NEW YORKER, Aug. 12 & 19, 2013.

These units must focus primarily on the pursuit of OCGs, though other related crimes may also fall within their purview.²¹ Members of such agencies should be specialized in the laws and investigative methods relevant to pursuing members of OCGs. The specific techniques in which enforcers specialize may vary somewhat depending on the type of law enforcement body and the nature of the criminal group being pursued. In the context of investigations, they may include the use of wiretaps, undercover operations, or complex financial investigations. In the context of prosecutions, they may include knowledge of the often-complex laws used in trials of criminal organizations. Competent enforcers may be recruited for their established expertise in these techniques or may receive training within the unit.

c. Degree of Institutionalization

In evaluating the degree to which states develop institutions, I consider a state to have undergone *no meaningful institutional reform* when it has neither permissive laws nor competent enforcement. I consider it to have undergone *weak reform* when it has adopted either competent enforcers or at least one form of permissive law. A state has undergone *moderate reform* when it has adopted competent enforcers and one form of permissive law (membership liability law or asset forfeiture). Finally, a state has undergone *strong reform* when it has adopted competent enforcers and both forms of permissive law.

It is worth saying a few words about what this dependent variable is not. It is not, in and of itself, a measure of how successful a state has been at combating organized crime. These institutions may be more or less effective in removing a given criminal group. They may also be undermined by outside forces that prevent them from functioning even marginally well. For

²¹ For instance, the US Department of Justice has an Organized Crime and Gangs Unit. The DoJ considers gangs to be distinct from traditional organized crime, though the two phenomena are related. This would still be considered a specialized prosecutorial unit.

example, a law may be passed that criminalizes membership in a group, but corrupt prosecution, high levels of witness tampering, or the effective intimidation of judges ensure that it is never actually enforced. Likewise, specialized law enforcement agencies may be developed but be too corrupt, underfunded, or hampered by other political actors to successfully realize their mandates. The effectiveness of institutions as they are developed has important implications for this theory and for the broader topic of legal responses to organized crime, but it is not, in itself, part of the dependent variable.

III. Initiating Reform

As a preliminary note, I deliberately speak about the actors who are responsible for the creation of anti-OCG institutions in somewhat vague terms, as they may vary across certain contexts. This is less true with regards to the establishment of permissive laws, in which case the legislature is almost always the relevant actor. However, in establishing competent enforcement bodies, there is more variation. In some contexts, these organizations will be established by legislation, but in others they may be created within the judicial or executive branch without the direct involvement of the legislature. In all contexts, however, I am speaking about political actors at the national level.

a. Challenges to Institutional Development

In order to understand the extent to which governments develop anti-organized crime institutions, it is necessary to first consider when they are willing to develop them at all. One might expect such institutions to be quasi-universal, with states passing laws and creating new law enforcement bodies as soon as organized crime emerges as a subject of serious political concern. In this argument, anti-organized crime institutions are essentially the sort of ‘low-hanging fruit’ whose emergence is not puzzling at all. I argue that this perception is mistaken,

and that establishing the kinds of institutions that I describe is often quite difficult. Moreover, there are several reasons to expect significant resistance to such reforms in many national contexts.

First, such institutions may raise serious concerns among civil libertarians and advocates of government restraint. Permissive laws often significantly increase the power of law enforcement to intrude into the lives of civilians, and they may considerably enhance the capability of the national government to conduct criminal investigations into an apparently wide swath of the citizen body. The creation of competent enforcement bodies may likewise appear to enhance the power of law enforcement agencies to target civilians. The expansion of law enforcement power that such institutions bring may engender serious concerns about due process. Particularly in countries where due process has historically been less than secure, or where there is a strong culture of federalism or suspicion of centralized government power, such institutions can seem highly dangerous.²² Political decisionmakers who give considerable weight to such concerns may actively resist anti-organized crime institutions or else may decline to propose them in the first place.

Second, establishing such institutions may be quite costly. This is particularly true in regards to competent enforcement bodies, which often require considerable budgets to secure office space, to hire and train agents, to purchase necessary equipment, etc. Fiscally conservative decisionmakers may consequently be resistant to establishing such organizations if there is not a demonstrable need for them. Third, bureaucratic pressures may work against the establishment of such bodies. Existing government agencies may feel that the creation of new specialized units

²² For example, one of the staunchest opponents of the Organized Crime Control Act, the law that includes the RICO statute, was the American Civil Liberties Union, which was deeply concerned about the implications of this legislation for American due process rights.

will undermine their own activities and cohesion or will divert needed resources away from them. In some cases, they may object to the establishment of competent enforcement bodies as giving too much power to an insufficiently limited law enforcement agency.²³ Leaders within the bureaucracy may consequently exercise significant political pressure to prevent the establishment of potential rivals.

Third, corruption may undermine the creation of anti-OCG institutions. Particularly in contexts where a criminal group enjoys close ties with a political party or other politically powerful actors, those allies may be able to prevent the establishment of institutions designed to harm the interests of the group. Even if such institutions exist, corrupt actors may theoretically still take steps to prevent them from functioning effectively. However, the passage of permissive laws and the creation of competent enforcement bodies are inherently risky for the criminal group, as they gives law enforcement some tools with which to repress the group. As it may be quite difficult for even corrupt actors within the government to credibly commit not to use such tools in the future, OCGs may reasonably expect their government allies to take measures to ensure such institutions never come into being at all.

Finally, much of the illicit activity in which organized criminal groups engage (i.e. drug dealing, extortion, prostitution, bribery, and even murder) involves crimes that fall within the jurisdiction of ordinary law enforcement bodies. Local police officers, prosecutors, and judges handle such crimes on a regular basis. Even if criminal groups are recognized as cohesive entities that profit from large-scale criminality, the regulation of such behavior is often conducted at the local level through the ordinary mechanisms of the criminal justice system. Moreover, criminal

²³ For example, the *Consiglio Superiore della Magistratura* (Superior Council of the Judiciary), the self-governing institution that guarantees the independence and functioning of the Italian judiciary, was fiercely resistant to the establishment of a specialized national antimafia prosecutor's office. The CSM was concerned that such a body would give too much power to a centralized prosecutorial agency. This is discussed at greater length in Chapter V.

groups are often most powerful in the margins of society (i.e. in poor neighborhoods or relatively remote locations).²⁴ The populations that are most directly impacted by such groups are therefore generally those with the least political power. The result is a situation in which politicians, particularly at the national level, may feel very little pressure to take politically risky steps to challenge such groups. These factors suggest that anti-OCG institutions should consequently be seen as relatively difficult to establish.

b. T0: Pre-Reform

Given the challenges just described, I expect that demand for reform will start at a relatively low level, particularly where organized crime is not seen as a pressing social issue. At this stage, national-level decisionmakers will have divergent attitudes towards change directed at combating organized crime. I classify decisionmakers into three categories: reformers, anti-reformers, and neutrals.

Reformers are those decisionmakers who actively advocate for the establishment of institutions to combat organized crime. These individuals' backgrounds may vary considerably. For instance, they may include politicians from areas that are deeply affected by organized crime, particularly if those politicians are from parties that the criminal groups do not back. At the same time, reformers may include politicians who are from areas where organized criminal presence is a minimal concern. For such politicians, taking on organized crime may be a relatively low-cost way of garnering significant attention and appearing to be tough on crime. At a bureaucratic level, reformers are likely to include those who most directly address problems of organized crime, such as police or prosecutors. Bureaucratic reformers are most likely to emerge

²⁴ See e.g., VANDA FELBAB-BROWN, THE BROOKINGS INSTITUTION, BRINGING THE STATE TO THE SLUM: CONFRONTING ORGANIZED CRIME AND URBAN VIOLENCE IN LATIN AMERICA (2011); YUSUF AHMAD ET AL., CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, REDUCING VIOLENCE AND IMPROVING THE RULE OF LAW: ORGANIZED CRIME, MARGINALIZED COMMUNITIES, AND THE POLITICAL MACHINE 15.

from relatively uncorrupted organizations, as it will be difficult to obtain organizational support if the agency has strong ties to a criminal group.²⁵

This theory makes few assumptions about the motives of reformers. The presence of reformers is compatible with the existence of corruption and calculations based solely on political interest. Although reformers are less likely to emerge from institutions with the closest ties to the criminal organization, even within a corrupt system political interest may make it profitable for individual politicians and bureaucrats to take on a public anti-organized crime stance. While the theory does not assume altruistic motives, it also is not inconsistent with them. Individuals may have a genuine commitment to combating organized crime and may be willing to undertake great personal risks to combat it. Both altruistic and self-interested reformers are therefore entirely compatible with this theory. At the starting point of my theory, I assume that reformers are a small but possibly quite dedicated faction. Because organized crime affects their interests directly, they are likely highly motivated to work to advocate the advancement of their desired changes.

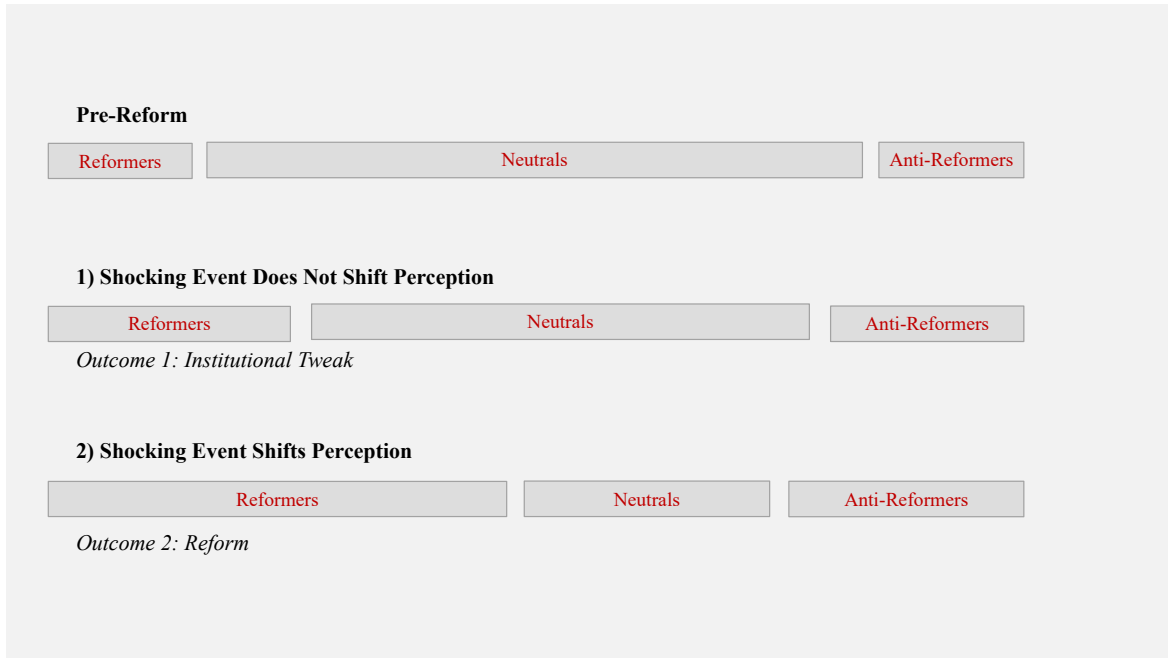
Anti-reformers are those who are actively opposed to the adoption of anti-organized crime institutions. Like reformers, they may come from a wide variety of backgrounds. Anti-reformers may include corrupt beneficiaries of ties to organized criminal groups. Politicians in areas with a high level of organized crime, and particularly those whose parties benefit from electoral mobilization or kickbacks from the criminal groups, may be particularly opposed to new reforms. At the same time, anti-reformers may include those with very weak or nonexistent ties to organized crime. Civil libertarians or those who are skeptical of expanded government power may be hostile to reform on ideological grounds, particularly if they represent

²⁵ This is not to deny that individuals or small factions within corrupt organizations may advocate for reform. However, the pressure imposed by thoroughly corrupted groups should make this outcome less likely.

constituencies for whom organized crime is not a significant issue. Bureaucrats who risk losing resources in reform efforts may also fall into this category. As with reformers, the theory is consistent with a wide variety of anti-reformer motivations. At the starting point of my analysis, I assume that anti-reformers, like reformers, are likely to be a relatively small faction. Their dedication to their position varies depending on the strength of reformers' advocacy. To the extent that reformers are actively pushing their proposed reforms, anti-reformers are more likely to see the issue as salient and respond against it. However, if organized crime is a truly marginal issue and reformers are not especially vocal, anti-reformers are less likely to constitute an active political force.

Neutrals are those decisionmakers without a strong interest in reform either way. They advocate neither for nor against reform but may be persuadable by either side. These are most likely to be politicians who represent areas that are not significantly affected by organized crime. Within the bureaucracy, this will include most civil servants who do not deal directly with organized crime, and whose positions or institutional power are not directly threatened by reform. I assume that at the starting point of my analysis, neutrals represent the largest population of decisionmakers. Where organized crime is not a pressing social issue, most politicians will have little incentive to address it, but are also unlikely to see much benefit in working against a reform that does not seem imminent. Explaining the adoption of organized crime institutions therefore requires explaining how neutrals (and perhaps some anti-reformers) come to favor reforms. The next section explores how power shifts in favor of reformers.

Figure 2.1: Effects of Perception Shift on Reform



c. T1: Rising Visibility of Organized Crime

I argue that the adoption of anti-organized crime institutions is driven by shifts in public perception of organized crime as a threat. Few, if any, would argue that organized crime is not a serious matter deserving law enforcement attention. Nevertheless, many of the activities in which organized criminals engage—extortion, prostitution, drug dealing, bribery, etc. are quintessentially matters for the ordinary criminal justice system, and particularly for local law enforcement.²⁶ Some degree of organized criminality, such as street gangs and biker groups, are also likely to be seen as somewhat endemic, particularly in urban environments. As such, even where the existence of organized crime is recognized, it may be understood primarily as a matter for local law enforcement, and not one for national policymakers. I assume a starting point that

²⁶ This is true at a general level. For federal systems, divisions between the national and state/provincial competencies may make these distinctions even more clearly defined. Concerns about the national government infringing on the sphere of the state/province may also contribute to hostility towards anti-organized crime institutions.

approximates this reality. While decisionmakers may acknowledge the presence of organized crime groups, the majority does not see them as a pressing issue demanding national government action. In other words, most decisionmakers begin as neutrals.

The possibility for change begins when organized crime increases in social visibility. This can happen in a number of different ways. Particularly shocking or high-profile murders, corruption scandals, or the revelation of a particular group's existence (if previously unrecognized) are some examples of events that may make organized crime nationally salient. The risk that such events may lead to public outcry against the criminal group(s) and demands that the government 'do something' about crime is often a motivation for criminal groups to maintain a low profile (Durán-Martínez 2015). Because of the dangerous nature of organized crime, its engagement in visible violence or corruption is inherently likely to generate interest and demands for action on the part of the public. Rising visibility of organized crime creates a public sense of unease and reduced safety, which creates a political opening for leaders advocating a law-and-order agenda.

The rise of a group's visibility is therefore politically important, as it shifts the calculations of decisionmakers. For reformers, a group's increased visibility creates an opening for them to push for their desired changes. The increased salience of the group in society is likely to create greater interest in and sympathy to their demands. Reformers may even work actively to increase organized crime's visibility (for instance, by launching investigative commissions into the problem of organized crime). In doing so, they seek to increase public focus on this issue and drive demands for policy change. Anti-reformers are likely to respond to the reformers' advocacy. The rise of organized crime as a topic of national concern and the proposals that result give anti-reformers a concrete target. Anti-reformers will criticize the proposed changes as

extreme or dangerous encroachments on liberty or may attack reformers as attempting to persecute their political enemies.

Critically, at this stage, neutrals begin to polarize. The increasing attention paid to organized crime is likely to make it difficult for individual decisionmakers not to take a position, and they may move to either the reform or anti-reform side. However, while rising visibility may lead more neutrals to support reform, the opposition has the upper hand for the simple reason that crime is generally a local problem. Even decisionmakers who are open to taking steps against a criminal group are unlikely to support radically overhauling important aspects of the criminal justice system to deal with a local crime issue. Instead, initial responses to rising perception of organized crime as a problem are likely to be limited to tweaking existing institutions, rather than the creation of new ones.²⁷ This may include the creation of legislative investigative bodies, strengthening of existing laws to allow them to be more effectively leveraged against organized criminal groups, or increasing resources dedicated to existing law enforcement agencies. In addition, such events may spur anti-organized crime efforts at the local level, particularly in states with robust federalist systems.²⁸

Ultimately, rising criminal visibility shifts the balance of political power away from neutrals, leading to more support for reform. However, in and of itself, it is not enough to drive demands for institutional reform. Greater shifts in public threat perception are necessary for that to occur. Where such shifts don't happen, institutional tweaking may be an endpoint.

²⁷ It is theoretically possible, although empirically uncommon, that initial events which raise public awareness of organized crime could be so significant as to motivate demand for institutional reform. Such events would have to shift public perception of crime from a local issue to a national threat, in the manner described in the following section.

²⁸ Unitary states may also experience subnational responses to organized crime, such as the creation of special policing bodies in particularly affected localities.

d. T2: Public Perception Shifts

The rise in criminal visibility may lead to demands for some change, but it is unlikely to get past the point of institutional tweaking unless the public comes to see organized crime as a national threat. As previously discussed, the institutional reforms considered here represent significant changes to the legal system. In the absence of large-scale perceived threats, arguments in favor of their establishment are likely to be overcome by libertarian or traditionalist concerns, or else by the influence of corrupt machines.

The type of threat that a group is perceived to pose may vary with the nature of the group(s) and the society. The most pressing threat publics are likely to perceive are security risks. Groups that engage in violence, particularly against innocent parties, may be seen as a threat to public safety. Disorganized groups that contribute to a rise in crimes of public security, such as armed robbery and murder are also likely to threaten the public's sense of safety. Other groups may be seen as a threat to economic well-being. For instance, where criminals are discovered to have infiltrated important sectors of the licit economy such that they control hiring or drive up the cost of goods, the public may view organized crime as a threat to their employment prospects or their economic well-being. Finally, where organized crime is seen to control important areas of public life, particularly government institutions, they may be seen as a threat to democracy and the ability of the state to function. Of course, these threats are not mutually exclusive, and publics may (and often do) see organized crime as a threat to more than one of these values.

It is difficult to know in advance exactly what will lead a group to be seen as a national threat. To some degree, this may depend on the social context. For instance, societies that have accepted a certain degree of organized criminality as normal are unlikely to perceive a national

threat simply because a new drug cartel emerges, even if it operates nationally. By contrast, in a country that considers itself relatively free from organized crime, a few high-profile incidents of violence or a particularly large corruption scandal might radically change public perceptions of the problem. Rising visibility of organized crime is likely to lay a foundation for public concern, but even a few high-profile events may be sufficient to drive public demand for national action.

Needless to say, it can be very difficult to predict which high-salience events will shift public opinion in such a significant manner, and it would be easy to slip into a form of post-hoc rationalization that views any event that precedes the creation of an anti-OCG institution as the one that shifted public perception. In order to facilitate the ex-ante recognition of such events, I identify five key criteria of events that are likely to drive shifts in public perception of organized crime from a local to a national threat. It is not necessary that one single event have all five of these features in order for public perception to shift. In many cases, public attitudes towards organized crime may shift as a result of a series of high-profile events. The presence of these factors over the course of several events may be enough to shift public threat perception.

- 1) First, these events will *affect or implicate national interests*, including important national figures or parties, and will receive considerable attention from the national press. Local events, such as the murder of a small-town mayor or the corruption of a municipality may generate public outrage. However, they are unlikely to lead to the establishment of major anti-organized crime institutions, as they are generally consistent with the perception of crime as a local problem.
- 2) Second, *the national government will be seen as responsible for addressing the event in question*. This second factor follows closely from the first. Where

a particular event is seen as the responsibility of local leaders, local solutions are likely to be preferred. In this case, the central government may be called upon to give support to local institutions, but there is unlikely to be demand for the national government to create its own new institutions.

- 3) Third, these events will be *surprising or unexpected*. Routine events are unlikely to lead to massive change, but surprising events may lead individuals to update their attitudes (Gelpi 2010). Thus, news stories about organized criminal corruption in a city that is widely associated with corruption and criminality are unlikely to generate significant public outrage. This is not to suggest that the type of event that leads to the establishment of institutions needs to be totally unprecedented. In many cases, a surprising event may build on the mounting tension of similar events and serve as the proverbial straw that broke the camel's back. However, there should be something about this occurrence that is particularly unusual or heinous such that the public does not expect it.
- 4) Fourth, public outrage will be *nonpartisan and distributed across social strata*. If an event is associated with a particular political party or is seen as targeting a specific social group (particularly if that group is marginalized), public pressure may not be sufficiently widespread to warrant change. Only when a broad, cross-cutting segment of society is mobilized should we expect to see institutions established. To be clear, while the public outrage should be non-partisan, the event itself may implicate one party more than others. For instance, if a particular party is found to have such corrupt ties to a criminal

group that its own constituents mobilize against it, this may be sufficient to mobilize change.

- 5) Fifth, *the criminal group's involvement in the event will be perceived to be relatively unambiguous*. In order for the public to exert pressure on their political leaders to undertake significant reforms, they must be convinced that organized criminal groups are responsible for the event in question. If there is considerable doubt about organized criminals' responsibility (i.e. if a given murder may have been carried out by criminals or terrorists), this may distract public attention from the criminal group or may divide the policy responses proposed by decisionmakers. Where political leaders actively seek to prevent the establishment of anti-organized crime institutions, such doubts may be sufficient to justify the rejection of any proposed institutional creation. In some cases, anti-reformers may even actively sow doubts about the group responsible for a particular act. It is not theoretically required that the criminal group actually *is* responsible for the event in question. Rather, it is the public's perception that matters here. If an event is unambiguously, but erroneously, attributed to a criminal group, it may be sufficient to meet this criterion.

Events that meet these five criteria are most likely to shift public perception about the nature of the threat that a group poses. As the public comes to see the group as a national threat, this is likely to translate into increased pressure, particularly on elected representatives and members of the security apparatus, to take serious measures to combat organized crime, up to

and including drastic reform. These moments open critical opportunities for reformers to advance their agenda.

It is worth noting that reformers themselves play a critical role in shaping public threat perception. They may highlight the power of the criminal group and argue that it poses a significant threat. Given the substantial and well-analyzed impact of elite cues on public opinion, this framing may have a significant impact (Jasperson et al 1998; Jacoby 2000; Druckman 2001; Brulle et al 2012; Morgan and Buice 2013; Guisinger and Saunders 2017). This is not to say that the criminal group's activities play no role in shifting public opinion. Often the behavior of the group helps the reformers to most effectively make their case. However, the reformers' framing and advocacy is critical to convincing the public of the need for national institutions and of the appropriateness of particular measures to combat the criminal group in question. In doing so, the reformers seek to turn general public demand for change into political pressure on neutrals to support the adoption of specific institutional reforms.

Figure 2.2: Reform Onset

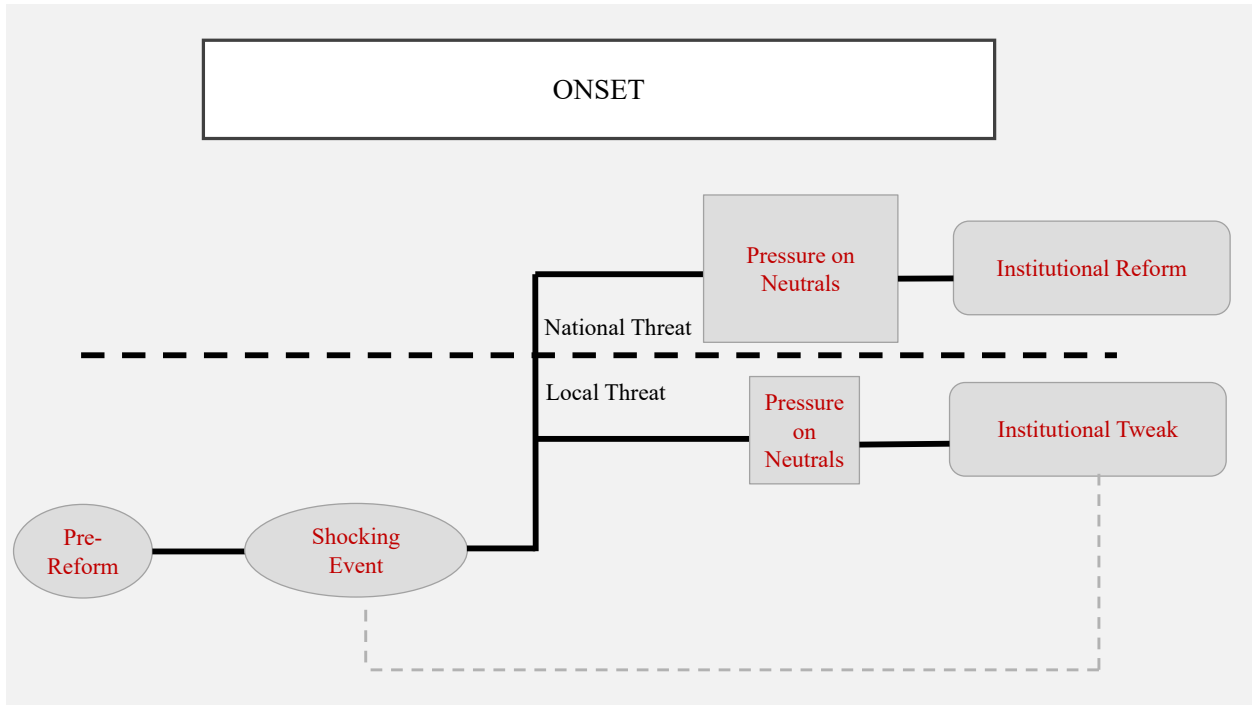
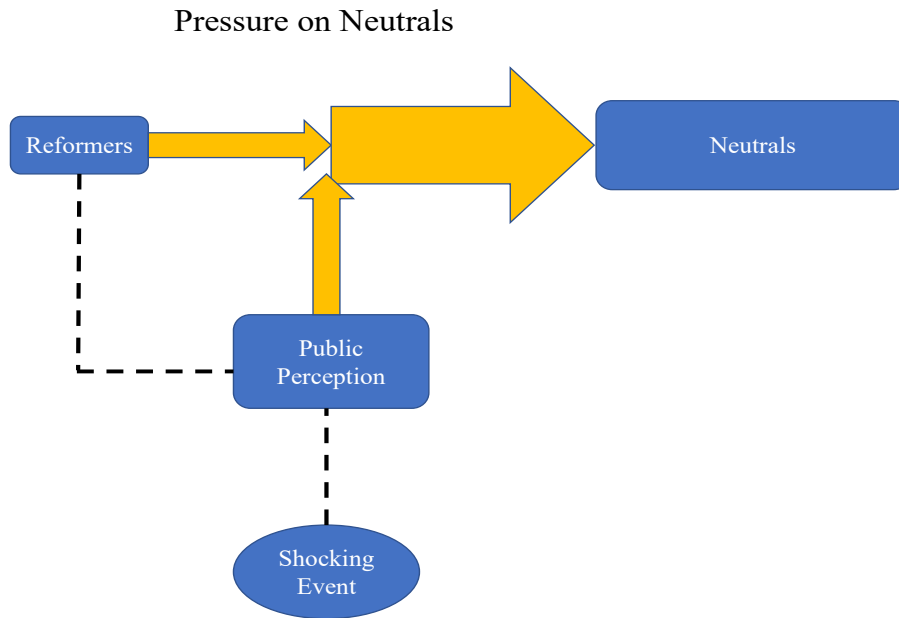


Figure 2.3: Pressure on Neutrals



e. Measuring Threat Shifts

In considering what qualifies as a national event, I rely primarily on media sources. I consider an event to be national in scope when it is covered by at least two media sources from outside the location where the event took place. Thus, a murder that took place in Chicago would not be considered national unless it was covered outside of the Chicago-area press. Of course, the fact that an event receives national attention is not enough to make it a cause of shifting public threat perception. In order to assess the impact of an event on public opinion, more in-depth qualitative analysis is necessary.

In order to analyze the impact of events on public attitudes towards organized crime, I employ a variety of sources. Where possible, I utilize public opinion surveys. However, as I focus primarily on historical case studies, data on public attitudes towards organized crime is not consistently available. As such, I also utilize public news sources to gauge public opinion. In

particular, I consider whether major national media sources cover organized crime as a local or national concern, tracing changes in coverage over time. Media outlets in democratic states are separate from the political process and are tasked with covering issues that are seen to be of most pressing social concern. Of course, media coverage is not a perfect proxy for public opinion (Strömbäck 2009). Media elites may reflect particular viewpoints that may or may not be reflective of general public opinion (Page 1996; Eilders 2002²⁹; Schudson 2002; Habel 2012). As such, where possible, I supplement media coverage with archival and interview data to better gauge how decisionmakers perceived the public position.

f. Testable Implications

At this point, there are several testable implications of my theory, which I present below:

- 1): *Where organized crime is low visibility, efforts at reform will be marginal.*
- 2): *When criminal visibility rises without shifting public perception of the scale of the threat, neutral decisionmakers will begin to polarize and institutional tweaks will occur.*
- 3): *When the public perception of organized crime shifts from a local to a national threat, institutional reform will occur.*

Given the difficulty of establishing institutions and the interests that may work against them, I expect that in most cases, even where the public begins to see organized crime as a national threat, it will not be possible to create both permissive laws and competent enforcers at once. Instead, I expect that reformers will generally concentrate on establishing one institution or the other,³⁰ though I concede that where the perception of threat is particularly high or where

²⁹ Eilders does note that there are circumstances in which media statements may be an adequate substitute for public opinion. According to her, “[u]niformity in the media system is also appreciated if it seems appropriate to put pressure on the political system to process an issue or react to a particular concern of the public. Media opinion can then be regarded as a substitute for public opinion which becomes a consistent, politically effective and sociologically relevant factor only as a high level of correspondence develops.” Christiane Eilders, *Conflict and Consonance in Media Opinion: Political Positions of Five German Quality Newspapers*, 17 EUR. J. OF COMM., 25, 30 (2002)

³⁰ By establishing one institution or the other, I mean that states will focus on establishing either competent enforcers or permissive laws. It is, however, relatively common for states to pass both membership liability laws and

decisionmakers are particularly unified behind a reformist agenda, it may be possible to create both institutions at once.³¹ As such, the question remains, to what extent will societies that have begun institutional reform continue to do so?

IV. Extent of Reform

Though institutions may be adopted in response to shifts in public attitudes towards organized crime, there is no guarantee that they will last, let alone expand. As discussed, these institutions are controversial and they often implicate powerful interests. Those who were willing to accept some change may refuse to accept further reform, particularly if it is seen as more fundamental or radical. In order to develop a systemized legal response to organized crime, the public perception of the criminal group as a threat must be sustained beyond the initial wave of reform. I argue that the structure of the criminal group to which the state is responding drives the extent of reform. *Where the public threat perception is driven by organizations that are seen as relatively cohesive, momentum for reform is likely to be sustained and extensive reforms are most likely to be instituted.* By contrast, where the public attitude is driven by more decentralized criminal groups, political momentum is more likely to wane, and reform will be more limited.

a. Criminal Group Structure

I argue that extensive reform is most likely to occur when the government is developing institutions in response to a criminal structure that is perceived as relatively cohesive. Criminal groups vary considerably in their organizational structures. Some, such as street gangs, tend to be

asset forfeiture laws at the same time, as these provisions are often seen to work in tandem. States will sometimes include both provisions in a single statute, or else pass the measures in separate laws in close succession.

³¹ At this time, I do not make any predictions about which institution will be developed first. A number of factors could and likely do influence where policymakers begin reform, including the strength of pre-existing institutions, legal system, and the political makeup of key decisionmakers. In order to keep this theory as broadly applicable as possible, I therefore only predict that one of the two will be developed first. Further research should be done to more adequately establish the factors that lead political leaders to choose one form of institutional reform over another.

relatively decentralized, exerting control within specific localized areas.³² Because they are fragmented, they are more likely to conflict with other groups, which may lead to violence (Durán-Martínez 2015; Catino 2014³³).³⁴ They may very well corrupt local elites, including police officers, politicians, and union leaders.³⁵ However, due to their fractious nature and tendency to compete with other groups, they may struggle to attain the economies of scale necessary to exert influence outside their territorial base of control (Bailey and Taylor 2009; Catino 2014). At the same time, these organizations have the advantage of being very difficult to dismantle. As they lack a clear hierarchy and are able to recruit from among the local population where they are most powerful, they are often able to easily replace leaders that are killed or imprisoned. Localized corruption may be sufficient to maintain their economic activities, and the ability to intimidate those living in the areas they control often makes it hard for non-corrupt law enforcement to target them systematically.

Other organizations operate in a more cohesive manner. Some criminal organizations maintain complex, role-differentiated structures that allow them to grow considerably in size and in the scope of their operations (Catino 2014). Other criminal groups may be less rigidly hierarchical, but nonetheless able to act in coordination. Such cohesive organizations may be

³² Some scholars distinguish gangs from organized crime altogether (Kleemans and Van Koppen 2020). Because gangs may motivate organized crime institutions, I do not separate them from my analysis.

³³ Catino (2014) argues that hierarchical organizations are more likely to kill public officials, but decentralized organizations are more likely to kill ordinary people.

³⁴ In some cases, decentralized criminal organizations may unify to operate at a larger scale. For instance, Mexican drug trafficking organizations have at various points in their history been able to cooperate in order to facilitate the national flow of drugs.

³⁵ As Snyder and Durán-Martínez (2009) note, governments may prefer to engage in corrupt relationships with fractionalized criminal organizations, as the existence of multiple criminal groups allows the government to drive up the cost of protection for individual groups. Particularly where the government agencies providing protection are themselves unified, the state may be able to extract considerable benefits (rent, electoral mobilizations, etc.) from disparate groups. I agree that national government actors may be willing to negotiate with fractious groups, particularly under the circumstances Snyder and Durán-Martínez identify. However, even under these circumstances, individual criminal groups are unlikely to be able to have a significant impact on national politics where they are decentralized in structure.

rooted in specific localities, and may be stronger in some locations than others, but they are able to achieve economies of scale that allow them to operate beyond their traditional base of operations. These organizations often develop elaborate systems of recruitment and initiation,³⁶ as well as rigid codes of silence that insulate them from prosecution.³⁷ The unity of these organizations should not be over-stated. Cohesive organizations are not necessarily singular hierarchies controlled by an all-powerful boss, though in some cases they may be.³⁸ They may be nationally affiliated networks of semi-autonomous clans that coordinate to achieve common objectives.³⁹

These groups are often better able to control violence than their decentralized counterparts, as unified frameworks of criminal operations allow the organization to coordinate to minimize potentially disruptive instances of visible violence (Catino 2014).⁴⁰ Individual leadership is often particularly important in these organizations, as stability is generally necessary to these groups' effective functioning. Such organizations may be able to achieve greater profits by operating at a larger scale. Their size and wealth also makes it easier for them to corrupt larger organizations, including labor unions and political parties. As such, they are

³⁶ Alternatively, they may have especially simple forms of recruitment. The Calabrian 'Ndrangheta sustains itself exclusively through family relationships. Unlike most mafias, membership in the 'Ndrangheta is passed down within immediate families. This is a surprisingly rare approach, as most groups do some outside recruitment. However, many have attributed the 'Ndrangheta's durability to the strength of blood ties. For a discussion of the importance of blood relationships to law enforcement efforts to combat the 'Ndrangheta, see ALEX PERRY, *THE GOOD MOTHERS* (2018).

³⁷ Decentralized groups may also maintain coded forms of communication to avoid detection.

³⁸ At their height, the Medellin and Cali cartels of Colombia approximated this approach. Sicily's Cosa Nostra and the American Mafia came the closest of the Italian/Italian-American mafias, as they established governing bodies that exerted considerable authority over individual families.

³⁹ This was true to some degree of Mexican drug trafficking organizations operating under the Guadalajara cartel as well as the Japanese Yakuza. It is also true of the 'Ndrangheta, which maintains a clan-based structure rooted in Calabria, but which operates at an international level, and is able to take on different forms in different territorial contexts. Anna Sergi, *'Ndrangheta Dynasties: A Conceptual and Operational Framework for the Cross-Border Policing of the Calabrian Mafia*, 15 *POLICING: A J. OF POL'Y AND PRAC.* 1522 (2021).

⁴⁰ There are nevertheless noteworthy examples of highly centralized criminal groups waging considerable campaigns of violence, including the Medellin Cartel under Pablo Escobar, the 2006 attacks by the Primeiro Comando da Capital (PCC) and Cosa Nostra under the control of the Corleonesi clan

more likely to be able to influence politics beyond their immediate base of operations. However, their centralization tends to make them relatively easy to target, particularly when individual leaders have substantial power. Since the group has an identifiable leadership structure that controls its operations, law enforcement may be able to effectively target that structure for dismantling in the event that the state decides to crack down on organized crime.

Both types of criminal organizations can pose very serious problems and may be seen as national threats by the public. As discussed, decentralized organizations may become quite violent. Where these groups emerge as a major topic of national discussion, public perception of insecurity may be significant. Perceptions of pervasive gang violence may lead the public, particularly in areas where gangs are common, to feel at risk of victimization. Cohesive organizations are generally less likely to engage in indiscriminate violence, though they may be able to engage in particularly damaging attacks.⁴¹ However, these groups are more capable of infiltrating important social institutions, such as unions, bureaucracies, and political parties. Public perception that a criminal threat comes from one or a few relatively cohesive organizations may therefore impact faith in political and social institutions or the ability of the economy to function fairly, even if the public does not feel especially at risk of experiencing violence from the group.⁴²

b. Criminal Group Structure and Extensiveness of Reform

I argue that cohesive groups are more likely to drive the sustained perception of threat that allows for more extensive reforms to be implemented for three reasons. First, they are bigger targets. Where a single identifiable organization (or a small number of organizations) is the

⁴¹ For a discussion of the politics of large-scale criminal violence, see BENJAMIN LESSING, *MAKING PEACE IN DRUG WARS* (2017)

⁴² This is not to deny that the public may fear both the cohesive group's infiltration of the state *and* violence.

source of public attention, it is easier for reformers to portray it as a rival to the government, not unlike a terrorist group or insurgency. This is particularly true if the group has extensive ties to the state. Where the group has infiltrated organs of the government or corrupted major political parties, it may appear to be a threat to the function of the state. In such cases, radical reform may seem not only reasonable, but necessary, and reformers will have a strong case to make for their more far-reaching proposals. Indeed, the establishment of new independent institutions (particularly law enforcement bodies) is likely to be seen as necessary to countering the influence of the group. Likewise, harsh laws may be seen as appropriate means to combat not only members of the criminal organizations but also their powerful allies in the legal world.

Second, cohesive criminal organizations offer reformers a particularly powerful argument against their opponents. Where the criminal group(s) that has attracted the public's attention is national in scope, and particularly where it has shown an ability to corrupt the state, reformers may accuse those who resist their agenda as being in league with the criminals. In some cases, these accusations might be true. However, even where an anti-reformer has no criminal ties, the environment of suspicion surrounding powerful criminal organizations may lead to doubts about his motives. This is driven by the corrupting power of the criminal organization, which creates a credible belief about the possibility of political leaders' criminal ties. Suspicion surrounding the influence of organized crime may be great enough to stifle dissent and reduce opposition to reformers' agendas.

Third, reforms are more likely to be successful against relatively cohesive groups. As discussed, one of the major advantages of a decentralized structure for criminal organizations is their resilience. Cohesive organizations with relatively fixed structures and leadership hierarchies may be more effectively targeted for dismantling. The stability of these groups makes it easier

for investigators to learn their methods, values, and in some cases even language.⁴³ It may also be easier to design permissive laws to target these groups. For instance, it is generally easier to define organized criminality to reflect a relatively stable type of structure.⁴⁴ Moreover, even broad statutes like many enterprise liability laws typically require proving some connection between an individual being held liable for a crime and the group on whose behalf the crime was committed, and so prosecutors using such statutes against highly decentralized organizations may have to build a case against each criminal entity separately. Given the complexity of these cases, such an approach may not always be sufficiently efficient to be worthwhile.⁴⁵ As such, reformers may be more motivated to push an extensive reform agenda against relatively cohesive organizations.

One might expect cohesive organizations to be more resistant to reformer pressure by virtue of their pre-existing ties with the state. Criminal organizations can rely on ties with the state to advance their interests to a considerable degree. Nevertheless, these relationships generally rely on secrecy—even in corrupt societies, open connections to organized criminal groups is generally considered taboo.⁴⁶ Where criminal groups' ties to the state are publicly revealed, even corrupt politicians should be expected to publicly distance themselves from organized crime.

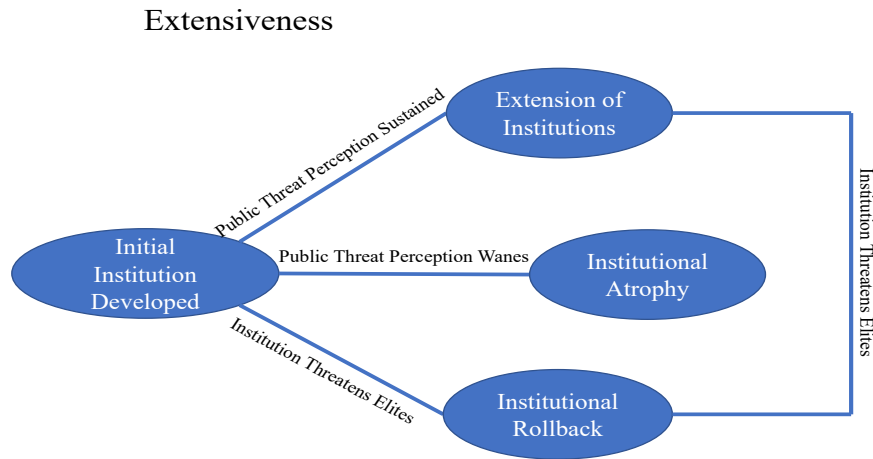
⁴³ The usefulness of specializing in language is most likely to apply where a criminal organization is ethnically based, and for this reason may be applicable to decentralized organizations as well. American law enforcement investigating Cosa Nostra families, for instance, had to hire officers who could translate, not only Italian, but Sicilian dialect in order to decipher conversations caught on some wiretaps.

⁴⁴ For example, Italy has been able to define organized crime around the very specific and historical phenomenon of territorially grounded mafia-type groups

⁴⁵ This is not to deny that these laws may have utility against decentralized groups. For instance, US prosecutors have successfully used RICO against street gangs. Joseph Wheatley, *The Flexibility of RICO and its Use on Street Gangs Engaging in Organized Crime in the United States*, 2 POLICING: A J. OF POL'Y AND PRAC. 82 (2008).

⁴⁶ In some contexts, criminal associations with government may be more or less an open secret. Even so, the politicians are unlikely to publicly acknowledge their ties to organized crime.

Figure 2.4: Reform Extensiveness



c. When Institutions Fail

The theory up to this point can explain when institutions emerge and when they expand, but it says little about when they fail. Yet in some countries, legal institutions have proven not to be an effective means of combating organized crime. I expect legal institutions to fail for one of two reasons. The first flows somewhat obviously from my theory. Where organized criminal groups disappear as a meaningful public threat, I expect legal institutions designed to combat them to weaken, or in some cases be dismantled. This may occur either because criminal groups have truly been effectively minimized as a threat, because the groups have reduced their visibility sufficiently to avoid public attention, or because political leaders have succeeded in marginalizing the issue of organized crime. As mentioned previously, reformers have an incentive to perpetuate a public perception that the organized criminal threat remains. However, if the groups' presence fades sufficiently, these arguments may fail. Anti-reformers may also

argue that the organized crime threat is not sufficient to merit the continuance of potentially damaging institutions. Of course, it is often difficult to dismantle existing institutions (Pierson 2000; Mahoney 2001). Instead, counter-reformers may more effectively marginalize these institutions by ignoring them. Permissive laws may go unused, competent enforcers may be under-staffed and under-funded. Where such marginalization occurs, it is indicative of *institutional atrophy*.

More difficult to explain is the rollback of institutions that are apparently successful at combating organized criminal groups that are still visible in society. I argue that this is most likely to occur when the threat posed to politicians by imposing the institution is greater than that posed by rolling it back. As I have discussed, decisionmakers in democratic societies must respond to public outcry, and this generally requires taking measures to avoid being linked to organized crime. This suggests that where the public perceives organized crime as a national threat, popular outrage is a sufficiently strong threat to politicians' interests (at least at the level of national decision-making) that it will require them to take steps against a criminal group's interests by establishing anti-organized crime institutions. However, in some cases, politicians may be more threatened by legal institutions' operation than by public perception that they are in league with the crooks. This may occur when the criminal group is strong enough relative to the state to impose its will, whether through corruption, or in extreme cases, acts of violence.⁴⁷ It may also occur when the legal institutions designed to combat organized crime are turned against politicians themselves. For instance, if a country's leaders are being threatened with prosecution under a permissive law, politicians may seek to repeal that legislation. If a competent

⁴⁷ This does not necessarily mean that the state simply complies with the criminal group's will. In these extreme cases of criminal violence, the state may see the criminal group as too great a threat to be dealt with through the legal system, and may instead employ extralegal means of repression, such as militarized crackdowns.

enforcement branch becomes particularly aggressive in targeting corrupt political leaders, those leaders may also try to dismantle that law enforcement unit. In either case, legal institutions effectively become victims of their own success in a process of *institutional rollback*.

d. Implications

This argument has several implications for our thinking about the relationship of legal institutions and organized crime itself. First, it suggests that as anti-organized crime institutions develop, criminal groups will have an increasingly strong incentive to organize themselves in a decentralized manner. Cohesive organizations are likely to pose an appealing target for reformers and are vulnerable to serious damage by the state. Unless centralized criminal groups feel that they can thoroughly corrupt the state or remain sufficiently invisible to prevent reformers from emerging, this logic suggests that criminals may find it most advantageous to organize in as decentralized a fashion as possible.⁴⁸

Second, the logic of establishing anti-organized crime institutions may create perverse incentives for those who combat organized crime. Reformers are incentivized to push for extensive reforms to combat cohesive organizations that can be clearly identified and against whom significant victories can be realized. However, if such groups are dismantled, the institutions that have been established no longer face the sort of threat they were designed to address. Moreover, if the public believes the problem of organized crime has been solved, anti-reformers may be able to weaken expansive legislation that looks increasingly unnecessary. This

⁴⁸ This expectation appears to have some empirical support, with many of the most famous cohesive organizations either largely dismantled or replaced by increasingly decentralized structures. The American and Sicilian branches of Cosa Nostra, as well as the Mexican and Colombian drug cartels are some examples of this trend. However, this is not a universal outcome. For instance, the PCC has developed a remarkably complex, quasi-bureaucratic system of organization (Lessing and Willis 2019). Given its roots in the Brazilian prison system and ability to operate its organization from prison, the PCC may be more resistant to state attempts to prosecute it than most criminal organizations. The Calabrian 'Ndrangheta has also retained a relatively cohesive structure, though it appears to be far less rigidly hierarchical than its Sicilian counterpart historically was (Sergi 2021).

may create incentives for those who combat organized crime to engage in threat inflation, for instance by portraying emergent groups as simply offshoots of preexisting cohesive organizations. The result may be a tendency to portray criminal groups, even those that have been largely dismantled, as an ever-present and insurmountable threat ready to emerge at any moment.⁴⁹

Third, the relationship between group structure and institutional formation suggests that the establishment of extensive anti-organized crime legal institutions is likely to remain limited, despite global pressure to the contrary. Many states have, and will continue to have, relatively decentralized organized crime, which may drive the public security threats necessary to support the adoption of initial reforms. However, cohesive organized criminal groups are far from ubiquitous. Consequently, relatively few states are likely to be able to sustain the public pressure necessary to motivate the creation of controversial institutions. This suggests that we should not expect comprehensive anti-organized crime legal systems to become universal. However, initial reforms should appear with greater frequency.

e. Testable Implications

At this point, there are four additional testable implications of my theory.

4): *Where organized criminal groups are perceived as relatively unified, extensive reform is likely.*

5): *Where organized criminal groups are perceived as relatively decentralized, reform is likely to be more limited.*

6): *Following reform, when the criminal group's or groups' visibility decreases considerably, institutions are more likely to atrophy.*

7): *If institutions threaten politicians, they are likely to be rolled back.*

⁴⁹ For a discussion of this tendency in the Italian context, see COSTANTINO VISCONTI, "LA MAFIA È DAPPERTUTTO". *FALSO!* (3D ED. 2016).

V. Alternative Logics

In this section I present three possible alternative explanations for the emergence of legal institutions to combat organized crime and the evidence that I would expect to see if they are correct.

a. Elite Decision-Making

It is possible that public opinion plays a fairly minimal role in explaining the onset and expansion of legal institutions to combat organized crime. Instead, elite decisionmakers may develop these institutions to respond to problems that they have identified. I identify two means by which elites may direct the adoption of anti-organized crime institutions: decisionmaker learning and party politics.

i. Decisionmaker Learning

Politicians may respond to the threat of organized crime as it emerges, most likely informed by those who are especially close to the problem, such as law enforcement officers. By this logic, legal institutions are less of an outgrowth of popular politics than they are a response to learning on the part of leaders about the scope and scale of organized crime as a threat to the society. Elites may still have ideological disagreements about the appropriate government response to organized crime, but where a threat has been identified by law enforcement, policymakers' debates should center around the type of institution to be adopted, rather than whether to adopt one at all.

If this logic is correct, I would expect to see several outcomes that differ from my theory. First, the timing of institutional development should correspond to the onset of government information about the scope of organized crime, rather than media coverage. Thus, government reports documenting the presence and prevalence of criminal institutions should be a better

predictor of the onset of reform than media coverage of sensational events or public outcry against criminal groups. Shifts in the political balance of power between reformers and anti-reformers should likewise reflect the arrival of such information. Second, there should be little difference in outcome between shifts in public threat perception and the onset of reform. If elite preferences alone are responsible for determining the response to organized criminal groups, there is no reason to suspect that changes in public attitudes should have a meaningful impact on the ultimate decision to adopt reform. Third, the extensiveness of reform should correspond to the demands of institutional actors, rather than public opinion. Law enforcement and prosecutorial bodies' reports about their institutional needs therefore should be better predictors of the degree to which institutionalization occurs than the nature of the group (though these certainly might be correlated).

While elite attitudes are surely important to the development of anti-organized crime legal institutions, I do not believe that they explain as much as my theory does. If decisionmaker learning drives the establishment of legal institutions to combat organized crime, we should expect to see much greater uniformity of such institutions than we do. The threat of organized crime has been shown to be international in its presence and scope, and yet even countries that face considerable organized criminal presence often show an unwillingness to adjust their legal systems to address it. Even within the EU, which ostensibly has taken a somewhat unified approach to this issue, countries with significant, albeit quiescent criminal groups, such as Germany, have been hesitant to undertake reforms despite significant elite pressure to do so. Within countries that do ultimately adopt reforms, official reports on the presence and scope of organized crime often significantly predate the decision to adopt legal reforms to combat these groups. The frequent failure of official reports and legislative commissions to secure the changes

they request suggests that decisionmaker learning alone is not sufficient to explain the onset and expansion of legal institutions to combat organized crime.

ii. Party Politics

A second elite-based explanation is that the development of anti-organized crime institutions is in fact driven by parties rather than the public. In this account, parties or factions within parties have divergent policy preferences, and the ability to establish anti-organized crime institutions is merely a reflection of the distribution of power among these groups. Unlike the decisionmaker learning hypothesis, the party politics hypothesis anticipates that the adoption of reform will be a function of parties' political interests rather than the emergence of new information. In this interpretation, public sentiment matters in some sense at an electoral level, but factions pursue policies based on their own preferences.

If this alternative is correct, I would expect to see identifiable parties or political factions associated with promoting anti-organized crime reform. Moreover, I would expect the adoption of anti-organized crime institutions to correspond closely with the political fortunes of particular parties. Therefore, when reformist factions hold political power, I would expect to see more anti-organized crime institutions being developed, regardless of shifts in public perception. When anti-reform parties hold significant power, I would expect to see efforts to downplay the need for reform, and possibly to reverse reforms that have been established. Of course, political calculations and public opinion still matters to a party-centric view and may constrain parties' activities. For instance, anti-reformers may be hesitant to take action that is perceived as being too soft on crime, particularly where the balance of power among political factions is relatively even, which may allow reformers to make some gains in these times.

This explanation has the potential to be quite powerful. Parties are important institutions in many democratic countries, as they may mediate and aggregate the political preferences of elites and publics. Undoubtedly, the priorities of parties, as well as factions within parties, plays a significant role in determining some of the institutional reforms which do occur. As such, I do not deny that these are key political actors in the development of anti-organized crime institutions, and I would argue that their role should be studied more extensively. However, I argue that their influence is nonetheless secondary to and largely driven by public perception. Where the public becomes convinced of the national threat posed by organized crime, even parties/factions that are hostile to reform often find that it is necessary to accept some institutional development. For instance, the Andreotti faction of the Christian Democracy party in Italy, as well as the Eisenhower and Johnson administrations in the United States, were relatively resistant to anti-organized crime reform. However, these political factions accepted institutional reform in the presence of mounting public concern about organized crime. This suggests that, while political factions may have preferences that are separate from those of the public, public pressure will nonetheless drive parties to accept reform. As such, party preference alone is not sufficient to explain the onset and expansion of legal institutions to combat organized crime.

b. International Pressure

A second explanation for the onset of legal reforms is the presence or absence of international (or, in some cases, supranational), pressure. Organized crime is increasingly a global issue. The UNTOC establishes international obligations on states to establish certain domestic responses to organized crime. The EU has imposed similar obligations on member

states.⁵⁰ The United States has regularly exerted pressure on other countries to take steps to counter their domestic organized criminal organizations.⁵¹ It is difficult, if not foolish, to deny that international influence has played a role in individual nations' responses to organized crime, even at the level of domestic law. It is possible that international pressure, rather than domestic public perception, is most likely to influence the adoption of anti-organized crime institutions. This explanation might make some exceptions for particularly powerful countries. Thus, the United States may respond primarily to domestic pressure, rather than external influence. However, according to this hypothesis, for most other countries, international, rather than domestic, influences determine the adoption of the reforms I seek to explain.

If this explanation is correct, I would expect the onset of legal institutions to be closely related to international attention being paid to a country's organized crime problems. Where a powerful international actor demands that a state take action to repress organized crime, this should lead that state to seek to adopt necessary institutions. This pressure should predict the establishment of institutions regardless of domestic attitudes towards the problem. I would further expect the extensiveness of institutions to be associated with international bodies sustaining pressure for reform on individual states, rather than on public demand to address a threat. If this explanation is correct, I would also expect policymaker debates to focus considerable attention on the proper role of the international actor(s) in the establishment of

⁵⁰ Council Framework Decision (2008/841/JHA), art. 2 requires member states to have either a criminal association offense or criminal conspiracy offense within their penal code. Council Framework Decision 2008/841/JHA of 24 October 2008 on the Fight Against Organised Crime, art 2 (L 300/42). Needless to say, given the EU's supranational structure, such laws directly impact the willingness of states to implement reform.

⁵¹ The best-known examples of US pressure have occurred in Latin America. American concern about the drug war has led the US to become heavily involved in the effort to quash Latin American drug trafficking organizations. However, this is far from the extent of US involvement. The US, under Republican and Democrat administrations, has exerted pressure on nations as far flung as Japan and Canada to take steps to combat organized crime.

domestic law and legal institutions, rather than (or in addition to) the nature of the threat the group itself poses to the state.

I argue that my theory does a better job of explaining the timing and extensiveness of legal institutions. In many nations where meaningful reform is actually implemented, the onset of that reform coincides with changes in domestic, rather than international, pressure. In addition, international pressure does not appear to play an equally significant role in all states that adopt institutional reform. For example, in Italy, which has a particularly robust anti-organized crime regime, international pressure does not appear to have been a particularly significant factor in the adoption of antimafia institutions. Moreover, although international pressure certainly exists, states often seem to be able to resist it when their publics are opposed to anti-organized crime reform.

Nonetheless, I agree that the international pressure hypothesis offers insights into aspects of democracies' fight against organized crime for which my theory cannot fully account. Accordingly, I consider the logic of this explanation at greater length in the conclusion. Though I address it primarily as a competing explanation here, in the conclusion I consider the possibility of evaluating the role of international pressure as an extension of my theory.

VI. Conclusion

This chapter presents a logic of the development of anti-organized crime legal institutions at the national level. I argue that such institutions are often politically difficult to establish. As such, decisionmakers generally should not be expected to create them unless there is considerable public demand that they 'do something' about the problem of organized crime. This insight about the political difficulty of establishing anti-organized crime legal institutions, combined with the pervasive understanding of behaviors associated with organized crime as

matters for ordinary law enforcement, explains why there is variation in the development of such institutions. Far from being ‘low-hanging fruit’ that states are likely to pluck at the first signs of criminal malfeasance, these institutions may be very challenging to create simply because of the degree to which they may increase the power of the national government, pose challenges for due processes, and threaten the interests of corrupt actors.

My theory also presents an understanding of how these challenges may be overcome to allow for the onset of institutional development. I describe the legal institutions that states must pursue if they are interested in enhancing their ability to systematically target criminal groups, namely permissive laws and competent enforcers. The ability of such institutions to pose a threat to organized crime is directly related to their considerable potential power, which explains much of the difficulty in implementing measures as diverse as the Organized Crime Control Act in the United States, the Direzione Nazionale Antimafia in Italy, and the anti-Boryokudan Laws in Japan. The importance of shifts in public perception to the creation of such institutions also sheds light on the importance, to criminal groups as well as institutional actors, of public relations and the impact of public opinion on the ability to achieve particular policy goals. Scholars have long noted the importance of public opinion and visibility to criminals’ behavior, and this theory provides an additional institutionalist account of the ways in which the public may shape organized criminals’ incentives by impacting the incentives of political leaders. It also lays the groundwork for future theories to explain variation in the ways criminal groups actually respond to such shifts.

Finally, I argue that the extensiveness of the reform ultimately realized in a given society is impacted by the nature of the group itself. The decision to adopt change beyond the initial reform depends on the sustained public perception of the threat that organized crime poses, a

function of the structure of the criminal group(s) causing public concern. I argue that criminal groups that are relatively cohesive in structure are more likely to drive demand for reform. In addition to their greater ability to drive sustained public perception of the threat posed by organized crime, these groups are also most susceptible to damage by legal institutions themselves. Thus, paradoxically, the ability of criminal groups to grow to a point of strength sufficient to influence the state to accede to their interests may also provide anti-organized crime reformers with the strongest argument to advocate for the tools needed to dismantle the group.

In the next chapter, I conduct a plausibility probe of my theory in the context of seven democracies outside of my main case studies. In doing so, I provide an overview of the variation in development of anti-organized crime institutions in countries from various regions of the world responding to a diverse array of criminal organizations. I provide a brief description of these cases in order to demonstrate empirically the mechanisms of my theory before moving to an in-depth account of my two main case studies in the subsequent chapters.

Chapter III: A Sample of Legal Institutions Around the World

I. Introduction: A Recap of the Theory

Organized crime has emerged as a topic of considerable international concern. According to the Global Initiative Against Transnational Organized Crime, virtually every region in the world has some level of organized criminal presence.¹ Of course, levels of criminality within states varies considerably.² However, states' legal-institutional responses to crime do not clearly follow the level of criminality within their borders. Thus while Australia and Canada experience roughly similar levels of organized criminality (Australia is ranked 145th in terms of level of criminality, Canada 161st), Australia's system of anti-organized crime institutions is considerably more extensive than Canada's, and indeed similar to that of the United States (ranked 66th).³ By contrast, while India's level of organized criminality is only slightly lower than Italy's (India is ranked 64th, Italy is ranked 53rd),⁴ Italy has an extremely complex and extensive anti-organized crime legal system, while India's is minimal at best.

What explains when countries will begin to develop anti-organized crime legal institutions? This chapter provides a brief overview of the development and non-development of institutions in seven democratic countries. This medium-n approach is intended to test the plausibility of my theory in a range of contexts outside of my main case comparison, thereby controlling for variables my main case selection cannot address while preserving the in-depth

¹ GLOBAL INITIATIVE AGAINST TRANSNATIONAL ORGANIZED CRIME, GLOBAL ORGANIZED CRIME INDEX 2021 (2021).

² For a ranking of criminality by country, *see* GLOBAL INITIATIVE AGAINST TRANSNATIONAL ORGANIZED CRIME, GLOBAL ORGANIZED CRIME INDEX 2021 151-53 (2021)

³ For a ranking of criminality by country, *see* GLOBAL INITIATIVE AGAINST TRANSNATIONAL ORGANIZED CRIME, GLOBAL ORGANIZED CRIME INDEX 2021 151-53 (2021)

⁴ For a ranking of criminality by country, *see* GLOBAL INITIATIVE AGAINST TRANSNATIONAL ORGANIZED CRIME, GLOBAL ORGANIZED CRIME INDEX 2021 151 (2021)

case analysis of a qualitative methodological approach. I select a diverse array of democratic countries from around the world, discuss their experiences with organized crime, and trace institutional development in each of them. Though this analysis is not conducted in the same degree of depth as my Italian and American case studies, it represents an important cross-national plausibility probe of my argument. In addition, it offers an opportunity to highlight the diversity of institutions that countries have developed to combat organized crime.

I argue that the development of anti-organized crime legal institutions is neither inevitable nor easily obtained. Initially pursued by a minority of decisionmakers, these reforms are often controversial. The ability of the reformers to achieve their goal relies upon sustained shifts in public perception of the threat of organized crime from a local issue to a national threat. Where such a shift occurs, democratic pressures force decisionmakers out of the neutral camp and into the pro- or anti-reform camps, creating an opening for reformers to secure initial institutional development. However, for full development (permissive laws + competent enforcers), reformers must sustain public attention and sense of national threat. This is most likely where the group being targeted is perceived as a relatively unified, cohesive entity.

If my theory is correct, I expect sustained campaigns to establish anti-organized crime reform met by significant pushback, with concerns varying depending on the national context. At the outset of my period of study, I expect to see evidence that the public sees crime as an issue relegated to certain locations or demographic groups. Though committed reformers should be identifiable early on, the majority of national level decisionmakers are expected to be neutral or hostile to the idea of organized crime as an issue demanding significant national institutional development. I further expect to see shifts in public attitudes as a result of high-profile events that bring the issue of organized crime to the center of the national conversation. These events

will meet five criteria. 1) They will affect or implicate national interests, including important national figures or parties and will receive considerable attention from the national press.⁵ 2) The national government will be seen as responsible for addressing the event in question. 3) These events will be surprising or unexpected. 4) Public outrage will be nonpartisan and distributed across social strata.⁶ 5) The criminal group's involvement in the event will be perceived as relatively unambiguous.

A single event may not lead to dramatic reform. However, significant high-profile events that do not by themselves shift public threat perception may lead to institutional tweaks, or small-scale changes to existing legal structures. If public focus on organized crime is sustained, these tweaks may lay a foundation for larger reforms over time. Therefore, I expect to see the most significant institutional development following a sustained period of media focus on organized crime. Conversely, where public attention on organized crime wanes, I expect institutional development to halt, and possibly even be rolled back. Furthermore, I argue that reformist elites play a critical role in shaping public opinion. As such, I expect to see reformers actively promoting a narrative of organized crime as a national threat as public attention focuses on this issue. In this context, I expect neutral decisionmakers to face increased pressure to take a stand on this issue. I expect to see shifts in the discourse by decisionmakers as attention builds, with leaders who had previously paid little attention to organized crime or who objected to focusing on it beginning to acknowledge the need to combat it at a national level, creating an opening for institutional development.

⁵ In some cases, language limitations prevent me from fully assessing the press response.

⁶ Assessing the distribution across outrage within a population requires considerable knowledge of the social context. In analyzing this variable in these cases, I point to significant social cleavages where I find evidence of them. However, language and data limitations make it quite possible that I may not have fully captured the nuances of social attitudes. Further analysis should be conducted by those with greater case-specific knowledge.

My theory anticipates that the most extensive institutional development is likely to occur where public threat perception is sustained over time. I expect that this is particularly likely to occur where the criminal group(s) driving public threat perception is (are) perceived as relatively cohesive. This is because cohesive organizations generally may be seen as capable of posing a credible competition with the state, and therefore demand the greatest national response. Consequently, I expect to see efforts to develop significant institutions accompanied by political campaigns on the issue of fighting organized crime as a national law and order priority. I also expect to see press and leadership rhetoric emphasizing the unity, strength, and organization of the criminal group. As this national threat perception is sustained, I expect it to become increasingly difficult for leaders to maintain an anti-reform position, leading hitherto anti-reform leaders to accept reform only at this stage.

Institutions may also fail over time. I argue that where public attention to organized crime wanes considerably, institutions may be allowed to weaken, in what I call institutional atrophy. Where public and media attention to organized crime falls considerably, I expect to see evidence of such weakening. This may include permissive laws being unused or reductions in funding and manpower to competent enforcement agencies. However, where the cost of maintaining the institutions poses a greater threat to elites than dismantling them, I expect these institutions to be dismantled. This may occur for instance where the criminal group is particularly strong relative to the state or where the institutions themselves are being used to target actors within the state.

In this chapter, I trace the theoretical mechanisms outlined above in seven abbreviated case studies, though I focus primarily on explaining the onset of institutional reform.⁷ The

⁷ The cases do broadly (though not fully) conform to my expectation that states facing more cohesive groups will develop more extensive institutions. However, due to resource constraints, I am not able to trace the development of institutions sufficiently to have confidence in my ability to adequately assess this part of the theory.

chapter proceeds as follows. Section II explains my case selection and methodological approach. Section III presents and analyzes the case studies in turn. Section IV analyzes the cases in the context of my theory and concludes.

Figure 3.1: Reform Onset

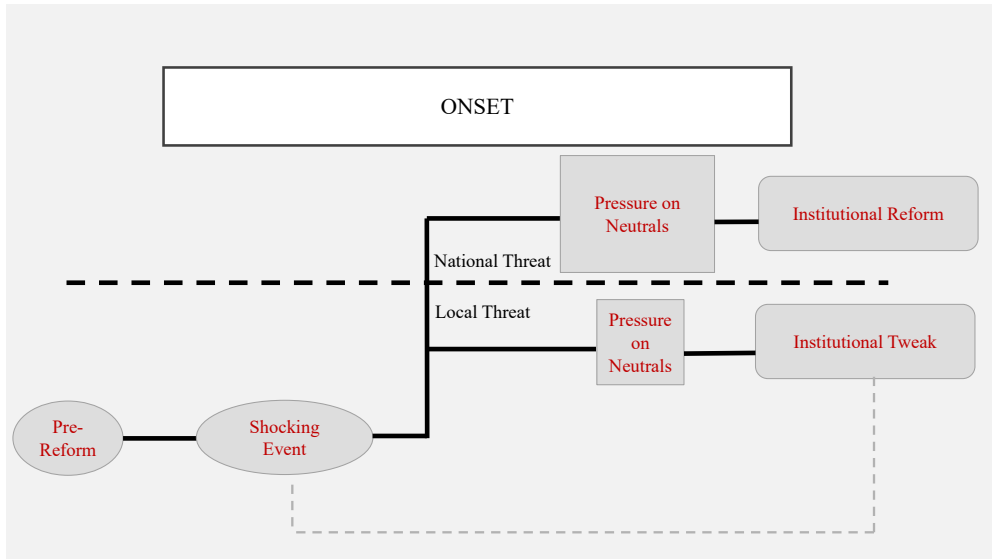
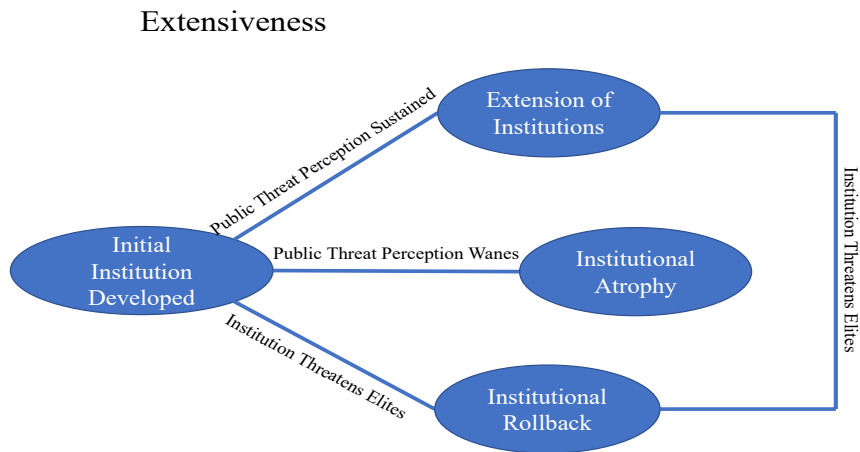


Figure 3.2: Reform Extensiveness



II. Case Selection and Methodology

a. Case Selection

In this chapter, I analyze the following countries: Australia, Canada, Colombia, Germany, India, Japan, and South Africa. In selecting cases for a medium-n analysis, I aim to draw on a representative sample of democracies, including countries from as many regions of the world as possible. This sample includes countries in Europe, North and South America, Africa, Oceania, and both South and East Asia. Within these regions, I selected prominent democratic states that have a documented history of organized criminal activity. In doing so, I sought out countries that had experience dealing with disparate types of criminal groups. Both Australia and Canada have struggled with prominent biker gang conflicts, and Canada has also dealt with the Quebec-based offshoot of the American Mafia. Colombia is home to some of the world's most powerful drug cartels, and much of its late twentieth century political activity was shaped by its experience combating drug traffickers. Germany has faced ethnic gangs since the end of the Cold War, and more recently has become a center for Italian mafia groups. India has been characterized primarily by urban gangs engaged in illicit trade. Japan has perhaps the longest tradition of organized crime of any country considered, as its yakuza mafia is believed to have been present since the Tokugawa Shogunate (1603-1868). The yakuza has been a strong and uniquely visible part of Japanese life since the end of World War II. South Africa has faced a number of violent street gangs, which have been particularly powerful since the end of the apartheid era.

The cases also reflect a diverse array of government and legal structures.⁸ This includes a mixture of presidential and parliamentary democracies, federalist and non-federalist governing structures, and civil and common-law jurisdictions. These states also have very different relationships with major international actors. For instance, Colombian politics has been subject to considerable U.S. interference, while in Germany, the EU has tended to place pressure on the

⁸ For a brief overview of the political and legal systems of each country, *see* Appendix A.

country's domestic legal system. Furthermore, the selection of cases reflects varying levels of development and corruption by organized criminals.⁹

b. Methodology

I trace the history of institutional development in each of the countries of interest using a combination of primary and secondary historical materials. The case studies are brief, intended to serve as a plausibility probe for my theory. As such, I do not have the extensive archival or interview data for these cases that I do for the Italian and American cases. Instead, I rely on publicly available material, including books and journal articles, newspapers, and in some cases government documents.¹⁰ I aim to include statements from representatives of majority and opposition parties, as well as various law enforcement bodies, where relevant. I primarily consult newspapers that have a national reach, and which are therefore best able to capture national, rather than purely local attitudes.

In tracing the history of organized crime within my cases, I identify events that my theory would expect to impact public opinion with regards to the problem of criminality, and I evaluate the discussion of crime presented by the media before and after these events. I am particularly interested in whether national news sources speak of organized crime as a local or national

⁹ For instance, while as of 2020, Japan had a GDP of nearly \$5 trillion and an extensive history of criminal involvement in politics, Canada had a GDP of nearly \$1.65 trillion and little history of organized criminal corruption of its governing bodies, and Colombia's GDP was only about \$271 billion and the country has an extensive history of organized criminals corrupting state actors. *GDP (current US\$)-Japan*, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=JP> (accessed 21 Feb. 2022); *GDP (current US\$)-Canada*, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=CA> (accessed 21 Feb. 2022); *GDP (current US\$)-Colombia*, THE WORLD BANK, <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=CO> (accessed 21 Feb. 2022).

¹⁰ This is somewhat contingent on the language of publication. I am only able to competently read in English and Italian. In four countries in my case study (Australia, Canada, India, South Africa), English is the national language, or else is so widely spoken that newspaper articles and government documents are published in English. Language limitations reduce my ability to review primary source material in the other three cases. I consult English language sources pertaining to these countries, while recognizing that this is far from ideal. More extensive analyses should explore the political processes of non-English or Italian speaking countries more closely by reviewing deliberations and press coverage of these countries in their native languages.

threat. I also consider the statements made by political and law enforcement leaders with regards to the problem of organized crime in order to assess their response to the public. Where possible, I attempt to demonstrate the political impact of organized crime by showing how political leaders responded to key events, both in public statements and legislative/bureaucratic activity.¹¹ In some cases, legal scholars were influential in arguing for or against particular reforms. Contemporary legal scholarship is also broadly reflective of the debates that were had at elite levels with regard to proposed legislation. I therefore consider legal scholarship contemporary with the reform in question to be a source that can shed light on the reasoning of decisionmakers at the time. In considering the public statements made by leaders, I look for statements describing the criminal groups that reform is designed to combat, as well as the measures that should be expected to reduce these groups' power. In cases of rollback, I consider public justifications of rollback to be meaningful, though not dispositive of political decisionmakers' true purpose.¹²

The results presented can only be considered a preliminary overview of a subject that truly calls for extensive archival analysis, grounded in deep knowledge of the language and legal systems of the countries being analyzed. In particular, I find that explanations of the extensiveness of institutional development rely on an in-depth understanding of the legal institutional context of individual nations. Assessing the growth of institutions and the political processes which allow (or disallow) that growth often relies on an exploration of legal technicalities, judicial influence, and bureaucratic politics. In some cases, this requires examining records in their original language. Although this information may sometimes be

¹¹ Public statements, particularly those of elected officials, are likely impacted by assessments about what the public wants to hear or how the elites wish to shape public opinion. As such, I do not consider them to be representative of a given official's true preferences.

¹² As with other public statements, I read justifications of rollback to be indicative of the kind of reasoning politicians believed the public was willing to accept as justification for the adjustment of anti-organized crime legal institutions.

gathered through publicly available sources, in many instances deep case knowledge is necessary in order to analyze the growth of institutions reliably. By contrast, it is possible to evaluate the connections between the onset of reform and the occurrence of surprising events even in the absence of this deep knowledge. Thus, while I apply my theoretical mechanisms to the onset of reform in this chapter, I am more circumspect in my analysis of the extensiveness of reform. I present information regarding the extensiveness to which institutions were developed in each case, but refrain from a final assessment of whether the cases fit with my theoretical mechanisms in regards to extensiveness. Yet while I acknowledge the limitations of the analysis presented in this chapter, as a survey of institutions in several prominent democracies around the world, it nonetheless provides a useful test for the plausibility of my theoretical framework.

III. Cases¹³

In this section I will discuss each of the seven cases that I consider and assess the applicability of my theory. I present an overview of the criminal context. I then trace each nation's history of development or non-development of legal institutions, followed by an analysis of the consistency of the case with my theory.

a. Australia

Australia is a case of strong reform. In response to a series of government inquiries into mafia-style crimes in the 1970s and early 1980s, the state developed a specialized investigative unit, the National Crime Authority (*competent enforcement*),¹⁴ as well as a series of increasingly powerful asset forfeiture laws (*permissive laws*). Concern about mafia groups faded in the last years of the twentieth century, to be replaced by fears of motorcycle gangs such as the Hell's Angels. Though these gangs were originally seen as fragmented, these was a growing consensus

¹³ Timelines for each case can be found in Appendix B.

¹⁴ Later replaced by the Australian Crime Commission and the Australian Criminal Intelligence Commission.

by the early 2000s that they had become more sophisticated and well-organized. This, combined with high-profile biker gang violence at the Sydney Airport led to the establishment of the Serious and Organised Crime Act, which outlawed participation in criminal organizations (*permissive law*).

i. [Organized Crime in Australia](#)

The nature of organized crime in Australia has shifted over the years. In the 1920s, Sydney was terrorized by the largely female-led “razor gangs.” Named for their weapon of choice and tendency to deliberately disfigure their opponents, these street gangs controlled much of the prostitution, cocaine, and illicit liquor trade in the Sydney area.¹⁵ In addition, ethnically based gangs have been present since the nineteenth century. Initially composed primarily of Australians of British, Irish, and Scottish ancestry, the demographic makeup of these gangs diversified as a result of migrations that occurred in the aftermath of World War II. The Calabrian ‘Ndrangheta and Russian mafia have established a presence in Australia, as have Vietnamese, Chinese, Colombian, and Middle Eastern groups.¹⁶ Gangs often developed close ties with police, politicians, and union figures, particularly in the populous state of New South Wales.¹⁷ Although politicians of both of the major parties were known to have ties to criminal groups, urban gangs’ involvement in the country’s powerful labor unions tended to result in somewhat stronger ties with the left-wing Labor Party.¹⁸

¹⁵ For a discussion of the razor gangs, see LARRY WRITER, *RAZOR: A TRUE STORY OF SLASHERS, GANGSTERS, PROSTITUTES AND SLY GROG* (2002).

¹⁶ Julie Ayling and Rod Broadhurst, *Organized Crime Control in Australia and New Zealand*, in *THE OXFORD HANDBOOK OF ORGANIZED CRIME* 612 (Letizia Paoli ed., 2014); Philip Jenkins, *The Politics of Organized Crime in Australia: A Comparative View*, 12 *J. OF CRIME AND JUST.* 103 (1989). Although Australian popular media often spoke in terms of a “mafia” threat, there is little evidence that any single organized hierarchy truly existed in Australia.

¹⁷ Philip Jenkins, *The Politics of Organized Crime in Australia: A Comparative View*, 12 *J. OF CRIME AND JUST.* 103 (1989).

¹⁸ Philip Jenkins, *The Politics of Organized Crime in Australia: A Comparative View*, 12 *J. OF CRIME AND JUST.* 103 (1989).

In addition to street gangs, outlaw motorcycle gangs (OMCGs) have a strong presence on the Australian criminal scene. OMCGs originated in the U.S. in the 1940s but spread to several other countries over the course of the 1960s and 1970s, including Australia. There are dozens of OMCGs in Australia alone. Local branches of major OCMGs tend to have considerable autonomy.¹⁹ However, chapters tend to have similarly role-defined, hierarchical structures, although there is variation among gangs.²⁰ In Australia, OMCGs have been associated with certain criminal trades, particularly the production and distribution of methamphetamine, the illegal firearms trade, and money laundering.²¹ They have also been associated with considerable violence, including several high-profile massacres (discussed below).²²

ii. Onset

a. Law enforcement campaigns for reform

Australian public perception of the problem of organized crime shifted considerably over the course of the second half of the twentieth century. In 1963, a series of murders in Melbourne

¹⁹ Christopher Dowling et al., *The Changing Culture of Outlaw Motorcycle Gangs in Australia*, TRENDS & ISSUES IN CRIME AND CRIM. JUST. 1 (Feb 2021).

²⁰ Mark Lauchs and Jarrod Gilbert, *Outlaw Motorcycle Gangs*, in THE PALGRAVE HANDBOOK OF AUSTRALIAN AND NEW ZEALAND CRIMINOLOGY, CRIME AND JUSTICE 159 (Antje Deckert and Rick Sarre eds., 2017). This was a model set by the Hell's Angels, arguably the most famous OMCG internationally. *See also* Christopher Dowling et al., *The Changing Culture of Outlaw Motorcycle Gangs in Australia*, TRENDS & ISSUES IN CRIME AND CRIM. JUST. 1 (2021).

²¹ Anthony Morgan et al, *Australian Outlaw Motorcycle Gang Involvement in Violent and Organised Crime*, TRENDS & ISSUES IN CRIME AND CRIM. JUST. 1 (2020); *Organised Crime in Australia 2017*, AUSTRALIAN CRIMINAL INTELLIGENCE COMMISSION, <https://www.acic.gov.au/publications/unclassified-intelligence-reports/organised-crime-australia-2017> (accessed 21 Feb. 2022) ; Ellie Sibson, *Tax Office Targets Biker Gang Members in Nationwide Money Laundering Crackdown*, ABC NEWS, May 17, 2017.

²² Though members of OMCGs committed crimes at a higher rate than non-members, they were not initially believed to be organized crime per se. Mark Lauchs et al, OUTLAW MOTORCYCLE GANGS: A THEORETICAL PERSPECTIVE, Ch. 2 (2015). Indeed, there is still a robust debate among scholars as to whether OMCGs should truly be considered criminal organizations or rather organizations of criminals. *See e.g.*, Anthony Morgan et al, *Australian Outlaw Motorcycle Gang Involvement in Violent and Organised Crime*, TRENDS & ISSUES IN CRIME AND CRIM. JUST. 1 (2020); Mark Lauchs and Zoe Staines, *An Analysis of Outlaw Motorcycle Gang Crime: Are Bikers Organised Criminals?*, 20 GLOBAL CRIME 69 (2019); Mark Lauchs et al, OUTLAW MOTORCYCLE GANGS: A THEORETICAL PERSPECTIVE, Ch. 2 (2015); Arthur Veno and Edward Gannon, THE BROTHERHOODS: INSIDE THE OUTLAW MOTORCYCLE CLUBS: FULL THROTTLE EDITION (2010); Thomas Barker, BIKER GANGS AND ORGANIZED CRIME (2d ed. 2014).

led the Victoria government to request help from the U.S. State Department. The resulting investigation culminated in a report documenting the extensiveness of local Calabrian organized crime syndicates in Australia. The report suggested that, left unchecked, these groups were likely to develop into powerful criminal empires akin to the American Mafia.²³ This argument was further bolstered by a series of royal commissions in the 1970s. Concerns about police corruption and the encroachment of American organized crime affiliates in Australian clubs led to the 1973 Moffitt Commission.²⁴ The 1977 disappearance of anti-drug campaigner Donald Mackay led to the establishment of the Woodward Commission, which found evidence of a Calabrian secret society that was involved in the drug trade, as well as money laundering and other crimes.²⁵ The 1977 Williams Commission brought together representatives of the Victoria, Tasmania, Western Australia, and Queensland governments, as well as the Commonwealth Government, to confirm the existence of organized crime. In 1981, the Commonwealth, along with the Victoria, NSW, and Queensland governments established the Stewart Commission to investigate the activities of Terry “Mr. Big” Clark, the head of the Mr. Asia drug syndicate.²⁶ In 1980, the government

²³ Philip Jenkins, *The Politics of Organized Crime in Australia: A Comparative View*, 12 J. OF CRIME AND JUST. 103 (1989). The accuracy of Cusack’s assessment has been called into question, and may well have been shaped by his own prior experience dealing with rising fears of Mafia crimes in the U.S.

²⁴ Evidence of police corruption was found in NSW in part as a result of the Moffitt Commission’s Inquiry. *NSW Sets Up Police Review Body*, CANBERRA TIMES, January 25th, 1979, at 10. Justice Moffitt concluded that there was a real danger of organized crime infiltrating Australia and recommended an improvement in police investigative methods and called for the establishment of special anti-organized crime police squads. *Third Evaluation of the National Crime Authority, Appendix 4*, PARLIAMENT OF AUSTRALIA (1993) https://web.archive.org/web/20050329200040/http://www.aph.gov.au/Senate/committee/acc_ctte/completed_inquiries/1996-99/3rd-eval/report/e04.htm

²⁵ *Third Evaluation of the National Crime Authority, Appendix 4*, PARLIAMENT OF AUSTRALIA https://web.archive.org/web/20050329200040/http://www.aph.gov.au/Senate/committee/acc_ctte/completed_inquiries/1996-99/3rd-eval/report/e04.htm. The Woodward Commission has been criticized for its tendency to over-emphasize the power and hierarchy of organized criminal groups, particularly those associated with ethnic minority groups. See Alfred McCoy, *DRUG TRAFFIC: NARCOTICS AND ORGANIZED CRIME IN AUSTRALIA* (1980).

²⁶ DON STEWART, ROYAL COMMISSION OF INQUIRY INTO DRUG TRAFFICKING 504 (1983) (“It can be seen from the above that the problems posed for law enforcement by organized criminal activity are considerable. The criminal law is not designed presently to facilitate the detection and prosecution of organized crime. Investigations are dependent upon the identification of individual offences and may be long term, demanding and complex. Resources, powers, procedures and techniques are inadequate to deal with the problem. Law enforcement agencies are constrained by territorial and statutory limitations.”). The Stewart Commission issued its report in 1983, concluding

established the Royal Commission on the Activities of the Federated Ship Painters and Dockers Union (better known as the Costigan Commission), which investigated criminal infiltration of the powerful Painters and Dockers Union.²⁷

The earliest calls for institutional reform came from federal law enforcement. Jenkins (1989) argues that this was largely driven by Australian police's growing contact with American law enforcement agencies, which were focused on the problem of Mafia-style crime at the time. Both Jenkins and Hall (1986) have documented the divisions that existed between different police bureaucracies in Australia at the time. State police, particularly in Victoria and NSW, were the most powerful and well-established law enforcement bodies in Australia at the time but were also seen as the most corrupt. As such, there was considerable mistrust between State and Commonwealth police forces.²⁸ Jenkins argues that Commonwealth Police actively sought to carve out a distinct role, preferably at the expense of their rivals in the Federal Narcotics Bureau. By 1981, the Australian Bureau of Criminal Intelligence was calling for the establishment of a national anti-organized crime policing agency as well as expansion of its own powers.²⁹ Although the police had advocated for increased powers to fight crime since at least the 1960s, these efforts were unsuccessful.³⁰ Organized crime, as a large-scale national threat, offered an ideal opportunity for them to establish such a role. In addition, by the early 1980s, members of

that Australian law enforcement lacked several tools to adequately combat the growing problem, including laws and law enforcement that were not designed to address group criminality.

²⁷ Costigan concentrated on the state of Victoria. FRANK COSTIGAN, FINAL REPORT: ROYAL COMMISSION ON THE ACTIVITIES OF THE FEDERATED SHIP PAINTERS AND DOCKERS UNION VOLUME 1 3 (1984)

²⁸ 'Unbelievable Mistrust,' CANBERRA TIMES, Sept. 7, 1978.

²⁹ *Organised Crime 'Too Much for One State,'* CANBERRA TIMES, Sept. 10, 1981.

³⁰ *Police Want Phone Taps,* CANBERRA TIMES, June 22, 1967; *Phone-Tap Power Wanted by Federal Police,* CANBERRA TIMES, Oct. 18, 1979.

the Liberal party, including Prime Minister Malcolm Fraser, were increasingly advocating for the creation of a crime control commission.³¹

b. The Costigan Commission and rising public perception of crime

The tide began to turn in the reformists favor as the findings of the Costigan Commission began to come out. *The Canberra Times*, which was wary of reform, noted that the series of commission reports were building pressure on the government to adopt it nonetheless.³² Unlike previous Commission Reports, the Costigan Commission was a national, rather than a state commission. Responsible for examining criminal corruption of the Painters and Dockers Union, the Commission's investigation led to examination of criminal ties within the government itself. Significantly, the Commission's investigation of business leaders revealed that some individuals with ties to organized crime also maintained close relationships with leading figures in the Labor Party, including Prime Minister Bob Hawke. Hawke had been criticized for his tepid support of the Commission's work and his efforts to end it as soon as possible.³³ Opposition politicians took the opportunity to decry the Labor Party as being at best soft on crime, and at worst in league with it.³⁴ Indeed, when Hawke announced an early election in October of 1984, organized crime and corruption became major campaign issues, with the opposition arguing that these scandals made Labor "totally unsuitable to government."³⁵

³¹ *Liberals Want Crime Control Commission*, CANBERRA TIMES, July 28, 1980; *Watch on Crime*, CANBERRA TIMES, May 1, 1982.

³² *Preventing Crime*, CANBERRA TIMES, June 15 1983.

³³ Cary Bennett, *The Emergence of Australia's National Campaign Against Drug Abuse: A Case-study in the Politics of Drug Control* 32 J. OF AUSTRALIAN STUD. 309, 315 (2008).

³⁴ *Delay Over Crimes Body Defended*, CANBERRA TIMES (19 Oct. 1983); *Embattled Australian PM Calls Election*, THE GAZETTE (9 Oct. 1984).

³⁵ From a statement by leader of the federal National Party, Ian Sinclair. Quoted in Cary Bennett, *The Emergence of Australia's National Campaign Against Drug Abuse: A Case-study in the Politics of Drug Control* 32 J. OF AUSTRALIAN STUD. 309, 315 (2008).

The Costigan Commission called for the establishment of a National Crime Authority, which would be a dedicated police force specializing in collecting, analyzing and disseminating intelligence, leading task forces, and investigating organized criminal activity.³⁶ Some politicians, particularly within the Labor Party, continued to express concern that such a force would threaten civil liberties.³⁷ So did the Australian Law Commission, an independent statutory body that conducts reviews into Australian law, as well as the Australian Council of Civil Liberties.³⁸ Australian politicians noted that the Commission had created a unique opportunity to establish such an authority. In its report on the National Crime Authority Bill, the Senate Standing Committee on Constitutional and Legal Affairs explicitly linked the need for the NCA to the impact that the Royal Commissions had had on Australian perception of the threat of organized crime. The report stated that the Royal Commissions

“have resulted in a community perception that there are in Australia certain types of criminal activity that existing law enforcement structures are not equipped or able to prevent. There is also a perception that resort to transient royal commissions into publicly notorious allegations has not provided an adequate solution. These perceptions have led to calls for the establishment of a standing body capable of providing an effective national response to these types of criminal activity.”³⁹

The importance of the timing was reflected in the committee’s debates as well, with Independent Senator Brian Harradine, noting that the bill

“is an expression of the view of the people, based on their moral values and their moral indignation about the undermining of the values that they consider essential for a democratic society. But the law must also have a protective role. As I said initially, we are establishing a national crime authority and everybody in this chamber realises that this would have been impossible 10 years ago. Senator Crichton-Browne [Liberal Party]

³⁶ *National Crime Authority Act 1984* (Austl.); Monique Mann, *New Public Management and the ‘Business’ of Policing Organised Crime in Australia*, 17 *CRIMINOLOGY AND CRIM. JUST.* 382 (2017).

³⁷ *Will a National Crimes Commission Cure the Cancer?* *TRIBUNE* (19 Oct. 1983); *Problems Seen in Crimes Body Concept*, *CANBERRA TIMES* (July 29, 1982)

³⁸ *Costigan Warns of Crime Jungle*, *CANBERRA TIMES* (July 29, 1983); *Most Serious Threat to Civil Liberties: Judge* *CANBERRA TIMES* (July 29, 1983)

³⁹ SENATE STANDING COMMITTEE ON CONSTITUTIONAL AND LEGAL AFFAIRS, *THE NATIONAL CRIME AUTHORITY BILL 1983 1.2-1.3* (1984).

suggested that it might be impossible in another 10 years, so we are getting it off the ground now because of the concern among the populace.”⁴⁰

c. The National Crime Authority and its Successors

In June 1984, the Australian Parliament passed the National Crime Authority Act, establishing the National Crime Authority. The NCA was a competent enforcement agency—responsible for investigating organized crime in coordination with state police,⁴¹ the NCA was endowed with special powers beyond those of any other police agency in Australia at the time. This included the ability to conduct inquisitorial style hearings and summon witness as well as removing the privilege against self-incrimination as a basis for refusing to procure a statement or evidence during an investigation.⁴² The NCA operated for nearly twenty years. However, it was widely criticized for failing to effectively coordinate with other police departments as well as failing to meet performance goals. The NCA was ultimately replaced in 2003 by the Australian Crime Commission, which combined the NCA, Australian Bureau of Criminal Intelligence and the Office of Strategic Crime Assessments. In 2016, the the Australian Crime Commission merged with CrimTrac, an agency responsible for information-sharing among law enforcement bodies. The new agency, which continues to be active, is known as the Australian Criminal Intelligence Commission.⁴³

iii. Extensiveness

In addition to specialized policing, Australia established a system of asset confiscation for dealing with organized crime. Early forfeiture legislation was passed in response to the

⁴⁰ 104 SENATE OFFICIAL HANSARD, COMM. DEBATES, NATIONAL CRIME AUTHORITY BILL 1983, at 2605 (6 June 1984), <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=CHAMBER;id=chamber%2Fhansards%2F1984-06-06%2F0063;query=Id%3A%22chamber%2Fhansards%2F1984-06-06%2F0051%22> (accessed 3 Mar. 2022).

⁴¹ The NCA was not limited to organized crime in its mandate, though that was certainly its main *raison d’être*.

⁴² MONIQUE MANN, *POLITICISING AND POLICING ORGANISED CRIME* (2019)

⁴³ AUSTRALIAN CRIMINAL INTELLIGENCE COMMISSION, <https://www.acic.gov.au/> (accessed 21 Dec. 2021)

reports of the Moffitt and Williams Commissions. In 1977 the government passed Section 229A of the Customs Act 1901, creating a civil forfeiture regime.⁴⁴ This measure was generally seen as overly restrictive and inadequate for combatting organized crime, as it placed the burden of proof on the government to justify the seizure of assets.⁴⁵ Liberalization of the asset forfeiture regime was seen as critical by anti-organized crime reformers, and particularly the leaders of the various Royal Commissions.⁴⁶ Justice Costigan argued that “the most successful method of identifying and ultimately convicting major organized criminals is to follow the money trail.”⁴⁷ In 1987, Parliament passed the Proceeds of Crime Act. This law facilitated efforts to target criminal finances, but was limited in its applicability by the decision to adopt the conviction-based approach that had been established in the UK (requiring that the individual whose assets were to be seized first have a criminal conviction), as opposed to the civil model used in the U.S., which did not require conviction.⁴⁸ In 2002, Parliament adopted the 2002 Proceeds of Crime Act, which allowed for non-conviction based forfeiture in some circumstances.⁴⁹

Beginning in the mid 2000s, the Australian concerns regarding organized crime began to shift. Rather than emphasizing syndicated, ethnically based “mafia-style” crime, the focus began to turn to outlaw motorcycle gangs. OMCGs have a long history of violence and criminal

⁴⁴ This law was extremely weak, as it required the government to prove the nexus between criminal activity and its proceeds. The law was amended in 1979 to remove this requirement. David Lusty, *Civil Forfeiture of Proceeds of Crime in Australia*, 5 J. OF MONEY LAUNDERING CONTROL 345 (2002).

⁴⁵ This provision has had some successes, including the confiscation of \$6.9 million from Bruce Cornwell in 1989. David Lusty, *Civil Forfeiture of Proceeds of Crime in Australia*, 5 J. OF MONEY LAUNDERING CONTROL 345 (2002).

⁴⁶ Justice Moffitt was particularly emphatic on this point. David Lusty, *Civil Forfeiture of Proceeds of Crime in Australia*, 5 J. OF MONEY LAUNDERING CONTROL 345 (2002).

⁴⁷ David Lusty, *Civil Forfeiture of Proceeds of Crime in Australia*, 5 J. OF MONEY LAUNDERING CONTROL 345 (2002).

⁴⁸ David Lusty, *Civil Forfeiture of Proceeds of Crime in Australia*, 5 J. OF MONEY LAUNDERING CONTROL 345 (2002).

⁴⁹ MARCUS SMITH AND RUSSELL G. SMITH, EXPLORING THE PROCEDURAL BARRIERS TO SECURING UNEXPLAINED WEALTH ORDERS IN AUSTRALIA (2016). In 2011, the Criminal Assets Confiscation Taskforce was established to coordinate asset confiscation proceedings across the Commonwealth. Relying on specialized investigators, this can be considered an example of the further development of Australian competent enforcement.

behavior in Australia. High-profile violent events, such as the 1984 Milperra Massacre shootout, have garnered them considerable press attention at various times. However, these groups were not seen as major players in the world of organized crime.⁵⁰ Though their involvement in criminal activities, including drug trafficking, was acknowledged, they were primarily seen as disorganized groups of bandits.⁵¹ This changed in the mid to late 2000s, when the sophistication of OCMGs came sharply to the fore. In 2009, a fight between rival gangs over a territorial dispute took place in the Sydney Airport, resulting in one member being beaten to death. The willingness of biker gangs to carry out killings in such a public venue was seen as a sign of OCMGs' growing boldness. Increased media attention to the problem of OCMGs led to a growing consensus that these groups were not only violent, but increasingly disciplined, well-organized, and powerful in the world of organized crime.⁵²

In response to the rise in biker violence, many states enhanced the investigative powers of police combatting organized crime.⁵³ In 2010, the national parliament passed the Crimes Legislation Amendment (Serious and Organised Crime Act) (No. 2) 2010, which created a new offense for participation by individuals in criminal groups in relation to crimes having a federal aspect.⁵⁴ This legislation is not as capacious as some of the state legislation or laws passed in

⁵⁰ MARK LAUCHS ET AL, *OUTLAW MOTORCYCLE GANGS: A THEORETICAL PERSPECTIVE* (2015).

⁵¹ Stephen Monterosso, *From Bikers to Savvy Criminals. Outlaw Motorcycle Gangs in Australia: Implications for Legislators and Law Enforcement*, 69 CRIME, L. & SOC. CHANGE 681 (2018)

⁵² Stephen Monterosso, *From Bikers to Savvy Criminals. Outlaw Motorcycle Gangs in Australia: Implications for Legislators and Law Enforcement*, 69 CRIME, L. & SOC. CHANGE 681 (2018). It is worth noting that some, such as Lauchs et. al (2015), dispute the idea of OCMGs as a criminal enterprise, but instead see them as organizations with a high number of criminals. As I am most concerned with how the OCMGs were portrayed to the Australian public, I am agnostic as to the best classification of the OCMGs.

⁵³ Julie Ayling, *Pre-emptive Strike: How Australia is Tackling Outlaw Motorcycle Gangs*, 3 AM. J. OF CRIM. JUST. 250 (2011).

⁵⁴ Julie Ayling, *Pre-emptive Strike: How Australia is Tackling Outlaw Motorcycle Gangs*, 3 AM. J. OF CRIM. JUST. 250 (2011).

other countries. Nevertheless, in making membership in criminal organizations a crime, it does meet my definition of a permissive law.⁵⁵

Table 3.1: Australia Onset

Australia		
	State Commissions	Costigan Commission
Affect/Implicate national interests and receive considerable press attention		X
National government responsible		X
Surprising/Unexpected	X	X
Nonpartisan/Distributed across social strata	X	X
Criminal group's involvement unambiguous	X	X
Outcome	Section 229A of the Customs Act 1901 (early civil forfeiture)	National Crime Authority

iv. [Analysis](#)

The Australian experience is consistent with my theory. The shift in public perception of organized crime from a local problem based mostly in Sydney and Melbourne to a national threat drove the country's first wave of anti-organized crime legislation, including the creation of the NCA (later the the Australian Crime Commission) and early asset forfeiture statutes. It is likely that the series of Royal Commissions had a cumulative effect in creating the sense of threat, but the Costigan Commission seems to be particularly important in driving legislative change at the national level. The Costigan Commission reports fits my expectations regarding perception-shifting events. 1) The Commission was a national investigative body whose findings implicated

⁵⁵ Australia's federal system and emphasis on state control of criminal procedure gives greater importance to state legislation than might be the case in some other contexts.

leading national figures such as Bob Hawke, and established links between organized crime and the legitimate economy, as well as key political institutions. It also received attention from the national press. 2) The Senate reports from the time suggest that the Australian public supported a permanent national solution to the problem. 3) Given the series of commission reports that had existed before, the existence of organized crime was not new information, but the extent of corruption appears to have been surprising. 4) Public outrage appears to have been relatively nonpartisan and distributed across social strata, as both Liberal and Labor politicians felt pressure to support reform. 5) Organized criminal involvement was perceived as relatively unambiguous.

Yet while the criminal groups that were the subject of media attention were often linked with the American Mafia and portrayed as similarly cohesive, these organizations were in fact quite ethnically diverse and could hardly be called unified structures. Indeed, the trend in Australia, as elsewhere, was towards more fluid criminal structures.⁵⁶ With the rise of OCMGs, and particularly with the shift in perception of these groups as organized and cohesive criminal enterprises, Australia experienced a second wave in institutional development. This included the expansion of state and federal association offenses. Ultimately, the outcome in Australia has been the establishment and continued development of strong institutional reform.

b. Canada

Canada has undergone strong reform. Asset forfeiture was adopted in the 1980s in response to a sustained push by the government to cast drugs as a national priority. In the 1990s, Canada passed legislation creating a criminal organization offense, largely in response to rising violence by biker gangs, and particularly the murder of 11-year-old Daniel Desrochers.

⁵⁶ Julie Ayling and Rod Broadhurst, *Organized Crime Control in Australia and New Zealand*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 612 (Letizia Paoli ed., 2014).

Competent enforcement units in Canada are more decentralized than in most cases, and emerged in a somewhat ground-up manner, initially in response to narcotics trafficking. Integrated policing units, including specialized groups within the federal police force, have developed over time to form a nationwide system of anti-organized crime investigation.

i. [Organized Crime in Canada](#)

Canada has a long history of low-level organized criminal activity, including piracy and outlaw gangs. In the twentieth century, bootlegging and smuggling led to the creation of more sophisticated criminal groups, as Prohibition in the United States offered enterprising Canadians an opportunity to profit from the black market. These “rum runners” became well organized and could be quite violent.⁵⁷ From the 1930s on, ethnically Italian mafia groups became a powerful feature in the Canadian criminal landscape. American criminal mastermind Charles “Lucky” Luciano pioneered early efforts to transplant Cosa Nostra structures to Canada, and various offshoots of the powerful American families were established in Canadian cities.⁵⁸ These organizations remained in place through much of the twentieth century, with the Montreal mafia gaining particular notoriety.⁵⁹

Beginning in the 1970s, organized crime in Canada began to diversify. This included the establishment of a wide variety of ethnically based syndicates, including Chinese triads, Colombian cartels, and Eastern European mafias.⁶⁰ In addition, motorcycle gangs became an increasingly prominent part of the Canadian criminal landscape. The Hells Angels and the

⁵⁷ STEPHEN SCHNEIDER, *ICED: THE STORY OF ORGANIZED CRIME IN CANADA*, Ch. 5 (2009).

⁵⁸ For instance, the powerful Montreal Mafia was affiliated with the Bonnano family of New York, the southwestern Ontario branch fell under the Detroit mob, and the rest of Ontario was controlled by the branch in Buffalo. STEPHEN SCHNEIDER, *ICED: THE STORY OF ORGANIZED CRIME IN CANADA*, 229 (2009).

⁵⁹ PETER EDWARDS AND ANTONIO NICASO, *BUSINESS OR BLOOD: MAFIA BOSS VITO RIZZUTO’S LAST WAR* (2016)

⁶⁰ STEPHEN SCHNEIDER, *ICED: THE STORY OF ORGANIZED CRIME IN CANADA*, 340 (2009).

Outlaws began to spread into Canada in the late 1970s.⁶¹ The biker gangs were closely linked with drug trafficking, and violent conflicts took place between rival groups over control of the narcotics trade.⁶² In addition to these relatively organized gangs, Canada is also home to several smaller criminal groups, including roughly 300 street gangs.⁶³

ii. Onset

a. **Concerns about Mafia Groups**

The Canadian perception of organized crime has been closely linked to developments in the United States. As American legislators and prosecutors increasingly began to target mafia crimes in the 1960s, some traveled to Canada to counsel the government on the threat posed by Cosa Nostra and Canada's susceptibility to infiltration.⁶⁴ Canadian media reported on links between Canadian criminals and prominent members of US organized crime groups.⁶⁵ Initially, this was received with some skepticism in the government. A series of official inquiries denied that organized crime existed to any serious extent. The Roach Royal Commission, which was established to investigate the presence of organized crime in the gambling sector, found no evidence of significant organized crime in Ontario outside the gambling industry.⁶⁶ The 1973 Report of the Royal Commission on Certain Sectors of the Building Economy, which

⁶¹ STEPHEN SCHNEIDER, *ICED: THE STORY OF ORGANIZED CRIME IN CANADA*, Ch 10 (2009).

⁶² STEPHEN SCHNEIDER, *ICED: THE STORY OF ORGANIZED CRIME IN CANADA*, Ch 10 (2009).

⁶³ DAVE MACKENZIE, *THE STATE OF ORGANIZED CRIME: REPORT OF THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS*, 41st Parliament, 1st Session (Mar. 2012).

⁶⁴ Margaret Beare and Michael Woodiwiss, *U.S. Organized Crime Control Policies Exported Abroad*, in *THE OXFORD HANDBOOK OF ORGANIZED CRIME* 545 (Letizia Paoli ed., 2014).

⁶⁵ Margaret Beare and Michael Woodiwiss, *U.S. Organized Crime Control Policies Exported Abroad*, in *THE OXFORD HANDBOOK OF ORGANIZED CRIME* 545 (Letizia Paoli ed., 2014).

⁶⁶ WILFRED D. ROACH, *REPORT OF THE HONOURABLE MR. JUSTICE WILFRID D. ROACH AS A COMMISSIONER APPOINTED UNDER THE PUBLIC INQUIRIES ACT BY LETTERS PATENT DATED DECEMBER 11, 1961* 357 (1963).

acknowledged the presence of violence and organized corruption in the building industry, took pains to avoid the term organized crime.⁶⁷

By contrast, Canadian police seem to have accepted the American perspective. For instance, while an Ontario Police Commission Report in 1967 described the organized crime situation as improving, by 1967 Toronto Police were traveling to the US to question American mobsters on the spread of organized crime in Canada.⁶⁸ The RCMP described an alleged meeting of Detroit mobsters and Canadian criminals at the James Bay Goose Club in 1958 as evidence of an Apalachin-style conspiracy⁶⁹ and as an indication that American organized crime was spreading north.⁷⁰ In 1967, a Federal–Provincial Conference of Attorneys General on Organized Crime released a report claiming that organized crime was present throughout the legitimate economy.⁷¹ As a result of the Conference’s findings, the RCMP established the Criminal Intelligence Services Canada in 1970 (CISC). CISC serves as an intelligence collection and coordination agency. It centralizes information gathered by provincial and federal law enforcement, maintains a national database related to organized crime, and provides reports and assessments on the state of organized crime.⁷² However, it does not provide a policing or prosecutorial force that concentrates on the investigation of organized crime. To the extent those organizations exist, they occur primarily at the provincial level. Thus, while CISC has certainly

⁶⁷ MARGARET BEARE, *CRIMINAL CONSPIRACIES: ORGANIZED CRIME IN CANADA* (1996). Quebec was more willing than Ontario to acknowledge the existence of organized crime. Commission reports from that province spoke of the presence of organized crime, particularly in Montreal.

⁶⁸ Margaret Beare and Michael Woodiwiss, *U.S. Organized Crime Control Policies Exported Abroad*, in *THE OXFORD HANDBOOK OF ORGANIZED CRIME* 545 (Letizia Paoli ed., 2014).

⁶⁹ The Apalachin meeting was a large-scale meeting of American organized crime figures that was pivotal in revealing the national organization of the American Mafia. It is discussed at greater length in Chapter VI.

⁷⁰ Margaret Beare and Michael Woodiwiss, *U.S. Organized Crime Control Policies Exported Abroad*, in *THE OXFORD HANDBOOK OF ORGANIZED CRIME* 545 (Letizia Paoli ed., 2014).

⁷¹ MARGARET BEARE, *CRIMINAL CONSPIRACIES: ORGANIZED CRIME IN CANADA* (1996).

⁷² CRIMINAL INTELLIGENCE SERVICE CANADA (Dec. 18, 2019), <https://cisc-scrs.gc.ca/index-eng.htm> (accessed 3 Feb. 2022).

contributed to Canada's ability to combat organized crime, it does not provide competent enforcement according to the terms of my theory. It is instead an institutional tweak.

b. Asset Forfeiture

Despite the concerns of Canadian police regarding organized crime, relatively little change occurred at the legislative level for much of the 1970s and 1980s, though investigations into the topic pointed to the economic power of criminal groups.⁷³ Nevertheless, some legislative efforts were made to increase law enforcement tools to combat organized crime. In 1984, asset forfeiture legislation was proposed, though the bill died in Parliament when a new election was called without ever having been debated.⁷⁴ However, in 1986, two days after President Reagan stated that the U.S. would renew its effort in the campaign against drugs, Canadian Prime Minister Brian Mulroney declared that drugs were an epidemic in Canada, surprising many in his government.⁷⁵ In the words of a senior official in Health and Welfare Canada, "when he [the PM] made that statement, then we had to make it a problem."⁷⁶

The Prime Minister's announcement received considerable media attention, and there was public support for enhanced measures to combat drug trafficking, such as the Prime Minister's National Drug Strategy.⁷⁷ In this context, Bill C-61, which would allow Canadian law

⁷³ MARGARET BEARE, *CRIMINAL CONSPIRACIES: ORGANIZED CRIME IN CANADA* (1996).

⁷⁴ MARGARET BEARE, *CRIMINAL CONSPIRACIES: ORGANIZED CRIME IN CANADA* (1996).

⁷⁵ Patricia G. Erickson, *Recent Trends in Canadian Drug Policy: The Decline and Resurgence of Prohibitionism*, 121 *DAEDALUS* 239, 248 (1992). There is relatively little evidence that drugs had become a significant problem in Canada at the time. Jensen and Gerber (1993) argue that the Prime Minister's declaration was an attempt to boost his political popularity at home by seizing on a politically safe issue.

⁷⁶ Patricia G. Erickson, *Recent Trends in Canadian Drug Policy: The Decline and Resurgence of Prohibitionism*, 121 *DAEDALUS* 239, 248 (1992).

⁷⁷ Patricia G. Erickson, *Recent Trends in Canadian Drug Policy: The Decline and Resurgence of Prohibitionism*, 121 *DAEDALUS* 239, 248 (1992). In addition, the Canadian Supreme Court held in 1985 that the assets of convicted American drug dealer Luis Pinto were not tangible assets and therefore could not be seized. This case further contributed to the calls for money laundering legislation. MARGARET E. BEARE AND STEPHEN SCHNEIDER, *TRACING OF ILLICIT FUNDS: MONEY LAUNDERING IN CANADA* 14 (1990).

enforcement to seize the proceeds of a wide variety of enterprise crimes, was submitted.⁷⁸ This time, the legislation received extensive debate and was passed in 1988.⁷⁹ While the asset forfeiture legislation was a significant development in Canada, its effectiveness was limited by the fact that it relied on a criminal conviction in order for assets to be seized.⁸⁰ Moreover, it did not convince the US that Canada was taking the fight against organized crime seriously. Further pressure came from the United States in 1989, when the Kerry Commission listed Canada as one of the 18 “highest priority countries” considered to be money-laundering hubs.⁸¹

c. Motorcycle gangs and Bill C-95

While the National Drug Strategy led to some legal development, the most significant reforms occurred in the following decade. In the 1990s, the focus on crime in Canada shifted from mafia-type groups to biker gangs. One incident in particular brought public attention to these groups. In 1995, a violent conflict between the Hells Angels and Rock Machine in Quebec culminated in a bombing that caused the death of 11-year-old bystander Daniel Desrochers. Sher and Marsden (2010) point to the Desrochers killing as the event that most aroused public outrage, and particularly a sense that the police were incapable of adequately protecting Canadians.⁸² In their review of media coverage of organized crime in Canada, Beare and Ronderos (2001) note a spike in press coverage of biker gangs at this time.⁸³ The result was

⁷⁸ For a discussion of this bill, *see generally*, AD GOLD, PROCEEDS OF CRIME: A MANUAL WITH COMMENTARY ON BILL C-61 (1989)

⁷⁹ MARGARET BEARE, CRIMINAL CONSPIRACIES: ORGANIZED CRIME IN CANADA (1996). The law was proclaimed in January 1989. MARGARET E. BEARE AND STEPHEN SCHNEIDER, TRACING OF ILLICIT FUNDS: MONEY LAUNDERING IN CANADA 14 (1990).

⁸⁰ MARGARET BEARE, CRIMINAL CONSPIRACIES: ORGANIZED CRIME IN CANADA (1996).

⁸¹ Margaret E. Beare and Frederick T. Martens, *Policing Organized Crime: The Comparative Structures, Traditions, and Policies Within the United States and Canada*, 14 J. OF CONTEMP. CRIM. JUST. 398 (1998).

⁸² JULIAN SHER AND WILLIAM MARSDEN, THE ROAD TO HELL: HOW THE BIKER GANGS ARE CONQUERING CANADA (2010). *See also* THOMAS GABOR, ET AL., COMMUNITY EFFECTS OF LAW ENFORCEMENT COUNTERMEASURES AGAINST ORGANIZED CRIME: A RETROSPECTIVE ANALYSIS 255 (2010); Graema Melcher, *Hit Them Where It Hurts: State Responses to Biker Gangs in Canada*. 40 DALHOUSIE L. J. 609 (2017).

⁸³ MARGARET BEARE AND JUAN RONDEROS, EXPLORATORY REVIEW OF MEDIA COVERAGE ON ORGANIZED CRIME IN CANADA: 1995-2000 34 (Mar. 2001).

a series of mass arrests and asset confiscation, primarily targeting Rock Machine.⁸⁴ The Bloc Québécois, a Quebec-based party which had been a marginal force in Canadian politics, pushed aggressively for a new criminal organization offense to target biker gangs.⁸⁵ In 1997, over the objections of civil libertarians, the Canadian Parliament passed Bill C-95, which for the first time established a criminal organization offense.⁸⁶

It is important to note that this bill was passed in the run-up to an election. The environment in which it was considered was so frenetic that witnesses were not even called to discuss the bill. Reform MP Jack Ramsay criticized the push for legislation by stating that “[i]f an election were not evident or imminent we would not be rushing this bill through without having witnesses.”⁸⁷ Indeed, when Silye urged a delay in order to ensure the bill did not infringe upon civil liberties, Liberal MP Allan Rock replied that there was an all-party agreement to deal with the bill immediately in response to the Government of Quebec’s request for help.⁸⁸

Advocates of C-95 faced considerable pressure to establish that it responded to a Canadian, rather than a Quebecois, problem. Critics of the bill argued that it was little more than an attempt to buy votes in Quebec. Reform MP Chuck Strahl stated that “[the government] must do something and therefore they are responding with this bill today because it is a Quebec issue and that is the reason for the bill coming forward now in its present format.”⁸⁹ In the words of

⁸⁴ Police acknowledged that they targeted the weaker Rock Machine group in order to achieve quicker results. Alexander Norris, *Battling the Biker Gangs*, EDMONTON JOURNAL, Oct. 2000.

⁸⁵ STEPHEN SCHNEIDER, *ICED: THE STORY OF ORGANIZED CRIME IN CANADA* 418 (2009).

⁸⁶ An Act to Amend the Criminal Code (Criminal Organizations) and to Amend Other Acts in Consequence, BILL C-95 (1997).

⁸⁷ 8 HOUSE OF COMMONS DEBATES, 2ND SESSION, 35TH PARLIAMENT, vol. 160 1805 (April 21, 1997). Ramsay was not opposed to the bill, but merely the speed with which it was passed. As he noted earlier in the debate. “I appreciate the time we are taking but it is not the same as having witnesses come forward with the various perspectives that this bill should have before we go forward with it. We are here because we do support the thrust of this bill.” 8 HOUSE OF COMMONS DEBATES, 2ND SESSION, 35TH PARLIAMENT, vol. 160 1320 (April 21, 1997).

⁸⁸ 8 HOUSE OF COMMONS DEBATES, 2ND SESSION, 35TH PARLIAMENT, vol. 160 1310 (April 21, 1997).

⁸⁹ 8 HOUSE OF COMMONS DEBATES, 2ND SESSION, 35TH PARLIAMENT, vol. 160 1555 (April 21, 1997).

Reform MP Jim Silye, “[a] political perception might be that this is being rushed through for a pre-election purpose to build up and shore up popularity in a province in which the Prime Minister may or may not have the proper poll numbers.”⁹⁰ The government responded by emphasizing the pan-Canadian threat posed by biker gangs. In the words of Allan Rock, “[o]rganized crime is a national concern which requires national measures.”⁹¹ Strahl may very well have been correct that the government was responding to pressure from Quebecois parties. However, as Katz (2011) argues, the media coverage of Desrochers’ murder was national. Scholars and observers, including Sher and Marsden,⁹² Gabor et al (2010),⁹³ and Melcher (2017)⁹⁴ have consistently noted that the Desrochers murder was the crucial turning point in shaping the way the broader Canadian public saw the biker threat. In the legislative debates, Desrochers’ murder was repeatedly cited by advocates of the bill as justification for its passage.⁹⁵

Bill C-95 was quickly found insufficient, and additional legislative reinforcements were adopted. In 2001, the government passed Bill C-24,⁹⁶ which reduced the number of individuals that needed to be present in the group in order for it to be considered a criminal organization; removed a requirement that at least one member had to have participated in the commission of

⁹⁰ 8 HOUSE OF COMMONS DEBATES, 2ND SESSION, 35TH PARLIAMENT, vol. 160 1255 (April 21, 1997).

⁹¹ 8 HOUSE OF COMMONS DEBATES, 2ND SESSION, 35TH PARLIAMENT, vol. 160 1705 (April 21, 1997).

⁹² JULIAN SHER AND WILLIAM MARSDEN, *THE ROAD TO HELL: HOW THE BIKER GANGS ARE CONQUERING CANADA* (2010).

⁹³ THOMAS GABOR, ET AL., *COMMUNITY EFFECTS OF LAW ENFORCEMENT COUNTERMEASURES AGAINST ORGANIZED CRIME: A RETROSPECTIVE ANALYSIS* 255 (2010).

⁹⁴ Graema Melcher, *Hit Them Where It Hurts: State Responses to Biker Gangs in Canada*. 40 *DALHOUSIE L. J.* 609 (2017).

⁹⁵ 8 HOUSE OF COMMONS DEBATES, 2ND SESSION, 35TH PARLIAMENT, vol. 160 1310, 1730, 1810 (April 21, 1997).

⁹⁶ While this made it easier to target organizations under Canadian law, the strength of this regime should not be overstated. First, membership in a criminal organization alone is not an offence. In addition, determination of criminal organization status is done on a case-by-case basis and applies only to the parties in that case. Thus, while courts have found the Hells Angels to be a criminal organization, that has not resulted in the group being outlawed. DAVE MACKENZIE, *THE STATE OF ORGANIZED CRIME: REPORT OF THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS*, 41st Parliament, 1st Session (Mar. 2012).

crimes for the organization in the past five years; and broadened the scope of offenses defining a criminal organization to include all serious offenses.⁹⁷

iii. Extensiveness

Canada has a somewhat unique policing structure. The Royal Canadian Mounted Police (RCMP) is a national police force, but it provides federal, provincial, and municipal police services.⁹⁸ Organized crime is considered a federal matter, and the RCMP maintains an Organized Crime Branch under the Federal and International Operations Directorate.⁹⁹ In addition, the RCMP maintains provincial-level divisions which often have their own anti-organized crime units.¹⁰⁰ Furthermore, the RCMP has tended to rely on the creation of joint task forces that bring members of different police units together in integrated teams.¹⁰¹ The integrated policing units directed at organized crime were established in the early 1970s,¹⁰² and were primarily designed to target narcotics trafficking.¹⁰³ Additional units would be developed in the

⁹⁷ DAVE MACKENZIE, THE STATE OF ORGANIZED CRIME: REPORT OF THE STANDING COMMITTEE ON JUSTICE AND HUMAN RIGHTS, 41st Parliament, 1st Session (Mar. 2012).

⁹⁸ *About the RCMP*, ROYAL CANADIAN MOUNTED POLICE, <https://www.rcmp-grc.gc.ca/en/about-rcmp> (accessed 4 Feb. 2022); *Federal Policing*, PROVINCE OF BRITISH COLUMBIA, <https://www2.gov.bc.ca/gov/content/justice/criminal-justice/policing-in-bc/the-structure-of-police-services-in-bc/federal> (accessed 4 Feb. 2022).

⁹⁹ *Federal Services—Organized Crime*, ROYAL CANADIAN MOUNTED POLICE (Mar. 8, 2011), <https://www.rcmp-grc.gc.ca/fio-ofi/organi-crime-eng.htm> (accessed 3 Feb. 2022).

¹⁰⁰ See e.g., KD (DWAYNE) McDONALD & KELLY RAINBOW, 'E' DIVISION CRIMINAL OPERATIONS FEDERAL, INVESTIGATIVE SERVICE & ORGANIZED CRIME (FISOC) FINANCIAL CRIME RESOURCES IN 'E' DIVISION, (Aug 31, 2020); *New Unit Names, More Integrated Structure Announced for Federal Policing*, SASKTODAY.CA, June 10, 2013.

¹⁰¹ BRENDA CHORNEY ET AL., ORGANIZED CRIME INTEGRATED UNITS: ANALYSIS REPORT (2010); MARIANNE RYAN, INTEGRATED POLICING TO COMBAT ORGANIZED CRIME IN CANADA (Aug. 2005). See also Deidre Seiden, *Tackling Transnational Organized Crime: Federal and Local Police Partnership Mitigates Risk of Lethal Drug*, PONY EXPRESS (REPRINTED BY ROYAL CANADIAN MOUNTED POLICE) (Jan. 2016), <https://www.rcmp-grc.gc.ca/en/gazette/tackling-transnational-organized-crime> (accessed 4 Feb. 2022).

¹⁰² Although the initial integrated policing units were developed in the 1970s, these groups primarily conducted investigations at the provincial level. As such, I do not consider this as the onset of reform. Given the organic, drawn-out development of Canadian competent enforcement, I instead consider it as part of the extensiveness of Canada's institutional development.

¹⁰³ MARIANNE RYAN, INTEGRATED POLICING TO COMBAT ORGANIZED CRIME IN CANADA (Aug. 2005).

1980s and 1990s.¹⁰⁴ Particularly significant were Integrated Proceeds of Crime (IPOC) units, the first of which were established in 1996.¹⁰⁵ The IPOC units are composed of specialized investigators and prosecutors dedicated to investigating money laundering and proceeds of crime.¹⁰⁶ Integrated policing units tend to be limited in scope to the provincial level.¹⁰⁷ Police have also relied on temporary cooperation arrangements, such as Joint Force Operations, rather than establishing institutionalized competent enforcement.¹⁰⁸ In addition, some provinces have developed specialized organized crime units.¹⁰⁹

The Canadian system of organized crime investigation, which relies heavily on integrated policing and joint task forces, is quite decentralized compared to the systems of other countries considered in this project. Nonetheless, these units do specialize in organized crime. Moreover, they exist throughout the country and are under the auspices of the RCMP, acting in its federal enforcement capacity. As such, I consider them to be institutions of competent enforcement.

¹⁰⁴ MARIANNE RYAN, INTEGRATED POLICING TO COMBAT ORGANIZED CRIME IN CANADA (Aug. 2005)

¹⁰⁵ MARIANNE RYAN, INTEGRATED POLICING TO COMBAT ORGANIZED CRIME IN CANADA (Aug. 2005)

¹⁰⁶ MARGARET E. BEARE AND STEPHEN SCHNEIDER, MONEY LAUNDERING IN CANADA: CHASING DIRTY AND DANGEROUS DOLLARS (2007); PUBLIC PROSECUTION SERVICE OF CANADA, THE FEDERAL PROSECUTION SERVICE DESKBOOK, PART II: THE FEDERAL PROSECUTION SERVICE—ORGANIZATION AND MANDATE 5.4.2.2 (2004), https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/fpd/ch05.html#section5_4_2_2 (accessed 4 Feb., 2022).

¹⁰⁷ BRENDA CHORNEY ET AL., ORGANIZED CRIME INTEGRATED UNITS: ANALYSIS REPORT 7 (2010).

¹⁰⁸ Stephen Schneider and Christine Hurst, *Obstacles to an Integrated, Joint Forces Approach to Organized Crime Enforcement*, 31 POLICING: AN INT'L J. OF POLICE STRATEGIES & MGMT. 359 (2008). Schneider and Hurst also note that the Canadian culture of promotion of police officers has tended to facilitate the movement of officers among branches, undermining the development of specialized expertise.

¹⁰⁹ THE ORGANIZED CRIME AGENCY OF BRITISH COLUMBIA (OCABC), [https://www.cfseu.bc.ca/about-cfseu-bc/about-ocabc/#:~:text=The%20Organized%20Crime%20Agency%20of%20British%20Columbia%20\(OCABC\)%20was%20established,is%20an%20independent%20policing%20agency](https://www.cfseu.bc.ca/about-cfseu-bc/about-ocabc/#:~:text=The%20Organized%20Crime%20Agency%20of%20British%20Columbia%20(OCABC)%20was%20established,is%20an%20independent%20policing%20agency) (accessed 21 Feb. 2022); *Organization*, VANCOUVER POLICE DEPARTMENT, <https://vancouver.ca/police/organization/investigation/investigative-services/organized-crime/index.html> (accessed 21 Feb. 2022).

Table 3.2: Canada Onset

Canada			
	Federal–Provincial Conference of Attorneys General on Organized Crime	War on Drugs	Biker Wars/Desrochers Murder
Affect/Implicate national interests and receive considerable press attention		X	X
National government responsible	X	X	X
Surprising/Unexpected	X	X	X
Nonpartisan/Distributed across social strata		X	X
Criminal group's involvement unambiguous	X		X
Outcome	Criminal Intelligence Services Canada	Bill C-61	Bill C-95

iv. [Analysis](#)

The Canadian experience is broadly consistent with my theory. While the Canadian police and US government consistently advocated for the Canadian government to adopt stronger tools to combat criminal groups, such efforts were largely unsuccessful. The US did pressure the Canadian government to adopt some enhanced money laundering statutes, but the Canadian government had to present crime as a national threat to its domestic public in order to make any legislative headway. The most significant legal developments in the Canadian fight against organized crime, namely Bill C-95 and its successors, only emerged when the Canadian public came to see biker gangs as a significant public threat. The murder of Daniel Desrochers gave the Bloc Québécois an opportunity to leverage shifting public perceptions of organized crime to secure concessions from the Liberal and Reform Parties in the run-up to the 1997 election. The violence of the biker gangs meets the criteria of a perception-shifting event. 1) They will affect

appear to have created widespread concern about public safety, which pro-reform legislators strenuously argued was a national concern. 2) The Bloc Québécois successfully argued that the violence in Quebec demanded national attention, an argument that seems to have been especially salient in the runup to an election. 3) The high level of violence and murder of a young child was quite surprising. 4) Public outrage appears to have been nonpartisan and distributed across social strata. Once again, this seems to have been in part a product of elite arguments about the national scope of the biker threat, since the violence was largely relegated to Quebec. 5) The bikers' involvement in the event will be perceived as relatively unambiguous. In this context, Bloc Québécois acted as a reformist faction pressuring otherwise neutral figures in Parliament. Biker violence, and particularly the Desrochers murder, made it virtually impossible for most Canadian politicians not to take up the law-and-order mantle and accede to the passage of legislation designed to target organized criminal groups.

Canada has adopted competent enforcement, albeit in a relatively decentralized form. Canada has relied heavily on integrated policing and joint task forces to develop specialized investigative capacity. In addition, the RCMP maintains an Organized Crime Branch as well as provincial-level organized crime investigative units. Due to data limitations, I am unable to fully assess the political forces behind the establishment of these agencies, but they should be considered sufficient to classify Canada as having undergone strong institutional reform.

c. Colombia

Colombia has undergone strong reform as well as temporary rollback. The country has adopted, repudiated, and readopted an extradition treaty with the United States. It also has developed asset forfeiture laws as well as specialized units dedicated to antinarcotics policing and to the management of the asset forfeiture regime. Much of Colombia's institutional

development, including the adoption of the extradition treaty and asset forfeiture laws, were the result of pressure by the US. However, the initial implementation and rollback of the treaty more closely followed domestic political forces. As such, while this case generally conforms to the expectations of my theory, it highlights the important role that international actors may play in shaping anti-organized crime institutions.

i. [Organized Crime in Colombia](#)

Colombia's history with organized crime is long and complex. The country's rough terrain has made it difficult to police, allowing smuggling and banditry to flourish. The development of a robust black market also contributed to the development of pervasive networks of corruption among Colombian law enforcement.¹¹⁰ The dynamics of conflict in the country shifted dramatically in the 1940s and 1950s with the outbreak of *La Violencia*, a sustained conflict between the two main political parties that was waged largely in the rural areas of the country.¹¹¹ *La Violencia* resulted in the deaths of roughly two percent of the Colombian population, as well as massive internal displacement and land expropriation.¹¹² In the aftermath of this violence, some peasants joined guerrilla movements, such as the Revolutionary Armed Forces of Colombia (*Fuerzas Armadas Revolucionarias de Colombia*—FARC), as well as criminal bands.¹¹³ These groups often engaged in extortion against landlords, who responded by establishing government-backed 'self-defense' units to protect their property.¹¹⁴

¹¹⁰ Francisco Thoumi, *Organized Crime in Colombia: The Actors Running the Illegal Drug Industry*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 177 (Letizia Paoli ed., 2014).

¹¹¹ Francisco Thoumi, *Organized Crime in Colombia: The Actors Running the Illegal Drug Industry*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 177 (Letizia Paoli ed., 2014).

¹¹² Francisco Thoumi, *Organized Crime in Colombia: The Actors Running the Illegal Drug Industry*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 177 (Letizia Paoli ed., 2014).

¹¹³ Francisco Thoumi, *Organized Crime in Colombia: The Actors Running the Illegal Drug Industry*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 177 (Letizia Paoli ed., 2014).

¹¹⁴ Francisco Thoumi, *Organized Crime in Colombia: The Actors Running the Illegal Drug Industry*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 177 (Letizia Paoli ed., 2014).

Drug trafficking prospered in this environment. In the 1970s, Colombian traffickers engaged in the marijuana trade.¹¹⁵ The Colombian military was initially assigned responsibility for combating marijuana cultivation, though it was withdrawn after allegations of corruption.¹¹⁶ By 1980, responsibility for eradication had been assigned to the national police.¹¹⁷ Eradication under the Turbay and Betancur administrations, combined with the rise of domestic US production of cannabis, prevented Colombia from being a central player in the marijuana market.¹¹⁸ However, Colombia is one of only a few countries in the world that grows coca, which can be converted into cocaine.¹¹⁹ Coca is easy to grow, is not produced in consumer countries, and has a higher value-to-weight ratio than marijuana.¹²⁰ As American demand for cocaine began to grow, this created opportunities for significant profit margins. Two dominant cartels emerged, which were named after the cities that were their respective capitals.¹²¹ The Medellin Cartel operated under the control of Pablo Escobar, and the Rodriguez Orejuela brothers ran the Cali Cartel. These organizations were highly sophisticated, complex organizations that largely coordinated the international cocaine trade, and were capable of mobilizing nationwide campaigns of violence and corruption.¹²²

¹¹⁵ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, DRUG CONTROL: US-SUPPORTED EFFORTS IN COLOMBIA AND BOLIVIA (Nov. 1988).

¹¹⁶ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, DRUG CONTROL: US-SUPPORTED EFFORTS IN COLOMBIA AND BOLIVIA (Nov. 1988).

¹¹⁷ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, DRUG CONTROL: US-SUPPORTED EFFORTS IN COLOMBIA AND BOLIVIA (Nov. 1988).

¹¹⁸ Francisco Thoumi, *Organized Crime in Colombia: The Actors Running the Illegal Drug Industry*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 177 (Letizia Paoli ed., 2014).

¹¹⁹ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, DRUG CONTROL: US-SUPPORTED EFFORTS IN COLOMBIA AND BOLIVIA (Nov. 1988).

¹²⁰ Francisco Thoumi, *Organized Crime in Colombia: The Actors Running the Illegal Drug Industry*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 177 (Letizia Paoli ed., 2014).

¹²¹ Francisco Thoumi, *Organized Crime in Colombia: The Actors Running the Illegal Drug Industry*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 177 (Letizia Paoli ed., 2014).

¹²² Francisco Thoumi, *Organized Crime in Colombia: The Actors Running the Illegal Drug Industry*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 177 (Letizia Paoli ed., 2014).

ii. Onset

Perhaps more than any other country in this chapter, Colombia's experience of combating organized crime was impacted by its relationship with the United States. As the main market for Colombian cocaine, the US had a considerable interest in checking the flow of the drug. The American government provided the Colombian government with substantial financial resources to aid in eradication and interdiction programs.¹²³ Moreover, it pressured the Colombian government to take strong measures to combat the cartels. Probably the most significant demand was that Colombia adopt a treaty allowing for the extradition of drug traffickers to the US. The Turbay government was reluctant, primarily because extradition was politically unpopular among Colombians, who saw it as an affront to their national sovereignty.¹²⁴ However, the Carter administration, eager to gain leverage over the Colombian narcos, pressured the Turbay government to adopt the extradition treaty.¹²⁵ A White House report leaked in the runup to Colombia's elections suggested that Turbay himself might have ties to drug traffickers.¹²⁶ In part to repair his tarnished image, Turbay agreed to sign the treaty in 1979.¹²⁷

The extradition treaty was an atypical legal instrument to tackle organized crime, but in the context of the war against the Colombian drug cartels, it was a powerful one. The treaty allowed for either country to seek the extradition of nationals of the other country for any of a

¹²³ U.S. GOVERNMENT ACCOUNTABILITY OFFICE, *DRUG CONTROL: US-SUPPORTED EFFORTS IN COLOMBIA AND BOLIVIA* (Nov. 1988).

¹²⁴ Mark Andrew Sherman, *United States International Drug Control Policy, Extradition, and the Rule of Law in Colombia*, 15 *NOVA L. REV.* 661, 678 (1991). Indeed, the argument that the treaty violated Colombian sovereignty would be part of Pablo Escobar's political platform. MARK BOWDEN, *KILLING PABLO* 32 (2001)

¹²⁵ Mark Andrew Sherman, *United States International Drug Control Policy, Extradition, and the Rule of Law in Colombia*, 15 *NOVA L. REV.* 661, 676 (1991).

¹²⁶ Mark Andrew Sherman, *United States International Drug Control Policy, Extradition, and the Rule of Law in Colombia*, 15 *NOVA L. REV.* 661, 676-77 (1991).

¹²⁷ Mark Andrew Sherman, *United States International Drug Control Policy, Extradition, and the Rule of Law in Colombia*, 15 *NOVA L. REV.* 661, 677 (1991).

series of offenses outlined in the treaty.¹²⁸ In practice, this treaty enabled the US to seek the extradition of high-profile narco-traffickers to face prosecution and imprisonment in the U.S. This posed a considerable threat, since U.S. courts were far more likely to convict traffickers and to impose significant sentences than their Colombian counterparts.¹²⁹

Nevertheless, it initially seemed the extradition treaty would pose little threat to Colombia's narcos. The Betancur administration, which assumed power in 1982, refused to honor the treaty.¹³⁰ Instead, Betancur preferred to pursue the narcos domestically.¹³¹ He appointed the anti-cartel hardliner Rodrigo Lara Bonilla as Minister of Justice.¹³² Lara worked closely with the DEA to conduct interdiction efforts targeting the Medellin Cartel.¹³³ When Pablo Escobar was elected an alternate member of Congress, Lara publicly denounced him and exposed his corrupt relationship to the government, ultimately leading to Escobar's expulsion from Congress.¹³⁴ On April 30, 1984, Lara was assassinated on Escobar's orders.¹³⁵ This resulted in a massive shift in public opinion against the drug traffickers, and particularly against the Medellin Cartel.¹³⁶ In the wake of Lara's assassination, the Betancur administration declared a

¹²⁸ The Treaty of Extradition Between the United States of America and the Republic of Colombia, U.S.-Colom., art. 1(b), Sept. 14, 1979, 1979 U.S.T. LEXIS 199. Appendix II outlines extraditable offenses.

¹²⁹ MARK BOWDEN, KILLING PABLO, 32 (2001); Bradley Graham, *Extradition Treaty Feared by Traffickers, Resented by Colombians*, WASH. POST (Aug. 23, 1989). Moreover, if convicted, traffickers would be incarcerated in American federal prisons, far removed from their families, communities, and markets.

¹³⁰ Arnaldo Claudio, *United States-Colombia Extradition Treaty: Failure of a Security Strategy*, 71 MIL. REV. 69, 70 (1991).

¹³¹ Arnaldo Claudio, *United States-Colombia Extradition Treaty: Failure of a Security Strategy*, 71 MIL. REV. 69, 70 (1991).

¹³² Arnaldo Claudio, *United States-Colombia Extradition Treaty: Failure of a Security Strategy*, 71 MIL. REV. 69, 70 (1991).

¹³³ Arnaldo Claudio, *United States-Colombia Extradition Treaty: Failure of a Security Strategy*, 71 MIL. REV. 69, 70-71 (1991).

¹³⁴ MARK BOWDEN, KILLING PABLO 35-40 (2001).

¹³⁵ Arnaldo Claudio, *United States-Colombia Extradition Treaty: Failure of a Security Strategy*, 71 MIL. REV. 69, 71 (1991).

¹³⁶ Jairo Santander, *Narrative Reinventions as Cognitive Mechanisms for Public Policy Stability: The Case of Anti-Drug Policy in Colombia*, 54 REVISTA DE ADMINISTRAÇÃO PÚBLICA 1613 (2020).

state of siege¹³⁷ and, despite its initial reluctance, began to utilize the extradition treaty.¹³⁸ By January of 1985, Colombia had begun extraditing drug traffickers to the United States.¹³⁹

At the same time, the Colombian state increasingly began to rely on competent enforcement units to target the drug cartels.¹⁴⁰ In 1987, the government established the Search Bloc (*Bloque de Búsqueda*), a unit of the National Police dedicated exclusively to pursuing Escobar and his associates.¹⁴¹ This unit would ultimately be responsible for finding and killing Escobar in 1993.¹⁴² In 1989, Colombia developed the Jungla Commandos, (*Compañía Jungla Antinarcóticos*), a specialized antinarcotics policing force trained by the US Army and Drug Enforcement Agency¹⁴³ which continues to operate.¹⁴⁴ The development of specialized law enforcement units to combat the drug cartels developed largely in conjunction with the implementation of the extradition treaty, and both were employed to target the growing threat of the Medellin Cartel.

iii. Rollback

In response to the decision to extradite, Pablo Escobar launched a full-scale war against the state. This included a campaign of assassinations against Colombian law enforcement

¹³⁷ Jairo Santander, *Narrative Reinventions as Cognitive Mechanisms for Public Policy Stability: The Case of Anti-Drug Policy in Colombia*, 54 REVISTA DE ADMINISTRAÇÃO PÚBLICA 1613 (2020).

¹³⁸ Arnaldo Claudio, *United States-Colombia Extradition Treaty: Failure of a Security Strategy*, 71 MIL. REV. 69, 71 (1991).

¹³⁹ Spencer Rich, *Colombia Extradites 4 to U.S.*, WASH. POST, Jan 6, 1985. One of the most high-profile extraditions occurred in 1987, when Colombia extradited Medellin boss Carlos Lehder to the United States.

¹⁴⁰ In addition to specialized police, a number of unofficial groups also targeted the cartels. In particular, paramilitary groups such as Los PEPES committed numerous atrocities against members of the cartel. As I am focused on the development of official, legal institutions to combat organized crime, I do not consider such groups here.

¹⁴¹ Because the Search Bloc was a temporary unit dedicated solely to the capture of Pablo Escobar, it is not a competent enforcement unit by the terms of my theory. However, given its importance in the Colombian context, I mention it to highlight the importance of specialized investigative units.

¹⁴² See generally MARK BOWDEN, KILLING PABLO (2001).

¹⁴³ *Run Through the Jungle: Colombia's JUNGLA Commandos*, SMALL WARS J. (Nov. 2011).

¹⁴⁴ COMANDOS JUNGLA DE LA POLICÍA NACIONAL, <https://www.policia.gov.co/especializados/jungla> (accessed 21 Feb. 2022).

personnel, judges, and politicians, as well as large-scale terror attacks targeting civilians.¹⁴⁵ Escobar made clear that his central demand was an end to extradition.¹⁴⁶ Escobar's efforts bore some fruit in 1987, when the Colombian Supreme Court, relying on a technicality, held that the law ratifying the extradition treaty was unconstitutional.¹⁴⁷ Colombian president Virgilio Barco Vargas told US diplomats that he was unable to pass a new treaty in the legislature because Colombian public opinion was strongly opposed and because the narcos were intimidating members of Congress.¹⁴⁸ Escobar's campaign of violence continued until 1991, when the Constitutional Assembly voted to include a prohibition on extradition in the new Colombian constitution.¹⁴⁹ Satisfied by this arrangement, Escobar surrendered to the authorities.

The prohibition on extradition continued for another 6 years. In the immediate aftermath of Escobar's death, the Cali Cartel gained power.¹⁵⁰ The leaders of this group generally avoided Escobar's use of high-profile violence in favor of silent corruption.¹⁵¹ The government of Ernesto Samper initially refused to consider extradition as a means of targeting cartels.¹⁵² However, following revelations that Samper had received campaign donations from the Cali Cartel in the 1994 election, pressure began to build on the Colombian government to take serious

¹⁴⁵ For a fuller discussion of Escobar's campaign of violence, see MARK BOWDEN, *KILLING PABLO* (2001). For a discussion of the strategic logic of Escobar's violence, see BENJAMIN LESSING, *MAKING PEACE IN DRUG WARS* (2017).

¹⁴⁶ MARK BOWDEN, *KILLING PABLO* 51-57, 80, 85 (2001).

¹⁴⁷ Luz E. Nagle, *The Rule of Law or the Rule of Fear: Some Thoughts on Colombian Extradition*, 13 *LOY. OF L.A. INT'L & COMP. L. REV.* 851 (1991). It is widely believed that the ruling was a product of the judges' fear of assassination by Escobar.

¹⁴⁸ Communication from American Embassy in Colombia to Secretary of State, *President Barco Chooses the Hard Option*, 2-3 (Dec. 1986).

¹⁴⁹ MARK BOWDEN, *KILLING PABLO* 98 (2001).

¹⁵⁰ Francisco Thoumi, *Organized Crime in Colombia: The Actors Running the Illegal Drug Industry*, in *THE OXFORD HANDBOOK OF ORGANIZED CRIME* 177 (Letizia Paoli ed., 2014).

¹⁵¹ Francisco Thoumi, *Organized Crime in Colombia: The Actors Running the Illegal Drug Industry*, in *THE OXFORD HANDBOOK OF ORGANIZED CRIME* 177 (Letizia Paoli ed., 2014).

¹⁵² CENTRAL INTELLIGENCE AGENCY, *COLOMBIA: A MIXED COUNTERNARCOTICS PICTURE IN 1996*, 8 (Jan. 30, 1997).

steps against Cali.¹⁵³ In 1996 and 1997, the U.S. decertified Colombia as a partner in the War on Drugs.¹⁵⁴ In an effort to rebuild his credibility, Samper acceded to US pressure to renew the extradition treaty. In the words of a US government official, “[t]he good thing about Samper was that we could do whatever we wanted on the drug front. The extradition issue was another instance when we moved the ‘goal posts back.’ In order to see how far we could push Samper on the drug stuff.”¹⁵⁵ In September 1997, the Colombian Congress voted to reverse the ban on extradition, though in a somewhat weaker form than the 1979 treaty.¹⁵⁶

America did not achieve all of its goals. One of the most important priorities for the US was securing the passage of an extradition treaty that would apply retroactively, allowing the US to seek the extradition of the leaders of the Cali Cartel.¹⁵⁷ The treaty was ultimately non-retroactive, which allowed the Colombian government to decline to extradite the already imprisoned Rodriguez Orejuela brothers.¹⁵⁸ However, Colombian president Álvaro Uribe led a renewed campaign of extraditions¹⁵⁹ which included the Rodriguez Orejuela brothers, who were extradited to the U.S. in 2004 and 2005 and plead guilty to drug and money laundering conspiracy charges.¹⁶⁰

¹⁵³ Francisco Thoumi, *Organized Crime in Colombia: The Actors Running the Illegal Drug Industry*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 177 (Letizia Paoli ed., 2014).

¹⁵⁴ GOVERNMENT ACCOUNTABILITY OFFICE, DRUG CONTROL: U.S. COUNTERNARCOTICS EFFORTS IN COLOMBIA FACE CONTINUING CHALLENGES (Feb. 1998).

¹⁵⁵ quoted in RUSSELL CRANDALL, DRIVEN BY DRUGS: U.S. POLICY TOWARD COLOMBIA 125 (2002).

¹⁵⁶ Juanita Darling, *Colombia Congress Votes to Lift Ban on Extradition*, L.A. TIMES, June 21, 1997.

¹⁵⁷ RUSSELL CRANDALL, DRIVEN BY DRUGS: U.S. POLICY TOWARD COLOMBIA 125 (2002).

¹⁵⁸ *Colombia's President Signs Extradition Bill Into Law*, THE WALL ST. J., Dec. 17, 1997.

¹⁵⁹ Francisco Thoumi, *Organized Crime in Colombia: The Actors Running the Illegal Drug Industry*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 177 (Letizia Paoli ed., 2014).

¹⁶⁰ Press Release, US Department of Justice, Cali Cartel Leaders Plead Guilty to Drug and Money Laundering Conspiracy Charges (Sept 26, 2006).

iv. Extensiveness

In addition to its controversial implementation of the extradition agreements with the US, Colombia became the first country in Latin America to adopt asset forfeiture legislation in 1996.¹⁶¹ This appears to have been at least in part a response to decertification.¹⁶² According to the CIA, the Colombian business community feared the possibility of US sanctions, and advocated for strong antinarcotics efforts to forestall such an outcome.¹⁶³ In addition, the public seems to have been behind the measure. According to the same CIA report, “media attention to congressional consideration of a package of counternarcotics bills helped fuel public outrage after Congress initially voted to essentially legalize the fortunes of the drug traffickers by limiting the retroactivity of the bill.”¹⁶⁴

The asset forfeiture laws were intended to target the large fortunes amassed by the narcos. Inverting the standard burden of proof, Colombia’s law allowed the government to seize the assets of any individual who could not prove the legal origins of his finances.¹⁶⁵ Beginning in 2002, the newly elected President Uribe began to use the law in an active campaign to target suspected drug lords.¹⁶⁶ However, the government was accused of failing to account for billions of dollars that had gone missing.¹⁶⁷ In 2011, the Colombian Justice Minister began the process of shutting down the National Narcotics Directorate (*Dirección Nacional de Estupefacientes*, or

¹⁶¹ Parker Asmann, *Asset Forfeiture in Latin America: A Moral Dilemma?*, INSIGHT CRIME (2017).

¹⁶² GOVERNMENT ACCOUNTABILITY OFFICE, DRUG CONTROL: U.S. COUNTERNARCOTICS EFFORTS IN COLOMBIA FACE CONTINUING CHALLENGES, 5-6 (1998).

¹⁶³ CENTRAL INTELLIGENCE AGENCY, COLOMBIA: A MIXED COUNTERNARCOTICS PICTURE IN 1996, 3 (Jan. 30, 1997).

¹⁶⁴ CENTRAL INTELLIGENCE AGENCY, COLOMBIA: A MIXED COUNTERNARCOTICS PICTURE IN 1996, 3 (Jan. 30, 1997).

¹⁶⁵ S.B., *Asset Seizure in Colombia: Seizing Control of a Wayward Agency*, THE ECONOMIST (2010).

¹⁶⁶ S.B., *Asset Seizure in Colombia: Seizing Control of a Wayward Agency*, THE ECONOMIST (2010).

¹⁶⁷ David Gagne, *Colombia Dismantles Corrupt Asset Seizure Program*, INSIGHT CRIME (Oct. 7, 2014).

DNE),¹⁶⁸ Colombia’s lead antinarcotics agency, which had been responsible for seized assets.¹⁶⁹ In 2014, the Special Assets Society (*Sociedad de Activos Especiales* — SAE) took over responsibility for managing asset forfeiture.¹⁷⁰ Though Colombia has maintained its asset forfeiture regime, allegations of corruption in managing the assets seized continue to plague the government.¹⁷¹

Table 3.3: Colombia Onset

Colombia		
	Cocaine traffic to the United States	Lara Bonilla Murder
Affect/Implicate national interests and receive considerable press attention	X	X
National government responsible	X	X
Surprising/Unexpected		X
Nonpartisan/Distributed across social strata		X
Criminal group's involvement unambiguous	X	X
Outcome	Extradition Treaty signed	Extradition Treaty implemented

v. Analysis

Colombia fits with my theory, albeit imperfectly. The treaty and the asset forfeiture law function as permissive laws in my theory, and units such as the Junglas and SAE serve as competent enforcement bodies. There can be little doubt that the United States played an

¹⁶⁸ The DNE was established in 1990, falling within the authority of the Ministry of Justice. U.S. DRUG ENFORCEMENT AGENCY INTELLIGENCE DIVISION, *THE DRUG TRADE IN COLOMBIA: A THREAT ASSESSMENT* (Mar. 2002).

¹⁶⁹ David Gagne, *Colombia Dismantles Corrupt Asset Seizure Program*, INSIGHT CRIME (Oct. 7, 2014).

¹⁷⁰ David Gagne, *Colombia Dismantles Corrupt Asset Seizure Program*, INSIGHT CRIME (Oct. 7, 2014). *See also* SOCIEDAD DE ACTIVOS ESPECIALES, <https://www.saesas.gov.co/> (accessed 5 Feb. 2022).

The SAE should be considered an additional unit of competent enforcement.

¹⁷¹ Juan Camilo Jaramillo, *Colombia Continues to Bungle Assets Seized from Drug Traffickers*, INSIGHT CRIME (2020).

outsized role in determining Colombia's decision to adopt extradition, as well as the particular form and extensiveness that Colombia's anti-organized crime legal institutions took. Indeed, the US saw itself playing precisely that role. The CIA itself noted in 1997 that "[t]he extent of Bogota's [sic] attention to counternarcotics will largely depend on the state of relations with the United States."¹⁷² Yet the decision to begin actively utilizing the treaty, as well as the decision to begin forming specialized policing units, can largely be traced to the rising threat posed by Pablo Escobar. Escobar's election to government, and the subsequent assassination of Rodrigo Lara Bonilla led even the relatively nationalist Betancur administration to seek harsh measures to target the narcos. As such, the effective implementation of both the treaty and competent enforcement appears to have been driven by domestic threat perception to an equal or even greater degree than US pressure. The Bonilla murder is also consistent with my expectations of a perception shifting event. 1) As Minister for Justice, Bonilla was a national figure whose death received considerable attention. 2) Given the brazen attack on the leading federal crimefighter as well as Escobar's presence within the national legislature and the international nature of the treaty, only the federal government could fully respond to this problem. 3) Although not unprecedented in the context of Colombia's violent politics, the Bonilla murder was unusually brazen. 4) Public outrage appears to have been nonpartisan and distributed across social strata. 5) The drug cartels' responsibility was perceived as relatively unambiguous.

Escobar's ability to overwhelm the Colombian state with his ongoing campaign of terror, combined with the unpopularity of extradition, ultimately led the courts and the legislature to reject the treaty. This suggests that domestic threat, rather than international pressure, was determinative of extradition's initial trajectory. More specifically, the threat posed to the elites

¹⁷² CENTRAL INTELLIGENCE AGENCY, COLOMBIA: A MIXED COUNTERNARCOTICS PICTURE IN 1996, 11 (Jan. 30, 1997).

by imposing the treaty (Escobar's violence) was greater than that from rolling it back (US pressure). Nevertheless, the role of the United States cannot be discounted, and the threat of sanctions after decertification seems to have been vital both to the reinstatement of extradition and the asset forfeiture law. In this way, while the threat posed by drug cartels does seem to have driven the extensiveness of legal institutions in Colombia, it is important to recognize that the role of the United States was also critical. This case demonstrates that international pressure, particularly from a powerful state, can greatly impact, and possibly determine, the development of a country's anti-organized crime legal institutions.

*d. Germany*¹⁷³

Germany has adopted moderate reform. Although the country does not have a strong tradition of organized crime, reunification and immigration following the fall of the Soviet Union led to increased fear of crime in both East and West Germany. In the early 1990s, Germany adopted asset forfeiture laws as well as policing units dedicated to combating organized crime.¹⁷⁴ Concern about organized crime in Germany declined in the aftermath of unification but has increased somewhat in recent years as a result of recent high-profile mafia activity. It is therefore possible that German institutional development may continue in the future.

¹⁷³ Due to language limitations, I am unable to assess the full range of sources that I can in other contexts. As such, this section is primarily confined to secondary sources and some English-language media.

¹⁷⁴ Germany does have a criminal association offense within its penal code. Strafgesetzbuch [StGB] [Criminal Code], § 129, *translation at* https://www.gesetze-im-internet.de/englisch_stgb/ (Ger.). This offense in fact dates back to the 19th century, where it was primarily used to repress political opposition. Klaus von Lampe, *Making the Second Step Before the First: Assessing Organized Crime*, 4-5 CRIME, L, & SOC. CHANGE 227, 235 (2004). However, this provision has never been particularly useful in combatting organized crime. It has instead primarily been used as a means of targeting political crime, and particularly terrorism. As such, German courts have held extremely high evidentiary standards for the use of this law, and it therefore has not been an important aspect of the German anti-organized crime legal regime. Michael Kilchling, *Organized Crime Policies in Germany*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 717, 746 (Cyrille Fijnaut and Letizia Paoli eds., 2004). As such, I do not consider Art. 129 to be adequate as a membership liability law by the terms of my theory.

i. Organized Crime in Germany

Germany has little tradition of domestic organized crime. Historically, localized criminal societies known as *Ringvereine* engaged in the vice trade in several German cities while maintaining close ties to members of the elite.¹⁷⁵ However, these organizations were disbanded and their members largely sent to concentration camps under the Third Reich.¹⁷⁶ Organized crime received relatively little attention either from law enforcement or from the German public for much of the twentieth century.¹⁷⁷ Indeed, this was seen as primarily an American and Italian problem that had little applicability in Germany.¹⁷⁸ Nevertheless, after World War II, ethnically-based gangs began to emerge as significant players in the German criminal landscape, and the development of criminal organizations has largely tracked patterns of immigration.¹⁷⁹ Of the criminal groups that have emerged in German organized crime reports, the largest have been Turkish groups, followed by groups dominated by immigrants from the former Yugoslavia and Italians.¹⁸⁰ In recent years, mafias have been cause for concern, as there is evidence that the powerful Calabrian ‘Ndrangheta sees Germany as an ideal location for money laundering, thanks to the country’s strong infrastructure and economy.¹⁸¹

¹⁷⁵ Klaus von Lampe, *Making the Second Step Before the First: Assessing Organized Crime*, 4-5 CRIME, L, & SOC. CHANGE 227 (2004).

¹⁷⁶ Klaus von Lampe, *Making the Second Step Before the First: Assessing Organized Crime*, 4-5 CRIME, L, & SOC. CHANGE 227 (2004).

¹⁷⁷ Due to data limitations as well as adherence to my theoretical scope condition of only assessing the development of legal institutions in democracies, when speaking of German policy prior to 1990, I am speaking exclusively about the policy of West Germany.

¹⁷⁸ Klaus von Lampe, *Making the Second Step Before the First: Assessing Organized Crime*, 4-5 CRIME, L, & SOC. CHANGE 227 (2004); Jörg Kinzig and Anna Luczak, *Organized Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 333 (Cyrille Fijnaut and Letizia Paoli eds., 2004).

¹⁷⁹ Klaus von Lampe, *Making the Second Step Before the First: Assessing Organized Crime*, 4-5 CRIME, L, & SOC. CHANGE 227 (2004); Hans-Jörg Albrecht, *Ethnic Minorities, Crime, and Criminal Justice in Germany*, 21 CRIME AND JUST. 31 (1997); Deutsche Welle, *Germany: A Hot Spot for Organized Crime?* (2014).

¹⁸⁰ Klaus von Lampe, *Making the Second Step Before the First: Assessing Organized Crime*, 4-5 CRIME, L, & SOC. CHANGE 227 (2004). In addition, various Eastern European and Middle Eastern groups also have significant presence in Germany.

¹⁸¹ Jürgen Roth, *The Mafia and Organized Crime in Germany*, in TRANSNATIONAL ORGANIZED CRIME: ANALYSES OF A GLOBAL CHALLENGE TO DEMOCRACY (Böll-Stiftung & Schönenberg eds., 2013); Rocco Sciarrone and Luca

ii. Onset

The police became increasingly aware of the existence of organized crime in the mid-1970s and began to host conferences on the issue.¹⁸² However, by the end of the decade, the police were turning their focus away from organized crime and towards the growing problem of terrorist violence.¹⁸³ Over the course of the 1980s, law enforcement and academics began to renew their focus on organized crime. In 1986, the Ministers of Home Affairs and Justice of the German federal states adopted for the first time a definition of organized crime.¹⁸⁴ Though remarkably broad, this definition was not incorporated into law, but merely served as a practical guideline for law enforcement.¹⁸⁵ Yet the public appears not to have been overly concerned about the threat of crime. Survey data suggests that through the mid 1980s, roughly 76% of the German

Sorti, *The Territorial Expansion of Mafia-type Organized Crime. The Case of the Italian Mafia in Germany*, 61 CRIME, L., & SOC. CHANGE 37 (2014); Mafia and Organized Crime in Europe, IL FATTO QUOTIDIANO; 'The Mafia are Invisible but Almost Everywhere in Germany', *Experts Say*, THE LOCAL GERMANY (2017); *Germany Among Mafia Raid Hits in Huge Police Operation*, THE LOCAL GERMANY (2018)

¹⁸² Jörg Kinzig and Anna Luczak, *Organized Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 333 (Cyrille Fijnaut and Letizia Paoli eds., 2004).

¹⁸³ Jörg Kinzig and Anna Luczak, *Organized Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 333 (Cyrille Fijnaut and Letizia Paoli eds., 2004).

¹⁸⁴ Jörg Kinzig and Anna Luczak, *Organized Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 333 (Cyrille Fijnaut and Letizia Paoli eds., 2004). The definition is as follows: "Organised crime constitutes the planned commission of criminal offences driven by the quest for acquiring profits or powers. Such criminal offences have to be, individually or in their entirety, of major significance and involve the cooperation of more than two participants acting with a common intent for a longer or indefinite period of time on a distributed-task basis: a) by utilisation of commercial or business-like structures; b) by application of violence or other methods suitable for achieving intimidation; or c) by exerting influence on politics, the media, public administrations, the justice systems, or commerce and industry." It should be noted that this definition does have some practical significance, as it is used by the police forces in determining which cases are organized crime for investigative and reporting purposes. Letizia Paoli and Cyrille Fijnaut, *Introduction to Part I: The History of the Concept*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 21 (Cyrille Fijnaut and Letizia Paoli eds., 2004).

¹⁸⁵ Jörg Kinzig and Anna Luczak, *Organized Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 333 (Cyrille Fijnaut and Letizia Paoli eds., 2004).

population believed the police had crime under control.¹⁸⁶ Despite the growing interest in organized crime among law enforcement, relatively little concrete change occurred during this time to enhance the state's ability to combat this problem. The landscape began to shift in the early 1990s. German reunification, as well as a surge of immigration, led many Germans to experience a rise in insecurity about crime, with East Germans demonstrating a higher perception of insecurity than West Germans.¹⁸⁷ Particularly within East Germany, media coverage of crime began to increase significantly.¹⁸⁸ At the same time, significant waves of immigration were occurring, and the German media highlighted links between newcomers and crime.¹⁸⁹ Of particularly great concern was the Russian Mafia, which was linked with human trafficking, prostitution, and smuggling of fissile materials.¹⁹⁰ At the same time, the European Union was placing increased emphasis on the problem of organized crime and demanding national legislatures adopt tools to combat this phenomenon.¹⁹¹

It was in this context of social upheaval that Germany began to implement reforms to its legal systems. A series of laws were passed in the 1990s recognizing organized crime as a social threat and giving police new tools to fight it. In 1992, Germany passed the Act to Fight Drug

¹⁸⁶ Uwe Dörmann, *Public Opinion Relating to Crime and Police Action*, in POLICE RESEARCH IN THE FEDERAL REPUBLIC OF GERMANY: 15 YEARS RESEARCH WITHIN THE "BUNDESKRIMINALAMT" 77 (Roland V. Clarke et al., eds 2012)

¹⁸⁷ Monica Gerber et al., *Insecurities About Crime in Germany, Austria and Switzerland: A Review of Research Findings*, 7 EUR. J. OF CRIMINOLOGY 141 (2010). Unfortunately, German scholars only began to keep records on public attitudes towards crime after reunification, largely in response to this shift. As such, an assessment of the shift in public attitude must be somewhat speculative.

¹⁸⁸ Monica Gerber et al., *Insecurities About Crime in Germany, Austria and Switzerland: A Review of Research Findings*, 7 EUR. J. OF CRIMINOLOGY 141 (2010). The East German coverage of crime seems to have brought it more on par with West German coverage. Nevertheless, it is reasonable to expect that the sudden increase in crime coverage may have had a greater impact on East Germans' perception of the threat of crime.

¹⁸⁹ GUALTIERO ZAMBONINI, MIGRATION POLICY INSTITUTE, THE EVOLUTION OF GERMAN MEDIA COVERAGE OF MIGRATION (2009).

¹⁹⁰ James J. Killean, *Der große Lauschangriff: Germany Brings Home the War on Organized Crime*, HASTINGS INT'L & COMP. L. REV. 173 (2000).

¹⁹¹ Michael Kilchling, *Organized Crime Policies in Germany*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 717 (Cyrille Fijnaut and Letizia Paoli eds., 2005).

Trafficking and Other Forms of Organized Crime (often called the Organized Crime Control Act).¹⁹² This legislation introduced money laundering and asset forfeiture into the German criminal code.¹⁹³ However, while the bill established that businesslike crimes and those committed by gangs would be considered aggravated, the legislature declined to recognize aggravation for ‘crimes committed in an organised manner,’ in light of the lack of a definition of organized crime in the German Penal Code.¹⁹⁴ As such, while this law did target criminal groups’ financial assets, it should not be considered a membership liability law.¹⁹⁵

Additional bills were passed in 1994 and 1998.¹⁹⁶ A 1994 provision allowed prosecutors to drop charges against key witnesses, though this provision was little used and eventually allowed to expire.¹⁹⁷ In 1998, police were given an array of enhanced powers, including the power to intercept communications, conduct undercover operations, and launch covert surveillance.¹⁹⁸ The push for reform came largely from the far left, which increasingly sought to

¹⁹² Jörg Kinzig and Anna Luczak, *Organized Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 333 (Cyrille Fijnaut and Letizia Paoli eds., 2004).

¹⁹³ Michael Kilchling, *Organized Crime Policies in Germany*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 717 (Cyrille Fijnaut and Letizia Paoli eds., 2004). For a discussion of the German asset forfeiture regime, see also Michael Kilchling, *Tracing, Seizing and Confiscating Proceeds from Corruption (and other Illegal Conduct) Within or Outside the Criminal Justice System*, 9 EUR. J. OF CRIME, CRIM. L. & CRIM. JUST. 264 (2001).

¹⁹⁴ Jörg Kinzig and Anna Luczak, *Organized Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 333 (Cyrille Fijnaut and Letizia Paoli eds., 2007).

¹⁹⁵ Michael Kilchling notes that the lack of a definition of organized crime has undermined financial investigations as well. Because the money laundering statute can only be applied to organized crime cases, regulations targeting organized crime must list the specific offences to which it applies. This has led to some narrowing of law enforcement’s focus in terms of the activities of organized crime. Michael Kilchling, *Organized Crime Policies in Germany*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 717 (Cyrille Fijnaut and Letizia Paoli eds., 2004).

¹⁹⁶ Jörg Kinzig and Anna Luczak, *Organized Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 333 (Cyrille Fijnaut and Letizia Paoli eds., 2004).

¹⁹⁷ Michael Kilchling, *Organized Crime Policies in Germany*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 717 (Cyrille Fijnaut and Letizia Paoli eds., 2004).

¹⁹⁸ Jörg Kinzig and Anna Luczak, *Organized Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE

claim the issue of internal security. Liberals, by contrast, tended to advocate for staunch protection of civil liberties and were more hesitant about proposed reforms.¹⁹⁹

The changes adopted enhanced the ability of police to combat organized crime. They were also highly controversial. Asset forfeiture, for instance, was believed by many to violate principles of German constitutionality.²⁰⁰ Electronic surveillance was arguably even more concerning, as it threatened a significant intrusion into the privacy of the home. Giving this power to the police stood in tension with the German constitution's emphasis on the value of personal privacy, particularly within the home.²⁰¹ This was a poignant issue in Germany given its history with both Nazism and (in the case of East Germany) a Communist surveillance state.²⁰² The legislation legalizing these measures passed by a very slim margin.²⁰³

iii. Extensiveness

Germany's early reforms are best described as moderate.²⁰⁴ While the country passed legislation allowing for asset forfeiture, it was of limited usefulness. Authorities were required to prove that the assets to be seized stemmed from criminal activity.²⁰⁵ From the early days of the

EUROPEAN UNION AND BEYOND 333 (Cyrille Fijnaut and Letizia Paoli eds., 2004); James J. Killean, *Der groBe Lauschangriff: Germany Brings Home the War on Organized Crime*, HASTINGS INT'L & COMP. L. REV. 173 (2000).

¹⁹⁹ Michael Kilchling, *Organized Crime Policies in Germany*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 717 (Cyrille Fijnaut and Letizia Paoli eds., 2004).

²⁰⁰ Michael Kilchling, *Organized Crime Policies in Germany*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 717 (Cyrille Fijnaut and Letizia Paoli eds., 2004).

²⁰¹ James J. Killean, *Der groBe Lauschangriff: Germany Brings Home the War on Organized Crime*, HASTINGS INT'L & COMP. L. REV. 173 (2000).

²⁰² Nicolas Nohlen, *Germany: The Electronic Eavesdropping Case*, 3 INT'L J. OF CONST. L. 680 (2005).

²⁰³ James J. Killean, *Der groBe Lauschangriff: Germany Brings Home the War on Organized Crime*, HASTINGS INT'L & COMP. L. REV. 173 (2000).

²⁰⁴ Due to language limitations, I am unable to assess the German public's perception of the cohesiveness of the criminal organizations or the way in which this was presented by the press and leaders. I therefore make no inferences about the relationship of perceived group structure and extensiveness in this case.

²⁰⁵ Justus Benseler, *Forfeiture Legislation in Germany: Legal Basis and Prosecution Practice*, 5 EUR. J. OF CRIME, CRIM. L., & CRIM. JUST. 203 (1997).

legislation's existence, this was recognized as a serious impediment to its effectiveness.²⁰⁶

Combined with poor investigative capacities and an attractive market, these weaknesses left Germany vulnerable to continued money laundering.²⁰⁷ In addition, Germany has struggled to establish a definition of organized crime in law.²⁰⁸ As such, while German police may pursue the crimes in which organizations engage, there is little in the legal system that allows them to target members of the group as a whole for prosecution.

Germany has developed national-level units of competent enforcement, particularly within the federal police force (Bundeskriminalamt, BKA). In November 1994, the 'Antidrug' Division of the BKA was merged with the newly formed 'Organised and General Crime' Division.²⁰⁹ This unit has original jurisdiction over offences related to organized crime as well as the collection and analysis of information relating to organized crime, including arms and narcotics trafficking, counterfeiting, and money laundering.²¹⁰ In 2002, Germany also passed the Act to Improve the Combat of Money Laundering and Terrorist Financing, establishing a Financial Intelligence Unit within the BKA to monitor suspicious transactions.²¹¹ However, that

²⁰⁶ Justus Benseler, *Forfeiture Legislation in Germany: Legal Basis and Prosecution Practice*, 5 EUR. J. OF CRIME, CRIM. L., & CRIM. JUST. 203 (1997).

²⁰⁷ Jürgen Roth, *The Mafia and Organized Crime in Germany*, in TRANSNATIONAL ORGANIZED CRIME: ANALYSES OF A GLOBAL CHALLENGE TO DEMOCRACY (Böll-Stiftung & Schönenberg eds., 2013).

²⁰⁸ Jörg Kinzig and Anna Luczak, *Organized Crime in Germany: A Passe-Partout Definition Encompassing Different Phenomena*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 333 (Cyrille Fijnaut and Letizia Paoli eds., 2004).

²⁰⁹ *The History of the Bundeskriminalamt*, BUNDESKRIMINALAMT, https://www.bka.de/EN/TheBKA/History/history_node.html;jsessionid=8EE105CD1FF59BE8237FC80ABFAE8990.live611?cms_date=1990 (accessed 6 Feb. 2022). Since January 2006, the Organised and General Crime Division has been known as the Serious and Organised Crime Division.

²¹⁰ *Division SO*, BUNDESKRIMINALAMT, https://www.bka.de/EN/TheBKA/OrganisationChart/OrganisationalUnits/SeriousAnOrganisedCrime/seriousanorganisedcrime_node.html (accessed 6 Feb. 2022).

²¹¹ Michael Kilchling, *Organized Crime Policies in Germany*, in ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND 717 (Cyrille Fijnaut and Letizia Paoli eds., 2004).

unit appears to have been developed in response to the September 11th attacks and the need to combat international terrorism.²¹²

Table 3.4: Germany Onset

Germany		
	Pre-Reunification	Post-Reunification
Affect/Implicate national interests and receive considerable press attention		X
National government responsible		X
Surprising/Unexpected		X
Nonpartisan/Distributed across social strata		X
Criminal group's involvement unambiguous	?	?
Outcome		Organized Crime Control Act

iv. Analysis

The German case study generally fits with my theory, though some caveats are in order. The passage of laws designed to enhance the country's ability to prosecute organized crime followed closely on the heels of a surge in attention paid to crime that occurred in the wake of German reunification. Fears of rising crime as a result of unification and immigration, particularly from Eastern Europe, seem to have created a heightened fear of crime. This threat was sufficient to motivate the passage of Germany's first anti-organized crime laws, with members of the left-wing parties acting as the key supporters of reform. In addition, specialized enforcement at the federal level was developed during this time.

²¹² Michael Kilchling, *Organized Crime Policies in Germany*, in *ORGANISED CRIME IN EUROPE: CONCEPTS, PATTERNS AND CONTROL POLICIES IN THE EUROPEAN UNION AND BEYOND* 717 (Cyrille Fijnaut and Letizia Paoli eds., 2004). Though more research is needed to know for sure, given the context of the early War on Terror, it seems likely that international pressure, specifically with regard to the funding of terrorist organizations, played a role in establishing this institution.

I am somewhat limited in my ability to directly analyze rising crime rates as perception-shifting events due to language limitations. However, I offer a somewhat speculative analysis here. 1) As concerns were tied to the successful reunification of the country and the security of its borders, rising crime rates in Germany at this time seem to have uniquely impacted national interests. 2) Given the role of the national government in managing the reunification process as well as national security in the context of the fall of the Soviet Union, rising crime rates were likely seen as the national government's responsibility. 3) The effects of reunification were sudden and unexpected. 4) Public concern appears to have existed throughout Germany, though it is noteworthy that fears were higher among East Germans. 5) The public's fears of organized crime were largely speculative and the extent of actual organized criminal activity is difficult to gauge. It is therefore difficult to say that organized criminal groups' involvement was seen as unambiguous. However, more analysis of German news coverage of crime should be conducted to assess this factor.

The threat perception was not sustained, and the laws adopted ultimately proved to be weak. Moreover, at least some of the German policing institutions that are used to target organized crime appear to have been driven by concerns about terrorism rather than organized crime per se. Further research is necessary to understand the extensiveness to which German institutions have developed thus far.

It is worth noting that, as of the time of this writing, German anti-organized crime institutions appear to be undergoing further change. Through the early 2000s, focus on organized crime declined and legislative development largely stalled. However, recent developments have brought more attention to this phenomenon. In 2007, a massacre at a pizza restaurant in Duisberg was traced back to a feud among warring factions of the Calabrian 'Ndrangheta. The killing was

taken as indicative of the growing presence of mafia groups in Germany, a threat about which Italy had been warning.²¹³ In the nearly fifteen years following the Duisberg massacre, there has been a resurgence of attention paid to the presence and violence of organized crime groups in Germany. This scrutiny has largely focused on Italian mafia-style groups but has not been limited to them.²¹⁴ In particular, Germany has been involved in several large-scale, high-profile international antimafia raids.²¹⁵ Well into the late 2010s, Germany was criticized for the leniency of many of its anti-money laundering laws.²¹⁶

This renewed energy has translated into some institutional development.²¹⁷ For instance, in 2017, Germany passed an Anti-Money Laundering Act that, among other reforms, established a new financial intelligence unit to address money laundering.²¹⁸ In 2019, the Interior Ministry proposed changes to restrict illegal re-entry into the country, with a goal of combating criminal

²¹³ *A Deadly Mafia Export from Italy*, DER SPIEGEL INT'L, Aug. 15, 2007; *A Mafia Feud that Began With a Row Over a Firework Leaves Six Dead*, THE GUARDIAN, Aug. 16, 2007; Petra Wischgoll, *Six Italians Shot in Germany in Mafia Feud*, REUTERS, Aug. 15, 2007.

²¹⁴ See e.g., Tom Bristow, *Organized Crime on the Rise in Germany*, THE LOCAL GERMANY, Oct. 2, 2014; 'The Mafia are Invisible but Almost Everywhere in Germany', *Experts Say*, THE LOCAL GERMANY, July 13, 2017; *Italian Mafia Quadruples Presence in Germany Over Less than Decade*, THE LOCAL GERMANY, Aug. 16, 2017; *Nationalist Turkish Biker Group Banned in Germany*, THE LOCAL GERMANY, July 10, 2018; Daniel Wighton, *Explosion in Kreuzberg Bar Amid Rising Criminal Gang Activity in Berlin*, THE LOCAL GERMANY, Oct. 23, 2018; *Germany to Tighten Residency Rules to Combat Organized Crime*, DEUTSCHE WELLE, June 12, 2019.

²¹⁵ *Germany Among Mafia Raid Hits in Huge Police Operation*, THE LOCAL GERMANY, Dec. 5, 2018; Elisabetta Povoledo, *Italian Police Arrest Over 300 in Raids on Organized Crime*, N.Y. TIMES, Dec. 19, 2019; Philip Oltermann and Lorenzo Tondo, *Mafia Gangs Move to Germany as Business Hits Hard Times in Sicily*, THE GUARDIAN, June 29, 2017.

²¹⁶ See e.g., Allison Williams, *Gangster's Paradise: Germany: A Great Place for Money Laundering*, HANDELSBLATT TODAY, Aug. 20, 2018; *Mafia and Organized Crime in Europe*, IL FATTO QUOTIDIANO.

²¹⁷ It is worth noting that Germany has also implemented EU directives with regards to money laundering. See e.g., *Germany Implements the 6th Anti-Money Laundering Directive—What Financial Services Firms Need to Know Now*, JD SUPRA (Nov. 18, 2020), <https://www.jdsupra.com/legalnews/germany-implements-the-6th-anti-money-80656/>. In order to remain consistent in my focus on national-level legal reforms, I do not consider developments originating at the supranational level. However, future work should consider the impact of EU decision-making on legal institutional development within European countries.

²¹⁸ Michael Greive, *Germany Overhauls Chaotic Anti-money-laundering Unit*, HANDELSBLATT TODAY (18 July 2018). The FIU struggled in its first year and developed serious backlogs. A year after its development, it underwent further reforms. The FIU has since noted a significant increase in anti-money laundering cases, though further research is needed to determine if this is a result of increased criminal activity or improved policing. See *Germany Sees Record Spike in Money Laundering Cases*, DEUTSCHE WELLE, Aug. 18, 2020.

gangs.²¹⁹ It also introduced a new policy of increased raids against suspected clans, with a goal of making the leaders insecure.²²⁰ In light of the rising attention being paid to organized crime, it is possible that Germany will experience further institutional reform in the coming years.

e. India

India is a case of weak reform. Although it has asset forfeiture laws that apply to certain offences associated with organized crime, it lacks membership liability laws and competent enforcement units. This is, in some sense unsurprising, given the highly localized nature of Indian organized criminal activity. However, this case diverges from my theoretical expectations in important ways. First, the asset forfeiture laws that have been established in India appear to have been a response to elite and international pressure, rather than shifts in public perception of organized crime. Second, India's experience of significant criminal violence in the form of the 1993 Mumbai bombing was not followed by anti-organized crime institutional development, though my theory would expect it to be. As such, the Indian case is a weak fit with my theory.

i. Organized Crime in India

Organized crime has existed in India in some form for centuries, stretching back to at least the seventeenth century. The Thuggees, an organization of professional robbers, were known to kill travelers and strip them of their goods.²²¹ In addition, bandits known as dacoits operated in the rural areas, while caste-based networks known as goondas were active in cities.²²² In the aftermath of World War II, shortages led to the establishment of black-market networks,

²¹⁹ *Germany to Tighten Residency Rules to Combat Organized Crime*, DEUTSCHE WELLE, June 12, 2019.

²²⁰ *Germany Cracks Down on Clan Crime with 'Zero Tolerance'*, DEUTSCHE WELLE, Mar. 2, 2019.

²²¹ Roderic Broadhurst and Nicholas Farrelly, *Organized Crime "Control" in Asia*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 634 (Letizia Paoli ed., 2014). The British eventually eradicated the Thuggees.

²²² Roderic Broadhurst and Nicholas Farrelly, *Organized Crime "Control" in Asia*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 634 (Letizia Paoli ed., 2014).

which were further expanded in the wake of independence.²²³ Widespread poverty and extensive corruption provided fertile soil for these illegal markets.²²⁴ In general, organized crime in India has manifested in loose networks of local gangs which engage in diverse criminal activities, including drug and arms smuggling, human trafficking, money laundering and cybercrime.²²⁵ They have also at times maintained connections with terrorist groups, which shall be discussed at greater length. Mumbai has historically experienced particularly high levels of such gang activity and is generally considered to be a key center of Indian organized crime.²²⁶

ii. Onset

India is distinctive for the lack of institutions that it has developed at the national level to combat organized crime. The country has passed minimal legislation targeting organized crime, although some anti-terror laws have been used against criminal groups.²²⁷ Police and prosecutors have certain enhanced investigative powers in cases of organized crime, including electronic surveillance, undercover operations, controlled delivery, and the ability to offer witness immunity.²²⁸ The role of competent enforcement in India is somewhat complicated by the country's federalist system. Specialized anti-organized crime policing units do exist within subnational police departments.²²⁹ At the national level, however, they are more limited. India

²²³ Arun Kumar, *Black Economy in India and Transnational Organized Crime: Undermining Democracy*, in TRANSNATIONAL ORGANIZED CRIME: ANALYSES OF A GLOBAL CHALLENGE TO DEMOCRACY 115 (2014)

²²⁴ Roderic Broadhurst and Nicholas Farrelly, *Organized Crime "Control" in Asia*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 634 (Letizia Paoli ed., 2014).

²²⁵ Roderic Broadhurst and Nicholas Farrelly, *Organized Crime "Control" in Asia*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 634 (Letizia Paoli ed., 2014).

²²⁶ Roderic Broadhurst and Nicholas Farrelly, *Organized Crime "Control" in Asia*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 634 (Letizia Paoli ed., 2014).; SHANKAR PRATAP SINGH, TRANSNATIONAL ORGANIZED CRIME: THE INDIAN PERSPECTIVE (2002).

²²⁷ Roderic Broadhurst and Nicholas Farrelly, *Organized Crime "Control" in Asia*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 634 (Letizia Paoli ed., 2014).

²²⁸ SHANKAR PRATAP SINGH, TRANSNATIONAL ORGANIZED CRIME: THE INDIAN PERSPECTIVE (2002).

²²⁹ For instance, the Mumbai Police Crime Branch includes an Anti-Extortion Cell which focuses on organized criminal activity. *Crime Branch*, MUMBAI POLICE, <https://mumbaipolice.gov.in/CrimeBranch> (accessed 7 Feb. 2022). The state of Odisha maintains a Special Task Force on organized crime within Criminal Investigation

does have a federal police unit, the Central Bureau of Investigation (CBI), which fills a role somewhat similar to the American FBI.²³⁰ In 1965, the CBI's Special Crimes Division was given competency to investigate transnational and multistate organized crime, along with other serious crimes.²³¹ While the Special Crimes Division does investigate organized crime, it has a very broad mandate and does not appear to have developed any units dedicated specifically to combating organized crime.²³² Furthermore, the CBI is by law an offshoot of the Delhi Police, and it only has original jurisdiction in Delhi.²³³ It can conduct investigations in other states only with the permission of those states, a permission that can be (and is) withdrawn for political purposes.²³⁴ As such, the Special Crimes Division cannot be considered adequately specialized or nationally effective to count as competent enforcement for purposes of my theory.

Arguably the closest that India has come to establishing a law targeting organized crime as a whole is in the realm of asset forfeiture. The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act of 1976 allows for the seizure of proceeds in the context of some smuggling crimes.²³⁵ The Narcotic Drugs & Psychotropic Substances Act of 1985 does likewise

Division of its Crime Branch. *STF*, CID CRIME BRANCH, ODISHA POLICE, <http://odishapolicecidcb.gov.in/?q=node/210> (accessed 7 Feb. 2022).

²³⁰ *CBI & its Roles*, CENTRAL BUREAU OF INVESTIGATION, <https://cbi.gov.in/CBI-its-Roles> (accessed 7 Feb. 2022).

²³¹ *CBI, I-T, ED, NIA and NCB - From Roles to Formation, Know All about Central Agencies Amid Recent Centre-Maharashtra Feud over Extortion Allegations*, THE FREE PRESS J. (Oct. 26, 2021).

²³² According to the CBI, the Special Crimes Division is responsible for “all cases of economic offences and all cases of conventional nature such as offences relating to internal security, espionage, sabotage, narcotics and psychotropic substances, antiquities, murders, dacoities/robberies, cheating, criminal breach of trust, forgeries, dowry deaths, suspicious deaths and other IPC offences as well as offences under other laws notified under the DSPE Act. It is also responsible for investigation of interstate and international rackets, large-scale frauds affecting the property or revenue of the Government and crimes of national importance.” *Divisions in CBI*, CENTRAL BUREAU OF INVESTIGATION, <https://cbi.gov.in/Divisions-in-CBI> (accessed 7 Feb. 2022). This mandate is far too broad to consider the Special Crimes Division itself as specialized in the prosecution of organized crime. There is not, to my knowledge, a subset of the Special Crimes Division focused exclusively on organized crime. However, it is somewhat difficult to access detailed information about the CBI structure. Such a unit would come closer to my definition of competent enforcement. However, even with such a unit, the inability of the CBI to operate nationally in the absence of state consent would still undermine the unit's ability to effectively target organized crime.

²³³ Prabhash Dutta, *What is General Consent to CBI? How Many States Have Withdrawn It?* INDIA TODAY (2020).

²³⁴ Prabhash Dutta, *What is General Consent to CBI? How Many States Have Withdrawn It?* INDIA TODAY (2020).

²³⁵ SHANKAR PRATAP SINGH, *TRANSNATIONAL ORGANIZED CRIME: THE INDIAN PERSPECTIVE* (2002).

in the context of the narcotics trade.²³⁶ Targeting assets is a difficult aspect of the fight against organized crime in India. Money laundering has long been a significant problem in the Indian criminal context, in large part because of the country's *hawala* system, an informal network of money lending and brokerage.²³⁷ Where a detained individual's assets have been seized, the burden of proof is on that person (rather than the prosecutor) to demonstrate that the assets were legally obtained.²³⁸ It is worth noting that the passage of these laws does not appear to have corresponded to any major surge in Indian concern about organized crime. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act followed rising concerns about India's role in the global heroin trade²³⁹ as well as international pressure on the Indian government to crack down on drug trafficking.²⁴⁰ It appears that attention to this issue was more international and elite-driven than popular.²⁴¹

As discussed, organized crime in India is loosely organized and very localized. As such, it does not generally seem to have been perceived as a national threat. This would lead me to expect India to have developed relatively little in the way of a robust anti-organized crime infrastructure. One event is problematic for my theory. On March 12, 1993, a series of 13 bombs ripped through the city of Mumbai (then Bombay), killing 257 people and wounding 1,400

²³⁶ SHANKAR PRATAP SINGH, *TRANSNATIONAL ORGANIZED CRIME: THE INDIAN PERSPECTIVE* (2002). In addition, Indian law allows for the preventive detention of foreign exchange racketeers and drug traffickers in certain circumstances. SHANKAR PRATAP SINGH, *TRANSNATIONAL ORGANIZED CRIME: THE INDIAN PERSPECTIVE* (2002).

²³⁷ Roderic Broadhurst and Nicholas Farrelly, *Organized Crime "Control" in Asia*, in *THE OXFORD HANDBOOK OF ORGANIZED CRIME* 634 (Letizia Paoli ed., 2014); SHANKAR PRATAP SINGH, *TRANSNATIONAL ORGANIZED CRIME: THE INDIAN PERSPECTIVE* (2002).

²³⁸ The Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, No. 13 of 1976, (1976), §6; Narcotic Drugs & Psychotropic Substances Act, 1985, No. 61 of 1985, (1985), §68J.

²³⁹ Suman Dubey and Asoka Raina, *India Fast Burgeoning into a Major Drug Transit Country*, *INDIA TODAY* (1981, updated in 2014)

²⁴⁰ *Heroin Trade Strained India-UK relations in 1980s*, *THE ECONOMIC TIMES* (2015).

²⁴¹ Raj Chengappa, *Public Perception Towards Drug Use*, in *SOUTH ASIA DRUG DEMAND REDUCTION REPORT* (1998). Chengappa notes that attitudes of shame regarding addiction tended to inhibit public discourse surrounding drug use. Anti-drug abuse campaigns were launched by the government and media, though there is reason to question their effectiveness.

more.²⁴² It was quickly concluded that Dawood Ibrahim, leader of the D-Company organized crime group had organized the attack.²⁴³ Despite Ibrahim's status as a leading organized crime figure, the attack is believed to have been motivated by ideological, rather than economic, considerations.²⁴⁴ The bombing was carried out in retaliation for Hindu destruction of the Babri mosque in Ayodhya in December 1992 and was the deadliest terrorist attack in India to that day.²⁴⁵ Given the unprecedented scale of the damage, the Mumbai bombings were seen as an attack on India (rather than Mumbai alone).²⁴⁶ Yet they did not result in a demand for the state to take action against organized crime.

One possible explanation for this result is the unique nature of the attack. Though Ibrahim was affiliated with an organized criminal group, the Mumbai bombings have generally been seen as a terrorist attack carried out for ideological, rather than economic, purposes.²⁴⁷ Those perpetrators who were caught were tried under India's harsh Terrorist and Disruptive Activities Act.²⁴⁸ Thus, while organized crime was adjacent to the attacks, it was not their cause per se. It is therefore possible that any shift in public threat perception was not directed at

²⁴² Sanjoy Hazarika, *200 Killed as Bombings Sweep Bombay*, N.Y. TIMES, Mar. 13, 1993; Bachi Karkaria, *How the 1993 Blasts Changed Mumbai Forever*, BBC, July 30, 2015.

²⁴³ Rajdeep Sardesai, *Muslims And The Blasts: Must They Wear A Badge Of Patriotism?* THE TIMES OF INDIA, April 1993; *Unravelling The Plot*, THE TIMES OF INDIA, Nov. 1993. Subhash Chakravarti, *Pakistan Preventing Dawood's Extradition*, THE TIMES OF INDIA, April 1993. Ibrahim fled India and has never been caught or stood trial.

²⁴⁴ Though D-Company's membership was religiously pluralist, the attack resulted in a fracturing of the organization into Muslim and Hindu factions. Roderic Broadhurst and Nicholas Farrelly, *Organized Crime "Control" in Asia*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 634 (Letizia Paoli ed., 2014).

²⁴⁵ Bachi Karkaria, *How the 1993 Blasts Changed Mumbai Forever*, BBC, July 30, 2015; SARAH MILLER AND RANDOLPH H. PHERSON, *CASES IN INTELLIGENCE ANALYSIS: STRUCTURED ANALYTIC TECHNIQUES IN ACTION*, Ch. 14 (2d ed. 2014)

²⁴⁶ Swapan Dasgupta, *Terrorist Blackmail: Responding With Measured Arrogance*, THE TIMES OF INDIA, Mar. 1993 ("The paradox, of course, is that the depredations of terrorists have succeeded in alerting the international community to the awesome threats to Indian nationhood."); *Unravelling The Plot*, THE TIMES OF INDIA, Nov. 1993 ("the bomb blasts in Bombay were no isolated happening, but part of an international conspiracy aimed at undermining the nation's sovereignty by spreading communal violence."); "An Attack on the Indian State," THE TIMES OF INDIA, Mar. 21 1993, at 15.

²⁴⁷ They are therefore distinct from the attacks of Pablo Escobar or mafia boss Totò Riina, both of whom engaged in violence to advance their criminal goals.

²⁴⁸ John Ward Anderson, *The Bombay Bomb Trial's Star Defendant*, WASH. POST, July 23, 1994.

organized crime and therefore did not lead to demand for new anti-organized crime legislation. This perception may have been manipulated, at least in part. In the wake of the bombing, Indian Home Secretary N.N. Vohra submitted a report on the criminalization of politics.²⁴⁹ However, the full report was never released to the public, prompting speculation that it may contain damning information about the extent of criminal involvement in Indian politics.²⁵⁰

While relatively little national anti-organized crime legislation has developed in India, state-level measures have had more success. In 1999, Maharashtra (the state in which Mumbai is located) passed the Maharashtra Control of Organised Crime Act, which created an offense of organized crime that was punishable by life imprisonment or death if a death has been caused by the crime.²⁵¹ It also created specialized courts to try such crimes and facilitated the use of enhanced police powers of surveillance.²⁵² Other states have since followed in Maharashtra's footsteps.²⁵³ While the development of anti-organized crime institutions is occurring in India, it seems to be taking place primarily at the subnational level.

²⁴⁹ *Vohra Committee Report*, 48 INDIAN J. OF PUB. ADMIN. 471 (1995).

²⁵⁰ Abhinandan Mishra, 'Vohra Annexures Will Expose Congress' Dawood, Mirchi Links', THE SUNDAY GUARDIAN, Oct. 19, 2019; Akhil Oka, *Vohra Committee Report Back In Focus As Plea In SC Seeks Action On Criminal-neta Nexus*, REPUBLIC WORLD, Nov. 20, 2020; Ashish Tripathi, *SC Refuses Plea Asking Govt to Act on Vohra Committee Report*, DECCAN HERALD, Dec. 11, 2020.

²⁵¹ A.G. Noorani, *Rule of Law and Organised Crime*, 34 ECON. & POL. WKLY. (1999).

²⁵² A.G. Noorani, *Rule of Law and Organised Crime*, 34 ECON. & POL. WKLY. (1999).

²⁵³ See e.g., Chitleen Sethi, *With its Own Organised Crime Control Law in Place, Haryana Now Hopes to Rein in Gangsters*, THEPRINT Aug. 22, 2019; *Kerala to Bring in MCOCA-like Law to Combat Organised Crimes*, THE WEEK, Aug. 6, 2020; *Law to Curb Organised Crimes Coming Up Soon: TN* THE NEW INDIAN EXPRESS, Oct. 2, 2020.

Table 3.5: India Onset

India		
	Localized Crime	Mumbai Bombing
Affect/Implicate national interests and receive considerable press attention		X
National government responsible		X
Surprising/Unexpected		X
Nonpartisan/Distributed across social strata		?
Criminal group's involvement unambiguous		?
Outcome	Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act; Narcotic Drugs & Psychotropic Substances Act	State-level reform

iii. [Analysis](#)

The Indian case is an imperfect fit with my theory. Organized crime has primarily manifested as a local issue in India, and the institutions set up to combat it have been most robust at the state level. This is consistent with my expectation that where crime is not seen as a national threat by the public, there is unlikely to be institutional reform. However, two aspects of this case are inconsistent with my theoretical expectations. First, where India has passed permissive laws, namely in the realm of asset forfeiture, there is no evidence that they were proceeded by a shift in public perception. Instead, these measures appear to have been primarily a response to elite and international concern.

Second, the lack of a national response to organized crime following the Mumbai bombings is surprising. According to the expectations of my theory, this event likely should have shifted public perception of the threat of organized crime. However, it must be acknowledged that at least two of the factors that I identify as necessary to shift public perception are not obviously

met in this case and require further study to be confirmed or repudiated. 1) As a major terrorist attack on the country's most populated city, this event both implicated national interests, and received considerable attention from the national press. 2) The national government appears to have been seen as responsible for addressing the Bombay attack, as those who were caught were tried under federal law. 3) The bombing was the largest terrorist attack in Indian history to that point and was quite shocking. 4) Public outrage generally appears to have been widespread, though it should be noted that it took place in the context of Hindu-Muslim conflict within India. As such, the bombings may have caused social division that undermined unified outrage directed against organized crime. 5) The criminal group's involvement in the event was relatively unambiguous. However, it seems that the group's motivation was seen as ideological rather than criminal, which may have weakened demand for anti-organized crime reform. Moreover, politicians with corrupt ties to organized crime also may have deliberately sought to minimize public perception of a link between criminal groups and the bombing. However, given the state of the evidence on this question, the relationship between politics and public perception remains speculative.

*j. Japan*²⁵⁴

Japan is a case of strong reform. Although organized criminal groups known as the yakuza have existed openly in Japan for many years, their increased use of violence and changing criminal activities in the late 1980s generated significant popular backlash. Beginning in the 1990s, the government adopted a series of administrative measures that restricted the groups' ability to engage in illicit activities. In addition, the Japanese police have developed specialized anti-organized crime units to target these groups. The Japanese case is unusual, both

²⁵⁴ As in the case of Germany, language limitations prevent me from fully reviewing primary source material.

in terms of the social acceptance of organized crime that the country initially demonstrated as well as the form which permissive laws ultimately took. Nevertheless, the processes through which these laws were adopted largely conforms to my theory.

i. Organized Crime in Japan

Japan's main organized crime group, the Yakuza, originated among street peddlers and gamblers during the early Tokugawa period (1600-1867).²⁵⁵ There are several yakuza groups, but the four main groups are the Yamaguchi-gumi, the Sumiyoshi-kai, the Inagawa-kai, and the Aizu Kotetsu-kai.²⁵⁶ Their activities include extortion, smuggling, gambling, and prostitution.²⁵⁷ Though the yakuza were repressed during the 1930s, they regained power in the wake of World War II.²⁵⁸ Economic shortages created a black market for smuggled goods, while economic recovery during the years of the Korean War created an opportunity for the yakuza to develop strong control over organized labor and certain sectors of the legal market.²⁵⁹ Following a police crackdown in the 1960s, the yakuza reorganized to focus on under-policed crimes, and effectively expanded its reach.²⁶⁰ In addition to smuggling, the yakuza controls illicit gambling and protection rackets, and maintains close connections to the legal economy.²⁶¹ Moreover, the yakuza's ties to the state have historically been quite close. Police officers maintained regular contact with yakuza bosses, who they saw as keeping control of the underworld.²⁶² Indeed,

²⁵⁵ PETER B.E. HILL, *THE JAPANESE MAFIA: YAKUZA, LAW, AND THE STATE* (2003)

²⁵⁶ Robin Andrews, *The Mafia That Fights Mother Nature*, FORBES, Nov. 30, 2017.

²⁵⁷ Robin Andrews, *The Mafia That Fights Mother Nature*, FORBES, Nov. 30, 2017.

²⁵⁸ Peter Hill, *The Japanese Yakuza*, in *THE OXFORD HANDBOOK OF ORGANIZED CRIME* 234 (Letizia Paoli ed., 2014).

²⁵⁹ Peter Hill, *The Japanese Yakuza*, in *THE OXFORD HANDBOOK OF ORGANIZED CRIME* 234 (Letizia Paoli ed., 2014).

²⁶⁰ Peter Hill, *The Japanese Yakuza*, in *THE OXFORD HANDBOOK OF ORGANIZED CRIME* 234 (Letizia Paoli ed., 2014). Legal reforms at the time particularly facilitated the targeting of gambling, so gangs with diverse sources of income were best able to weather the crackdown.

²⁶¹ Peter Hill, *The Japanese Yakuza*, in *THE OXFORD HANDBOOK OF ORGANIZED CRIME* 234 (Letizia Paoli ed., 2014); Bruce A. Gagert, *Yakuza: The Warlords of Japanese Organized Crime*, 4 ANN. SURV. OF INT'L AND COMP. L. 147 (1997).

²⁶² Peter Hill, *Heisei Yakuza: Burst Bubble and Bōtaihō*, 6 SOC. SCI. JAPAN J. 1 (2003).

yakuza bosses often worked cooperatively with the police.²⁶³ In addition, the yakuza historically had close ties to politicians, particularly the conservative Liberal Democratic Party (LDP).²⁶⁴ In the mid-twentieth century these links were relatively open, though by the end of the twentieth century, the criminal groups tended to operate in a less visible manner.²⁶⁵ Nevertheless, yakuza members continued to engage in electioneering activities and corrupt funding of politicians.²⁶⁶

Unlike many organized criminal groups, the yakuza have a semi-public role in society. Yakuza membership is not illegal, and historically members of the yakuza have participated openly in public ceremonies and disaster relief activities, even opening offices and handing out business cards.²⁶⁷ The yakuza have represented themselves as bound by a code of chivalry (*ninkyō*) and obligations of patriotism that make them uniquely pro-social gangsters.²⁶⁸ In the words of one former yakuza leader, "the yakuza are trying to pursue the road of chivalry and patriotism. That's our biggest difference with the American Mafia, it's our sense of *giri-ninjo* (a combination of duty and compassion). The yakuza try to take care of all society if possible, even if it takes one million yen to help a single person."²⁶⁹ Yakuza films have been very popular in Japan, and seem to have contributed to a certain social mythologizing of organized crime, which members of the yakuza have themselves sought to influence.²⁷⁰ Members of the yakuza have

²⁶³ Bruce A. Gagert, *Yakuza: The Warlords of Japanese Organized Crime*, 4 ANN. SURV. OF INT'L AND COMP. L. 147 (1997).

²⁶⁴ EIKO MARUKO SINIAWER, RUFFIANS, YAKUZA, NATIONALISTS: THE VIOLENT POLITICS OF MODERN JAPAN, 1860–1960 (2008)

²⁶⁵ Peter Hill, *The Japanese Yakuza*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 234 (Letizia Paoli ed., 2014).

²⁶⁶ Peter Hill, *The Japanese Yakuza*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 234 (Letizia Paoli ed., 2014).

²⁶⁷ Jake Adelstein, *The Yakuza Lobby*, FOREIGN POLICY, Dec. 13, 2012; Terril Yue Jones, *Yakuza Among First with Relief Supplies in Japan*, REUTERS, Mar. 25, 2011.

²⁶⁸ Peter Hill, *The Japanese Yakuza*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 234 (Letizia Paoli ed., 2014); Bruce A. Gagert, *Yakuza: The Warlords of Japanese Organized Crime*, 4 ANN. SURV. OF INT'L AND COMP. L. 147 (1997).

²⁶⁹ Bruce A. Gagert, *Yakuza: The Warlords of Japanese Organized Crime*, 4 ANN. SURV. OF INT'L AND COMP. L. 147 (1997).

²⁷⁰ Federico Varese, *The Secret History of Japanese Cinema: The Yakuza Movies*, 7 GLOBAL CRIME 105 (2006).

historically been recognizable by their elaborate body tattoos as well as the fact that many of them have amputated parts of their fingers.²⁷¹ There is some evidence that the Yakuza has been taking steps in recent years to reduce their visibility by decreasing the use of such readily identifiable signals.²⁷²

ii. Onset

In the Japanese context, public awareness of the existence of organized crime was consistently high. As discussed, the yakuza operated relatively publicly and were widely seen as part of the social fabric. They also tended to respond to public opinion, which tolerated the groups as long as they remained within certain limits of behavior.²⁷³ In particular, the yakuza was expected to confine its criminal activities to prostitution, gambling, and extortion, and to avoid the use of violence against ordinary civilians.²⁷⁴ However, the yakuza began to change in the mid-1980s. Taking advantage of the economic boom ongoing at the time, the yakuza increased its presence in the legitimate market, particularly in real estate.²⁷⁵ At the same time, gangs increasingly began to rely on violent intimidation against ordinary citizens.²⁷⁶ Perhaps more significantly, in the late 1980s and early 1990s, a series of yakuza wars broke out in Japan,

²⁷¹ Amputation is part of a ritual known as *yubitsume*, whereby members of the organization sever parts of their own fingers to atone for some mistake deemed punishable by the organization's hierarchy. Anand Bosmia et al., *Yubitsume: Ritualistic Self-Amputation of Proximal Digits Among the Yakuza*, 6 J. OF INJ. & VIOLENCE RES. 54 (2014). However, such visible markers can be hidden with clothing to cover the tattoos as well as prosthetic fingers. Akiko Fujita, Prosthetic Fingers Help Reform Japan's Feared Yakuza Gangsters, ABC NEWS, June 6, 2013.

²⁷² Edward F. Reilly, *Criminalizing Yakuza Membership: A Comparative Study of the Anti-Boryokudan Law*, 13 WASH. U. GLOBAL STUD. L. REV. 801 (2014). Reilly also notes that the increasing prevalence of tattoos among non-yakuza Japanese has made it somewhat easier for members of the group to blend in.

²⁷³ Bruce A. Gagert, *Yakuza: The Warlords of Japanese Organized Crime*, 4 ANN. SURV. OF INT'L AND COMP. L. 147 (1997).

²⁷⁴ Bruce A. Gagert, *Yakuza: The Warlords of Japanese Organized Crime*, 4 ANN. SURV. OF INT'L AND COMP. L. 147 (1997).

²⁷⁵ Bruce A. Gagert, *Yakuza: The Warlords of Japanese Organized Crime*, 4 ANN. SURV. OF INT'L AND COMP. L. 147 (1997).

²⁷⁶ Peter Hill, *Heisei Yakuza: Burst Bubble and Bōtaihō*, 6 SOC. SCI. JAPAN J. 1 (2003).

resulting in fatalities.²⁷⁷ Among the dead was a high school student who was mistaken for a gang member, a killing that particularly inflamed popular opinion.²⁷⁸

The public response included protests and demands for the closure of yakuza facilities.²⁷⁹ At the same time, the LDP was reeling from a series of corruption scandals that had severely tarnished its image.²⁸⁰ Kaifu Toshiki was chosen as Prime Minister by the LDP in 1989 in order to address this damage.²⁸¹ As part of this objective, Toshiki and the LDP adopted a reformist stance towards the yakuza, introducing legislation to combat organized crime.²⁸² This, combined with American pressure to crack down on organized crime, led to new political interest in anti-yakuza reform.²⁸³ In 1991, the parliament unanimously passed the Boryokudan Countermeasures Law which Toshiki had proposed.²⁸⁴ This law defined violence-based groups (*boryokudan*) and illegalized a number of activities in which the yakuza was engaged.²⁸⁵ In addition, penalties were put into effect for citizens who did business with the yakuza.²⁸⁶

²⁷⁷ Peter Hill, *Heisei Yakuza: Burst Bubble and Bōtaihō*, 6 SOC. SCI. JAPAN J. 1 (2003). These wars were the Yama-ichi Tōsō (1984-89), the Hachiōji war (1990), and the conflict between the Sandai-me Kokuryū-kai and the Okinawa Kokuryū-kai (1990). Peter Hill, *Heisei Yakuza: Burst Bubble and Bōtaihō*, 6 SOC. SCI. JAPAN J. 1 (2003).

²⁷⁸ Peter Hill, *Heisei Yakuza: Burst Bubble and Bōtaihō*, 6 SOC. SCI. JAPAN J. 1 (2003); DAVID E. KAPLAN AND ALEC DUBRO, *YAKUZA: JAPAN'S CRIMINAL UNDERWORLD* (2012)

²⁷⁹ DAVID E. KAPLAN AND ALEC DUBRO, *YAKUZA: JAPAN'S CRIMINAL UNDERWORLD* (2012). The agitation has not been entirely unidirectional. In addition to launching violent attacks against citizens groups, a yakuza group in Hamamatsu sued local residents trying to expel them for “mental anguish.” DAVID E. KAPLAN AND ALEC DUBRO, *YAKUZA: JAPAN'S CRIMINAL UNDERWORLD* 209 (2012).

²⁸⁰ Peter Hill, *Heisei Yakuza: Burst Bubble and Bōtaihō*, 6 SOC. SCI. JAPAN J. 1 (2003).

²⁸¹ Peter Hill, *Heisei Yakuza: Burst Bubble and Bōtaihō*, 6 SOC. SCI. JAPAN J. 1 (2003).

²⁸² Edward F. Reilly, *Criminalizing Yakuza Membership: A Comparative Study of the Anti-Boryokudan Law*, 13 WASH. U. GLOBAL STUD. L. REV. 801 (2014); Peter Hill, *Heisei Yakuza: Burst Bubble and Bōtaihō*, 6 SOC. SCI. JAPAN J. 1 (2003).

²⁸³ Edward F. Reilly, *Criminalizing Yakuza Membership: A Comparative Study of the Anti-Boryokudan Law*, 13 WASH. U. GLOBAL STUD. L. REV. 801 (2014); Peter Hill, *Heisei Yakuza: Burst Bubble and Bōtaihō*, 6 SOC. SCI. JAPAN J. 1 (2003); PETER B.E. HILL, *THE JAPANESE MAFIA: YAKUZA, LAW, AND THE STATE* (2003); Steven R. Weisman, *Japan's Urban Underside Erupts, Tarnishing Image of Social Peace*, N.Y. TIMES, Oct. 11, 1990.

²⁸⁴ Edward F. Reilly, *Criminalizing Yakuza Membership: A Comparative Study of the Anti-Boryokudan Law*, 13 WASH. U. GLOBAL STUD. L. REV. 801 (2014); Peter Hill, *Heisei Yakuza: Burst Bubble and Bōtaihō*, 6 SOC. SCI. JAPAN J. 1 (2003).

²⁸⁵ PETER B.E. HILL, *THE JAPANESE MAFIA: YAKUZA, LAW, AND THE STATE* (2003). The law was passed without objection or criticism within a month of gaining cabinet approval, in what was an exceptionally fast process.

²⁸⁶ Edward F. Reilly, *Criminalizing Yakuza Membership: A Comparative Study of the Anti-Boryokudan Law*, 13 WASH. U. GLOBAL STUD. L. REV. 801 (2014); Peter Hill, *Heisei Yakuza: Burst Bubble and Bōtaihō*, 6 SOC. SCI. JAPAN J. 1 (2003).

The Japanese approach is in some ways counter-intuitive, as it relies on a criminalization of the behavior of non-yakuza citizens, rather than the yakuza alone. To outside observers, this may seem ineffective, as it relies on the public's willingness to stand up to criminals. However, this approach does seem to have borne some success. By threatening the prosecution of citizens who have dealings with the yakuza, Japan appears to have undermined the ability of the yakuza to engage in its regular business dealings.²⁸⁷ It is likely that the stigma around arrest combined with Japan's near-100% conviction rate has helped to make this threat singularly powerful in the Japanese context, though further research is needed to confirm the causation.²⁸⁸

iii. Extensiveness

The yakuza itself has actively worked to prevent further reforms. In 2007, the largest yakuza factions decided to support the Democratic Party of Japan (DPJ).²⁸⁹ This was the first time the groups had supported a party other than the LDP.²⁹⁰ This decision was apparently adopted in response to the LDP's increased willingness to crack down on organized crime.²⁹¹ At least some insiders have claimed that the yakuza chose to switch its support in order to prevent more robust criminal laws from being passed.²⁹² The DPJ subsequently won the 2009 elections, though this did not ultimately prevent continued legal reform.²⁹³

²⁸⁷ The 2011 Organized Crime Exclusion Laws prohibit citizens from making payments to the Yakuza. The penalties include a maximum fine of approximately \$5,000 or a maximum of 1 year in prison. Edward F. Reilly, *Criminalizing Yakuza Membership: A Comparative Study of the Anti-Boryokudan Law*, 13 WASH. U. GLOBAL STUD. L. REV. 801 (2014); Peter Hill, *Heisei Yakuza: Burst Bubble and Bōtaihō*, 6 SOC. SCI. JAPAN J. 1 (2003).

²⁸⁸ David T. Johnson, *Japan's Prosecution System*, 41 CRIME & JUST. 35 (2012).

²⁸⁹ Jake Adelstein, *The Last Yakuza*, 27 WORLD POL'Y J. 63 (2010).

²⁹⁰ Jake Adelstein, *The Last Yakuza*, 27 WORLD POL'Y J. 63 (2010).

²⁹¹ Jake Adelstein, *The Last Yakuza*, 27 WORLD POL'Y J. 63 (2010); Peter Hill, *The Japanese Yakuza*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 234 (Letizia Paoli ed., 2014).

²⁹² Jake Adelstein, *The Last Yakuza*, 27 WORLD POL'Y J. 63 (2010).

²⁹³ Jake Adelstein, *The Last Yakuza*, 27 WORLD POL'Y J. 63 (2010).

The Boryokudan Countermeasures Law has been strengthened over the years, with revisions in 2007 and 2012 enhancing prosecutorial tools.²⁹⁴ The revisions enhanced the groups' civil liability, creating opportunities for citizens to sue yakuza groups that caused them damage.²⁹⁵ In addition, they made it easier for police to arrest members of the yakuza.²⁹⁶ In 2011, Japan passed the Organized Crime Exclusion Laws, which further increased the obligations on citizens, for instance by prohibiting individuals from paying members of yakuza groups and banks from making loans to them.²⁹⁷ The Japanese approach allows the Japanese public to work with the police to regulate organized crime. However, Japan continues to refuse to criminalize the yakuza outright, despite U.S. pressure to increase its crackdown on these groups.²⁹⁸

By 2004, Japanese prefectural police had begun establishing specialized units within their departments dedicated to combating organized crime.²⁹⁹ These were specifically intended to be units trained in skills necessary to conduct investigations into organized criminal groups.³⁰⁰ In September 2009, National Police Agency chief Takaharu Ando declared war on organized crime,

²⁹⁴ Edward F. Reilly, *Criminalizing Yakuza Membership: A Comparative Study of the Anti-Boryokudan Law*, 13 WASH. U. GLOBAL STUD. L. REV. 801 (2014).

²⁹⁵ Edward F. Reilly, *Criminalizing Yakuza Membership: A Comparative Study of the Anti-Boryokudan Law*, 13 WASH. U. GLOBAL STUD. L. REV. 801 (2014).

²⁹⁶ Edward F. Reilly, *Criminalizing Yakuza Membership: A Comparative Study of the Anti-Boryokudan Law*, 13 WASH. U. GLOBAL STUD. L. REV. 801 (2014).

²⁹⁷ Edward F. Reilly, *Criminalizing Yakuza Membership: A Comparative Study of the Anti-Boryokudan Law*, 13 WASH. U. GLOBAL STUD. L. REV. 801 (2014).

²⁹⁸ Edward F. Reilly, *Criminalizing Yakuza Membership: A Comparative Study of the Anti-Boryokudan Law*, 13 WASH. U. GLOBAL STUD. L. REV. 801 (2014).

²⁹⁹ NATIONAL POLICE AGENCY DEPUTY COMMISSIONER GENERAL, GUIDELINES OF POLICE POLICY IN JAPAN, OUTLINE OF MEASURES AGAINST ORGANIZED CRIME, Chapter VIII, §III.2 (Oct. 25, 2004).

³⁰⁰ NATIONAL POLICE AGENCY DEPUTY COMMISSIONER GENERAL, GUIDELINES OF POLICE POLICY IN JAPAN, OUTLINE OF MEASURES AGAINST ORGANIZED CRIME, Chapter VIII, §III.2 (Oct. 25, 2004) (“The police are to give practical education on methods of collection, integration and analysis of information about criminal organizations, how to utilize advanced information technologies such as Organized Crime Control Information Management Systems, good use of investigation methods effective for cracking down on organized crime, and the language ability necessary for investigating crimes committed by foreigners, in order to develop investigators who have specialized skills and to improve investigation abilities.”)

launching a significant crackdown on the yakuza.³⁰¹ In recent years, the groups' membership has decreased.³⁰² It is also aging, as fewer young people find membership economically or culturally appealing.³⁰³ As much of this difficulty stems from the burden Japan's reformist laws place on yakuza members' ability to earn money,³⁰⁴ these laws arguably function in a manner analogous to asset forfeiture regimes.

Table 3.6: Japan Onset

Japan		
	Postwar Open Yakuza Operation	Yakuza Wars
Affect/Implicate national interests and receive considerable press attention		X
National government responsible		X
Surprising/Unexpected		X
Nonpartisan/Distributed across social strata		X
Criminal group's involvement unambiguous	X	X
Outcome		Boryokudan Countermeasures Law

³⁰¹ 민동현, *Japan Toughens Up on Yakuza Gangsters*, KOREA HERALD, Jan. 24, 2011; Gavin Blair, *Japan's Yakuza Mafia Faces a Crackdown*, CHRISTIAN SCI. MONITOR, July 27, 2010; *Japanese Police Arrest 'Don' After Long Campaign Against Yakuza Gangsters*, SUNDAY TIMES, Dec. 3, 2010.

³⁰² Jake Adelstein and Nathalie-Kyoko Stucky, *Where Have Japan's Yakuza Gone?*, DAILY BEAST, July 12, 2017.

³⁰³ Jake Adelstein and Nathalie-Kyoko Stucky, *Where Have Japan's Yakuza Gone?*, DAILY BEAST, July 12, 2017; Justin McCurry, *Making a Slow Getaway: Japan's Anti-Yakuza Laws Result in Cohort of Ageing Gangsters*, GUARDIAN, Sept. 5, 2020; *The Gang's Gone Gray: Majority of Yakuza in Japan Now Over Age 50*, ASAHI SHIMBUN, Aug. 21, 2020. As Adelstein and Stucky note, it is possible that at least some of the perceived decline in yakuza membership is a result of the organization increasingly going underground.

³⁰⁴ Jake Adelstein and Nathalie-Kyoko Stucky, *Where Have Japan's Yakuza Gone?*, DAILY BEAST, July 12, 2017; Justin McCurry, *Making a Slow Getaway: Japan's Anti-Yakuza Laws Result in Cohort of Ageing Gangsters*, GUARDIAN, Sept. 5, 2020.

iv. Analysis

The Japanese experience fits with my theory, albeit in a unique way. Though the Japanese public had long recognized and tolerated the existence of organized crime, once the yakuza broke the social compact and began to engage in excessive violence, the public began to demand that they be repressed. The scandals of the 1980s do correspond with my expectations of perception-shifting events. 1) The infiltration of the yakuza into the legitimate economy as well as its ties with national parties implicated national interests. 2) In the context of Japan's highly unitary system, and given the national parties' involvement in the scandals, the national government was seen as responsible for the problem. 3) Although the yakuza was an accepted part of Japanese society, its breaking of the social compact was unexpected and drove public protest. 4) Public outrage appears to have been nonpartisan and distributed across social strata. 5) The yakuza's involvement in violence and corruption was perceived as relatively unambiguous.

This shift in national perception of the yakuza from an accepted part of Japanese society to a threat seems to have been key to the government's initial passage of the Boryokudan Countermeasures Law. Admittedly, this outcome was somewhat over-determined. The scandals plaguing the LDP and international pressure mounting in the late 1980s and early 1990s likely contributed to the government's decision to implement reform. Nonetheless, perception of the yakuza as a serious problem has been sustained through several iterations of enhanced anti-yakuza legislation and the development of competent enforcement units within the police, suggesting reform was not merely a result of political circumstances of the early 1990s.

The Japanese legislation represents an atypical form of permissive laws. Rather than criminalizing the yakuza, Japan has instead relied on administrative measures to radically restrict the group's ability to engage in its traditional activities. In addition, by opening the group up to

lawsuits, it has made yakuza assets vulnerable to seizure. These reforms do seem to have weakened the group, though it is unclear that they would be similarly effective in another national context. It is worth noting that Japan has consistently declined to criminalize the yakuza outright, despite American pressure to do so. Thus, while international insistence may have combined with domestic pressure to push the Japanese government to adopt its initial reform, this factor ultimately does not explain the trajectory that Japan's anti-organized crime institutional development has taken.

k. South Africa

South Africa is a case of strong reform with rollback. Although organized crime was not seen as a major issue under the apartheid regime, rising crime rates and the growth of powerful gangs in the aftermath of democratization made crime a national priority. This led to the passage of the Prevention of Organized Crime Act, which was modeled on the US RICO statute. This law functioned as a membership liability law and also introduced asset forfeiture provisions. In addition, South Africa established highly specialized and professional unit of investigators and prosecutors known colloquially as the Scorpions. The Scorpions investigated both organized crime and corruption, but as their investigations began to target high-level political and bureaucratic figures, they became a growing threat to the South African elite and were replaced by less effective units. Although South Africa still has competent enforcement, the dismantling of the Scorpions nonetheless undermined the strength of anti-organized crime law enforcement, and therefore functions as an instance of rollback.

i. Organized Crime in South Africa

Organized crime in South Africa has historically been under-analyzed and poorly understood.³⁰⁵ Though organized crime was generally not considered a political priority under the apartheid regime, a handful of local criminal groups such as Johannesburg's 'bouncer mafia' began to emerge in the late apartheid period, and a few even developed connections with foreign organizations.³⁰⁶ In addition, some anti-apartheid resistance figures developed connections with criminal groups and relied in part on smuggling to fund their activities.³⁰⁷ At the same time, the apartheid government often supported gangs in order to suppress political resistance.³⁰⁸ In the late 1980s and early 1990s, foreign criminal groups increasingly developed sophisticated networks in South Africa.³⁰⁹ Following the country's democratization in 1994, South African gangs underwent a period of significant transition, and a few became quite large, effectively organized, and well-armed.³¹⁰ These groups primarily engaged in illicit trafficking of drugs, commodities, arms, and stolen goods.³¹¹ In addition to relatively organized gangs, small-time, ad hoc networks are a significant part of the South African criminal landscape.³¹²

³⁰⁵ MARK SHAW, ORGANISED CRIME IN POST-APARTHEID SOUTH AFRICA (1998); Mark Shaw & Simone Haysom, *Organised Crime in Late Apartheid and the Transition to a New Criminal Order: The Rise and Fall of the Johannesburg 'Bouncer Mafia'*, 42 J. OF SOUTHERN AFRICAN STUD. 577 (2016).

³⁰⁶ MARK SHAW, ORGANISED CRIME IN POST-APARTHEID SOUTH AFRICA (1998); Mark Shaw & Simone Haysom, *Organised Crime in Late Apartheid and the Transition to a New Criminal Order: The Rise and Fall of the Johannesburg 'Bouncer Mafia'*, 42 J. OF SOUTHERN AFRICAN STUD. 577 (2016). By the end of the apartheid regime, some police were beginning to take organized crime seriously as a growing problem. PETER GASTROW, TRIAD SOCIETIES AND CHINESE ORGANISED CRIME IN SOUTH AFRICA (Feb. 2001).

³⁰⁷ Khalil Goga, *Taking Stock of the Last 20 Years: Responses to Organised Crime in a Democratic South Africa*, 48 SOUTH AFRICA CRIME Q. 63 (2014).

³⁰⁸ Khalil Goga, *Taking Stock of the Last 20 Years: Responses to Organised Crime in a Democratic South Africa*, 48 SOUTH AFRICA CRIME Q. 63 (2014).

³⁰⁹ Antoinette Louw, *Surviving the Transition: Trends and Perceptions of Crime in South Africa*, 41 SOC.

INDICATORS RES. 137 (1997); Khalil Goga, *Taking Stock of the Last 20 Years: Responses to Organised Crime in a Democratic South Africa*, 48 SOUTH AFRICA CRIME Q. 63 (2014).

³¹⁰ ANDRE STANDING, THE THREAT OF GANGS AND ANTI-GANGS POLICY (2005).

³¹¹ MARK SHAW, ORGANISED CRIME IN POST-APARTHEID SOUTH AFRICA (1998); ANDRE STANDING, THE THREAT OF GANGS AND ANTI-GANGS POLICY (2005). Police have also observed the presence of some foreign organized crime groups, including the Russian Mafia and Chinese Triad groups.

³¹² Khalil Goga, *The Business of (Dis)organised Crime in South Africa*, INST. FOR SECURITY STUD. (2015), <https://issafrica.org/iss-today/the-business-of-dis-organised-crime-in-south-africa> (accessed 22 Feb. 2022).

iv. Onset

During apartheid, South African authorities did not consider organized crime to be a particularly significant problem within their country, though they acknowledged that local gangs engaged in criminal activities such as drug trafficking and coordinated thefts.³¹³ Beginning in the early 1990s and continuing through the early years of democratization, South African crime rates increased considerably.³¹⁴ In the year after democratization, South Africa experienced 700 more homicides than it had the previous year, for a total of 18,983 deaths.³¹⁵ This statistic solidified South Africa as one of the most murderous states in the world.³¹⁶ Moreover, South Africans reported an increased sense of personal insecurity surrounding crime, and a perception that the increase had immediately followed democratization.³¹⁷ In the aftermath of democratization, crime, rather than socio-economic concerns, was considered the most pressing issue facing South Africa.³¹⁸ In response to rising gang violence, communities mobilized to counter criminal groups. One worrying trend was the development of vigilante networks such as People Against

³¹³ Doraval Govender, *A Conceptual Analysis of Strategies to Combat Organised Crime in South Africa*, 7 INSIGHT ON AFRICA 120 (2015).

³¹⁴ Khalil Goga, *Taking Stock of the Last 20 Years: Responses to Organised Crime in a Democratic South Africa*, 48 SOUTH AFRICA CRIME Q. 63 (2014); Antoinette Louw, *Surviving the Transition: Trends and Perceptions of Crime in South Africa*, 41 SOC. INDICATORS RES. 137 (1997). The crime rates reported are both organized and interpersonal.

³¹⁵ Bob Drogin, *Anti-Gang Fury Roils S. Africa*, L.A. TIMES, Aug. 13, 1996.

³¹⁶ Bob Drogin, *Anti-Gang Fury Roils S. Africa*, L.A. TIMES, Aug. 13, 1996; Antoinette Louw, *Surviving the Transition: Trends and Perceptions of Crime in South Africa*, 41 SOC. INDICATORS RES. 137 (1997).

³¹⁷ Antoinette Louw, *Surviving the Transition: Trends and Perceptions of Crime in South Africa*, 41 SOC. INDICATORS RES. 137 (1997); Antoinette Louw, *Citizen Perceptions of Crime and Policing in South Africa*, in CRIME AND POLICING IN TRANSITIONAL SOCIETIES (2000). Louw (2000) notes that perceptions varied considerably by race and social class, with white South Africans more likely to perceive a lack of safety than their black counterparts. However, it is worth noting that these differences shrank when black South Africans were asked about safety in the places where they lived, rather than in general. Louw (1997) persuasively demonstrates that crime rates were increasing prior to democratization. For my purposes, the key variable of interest is shifts in public perception, rather than the actual change in crime rates. It appears that the public began to see crime as a major threat primarily after 1994.

³¹⁸ Antoinette Louw, *Surviving the Transition: Trends and Perceptions of Crime in South Africa*, 41 SOC. INDICATORS RES. 137 (1997).

Gangsterism and Drugs (PAGAD).³¹⁹ PAGAD was linked to high-profile murders of gang figures, and in some cases, gangs even marched for police protection against the vigilantes.³²⁰

It was in the context of this rising fear of crime throughout South Africa that the parliament passed two bills targeting organized crime: the Proceeds of Organised Crime Act was passed in 1996 to target money laundering, but it had several loopholes and proved not to be useful.³²¹ Two years later, the Prevention of Organised Crime Act (PCOA) repealed and replaced the Proceeds of Organised Crime Act.³²² The PCOA was modeled on the American RICO statute, and it allowed prosecutors to target criminal groups as enterprises.³²³ As such, it qualifies as a membership liability law. In addition, it included among its provisions US-style civil asset forfeiture, which introduced for the first time a non-conviction based asset forfeiture scheme into South African law.³²⁴ During debates on the law, concerns were raised about possible violations of civil liberties and human rights.³²⁵ However, critics were largely dismissed as being soft on crime, and the bill was passed nearly unanimously.³²⁶ In addition, in May 1999, the National

³¹⁹ Bob Drogin, *Anti-Gang Fury Roils S. Africa*, L.A. TIMES, Aug. 13, 1996.

³²⁰ Bob Drogin, *Anti-Gang Fury Roils S. Africa*, L.A. TIMES, Aug. 13, 1996.

³²¹ PETER GASTROW, ORGANISED CRIME IN SOUTH AFRICA: AN ASSESSMENT OF ITS NATURE AND ORIGINS (1998).

³²² Prevention of Organised Crime Act 121 of 1998, Preamble (S. Afr.)

³²³ Prevention of Organised Crime Act 121 of 1998, Chapter 2, §1; ANDRE STANDING, THE THREAT OF GANGS AND ANTI-GANGS POLICY (2005); DELANO COLE VAN DER LINDE, CRIMINAL GANG ACTIVITIES: A CRITICAL AND COMPARATIVE ANALYSIS OF THE STATUTORY FRAMEWORK UNDER SOUTH AFRICAN CRIMINAL LAW, (Dec. 2018) (Ph.D. dissertation, Stellenbosch University).

³²⁴ Raylene Keightley, *Asset Forfeiture in South Africa under the Prevention of Organised Crime Act 121 of 1998*, in CIVIL FORFEITURE OF CRIMINAL PROPERTY 93 (Simon N.M. Young, ed. 2009).

³²⁵ HEARINGS, PREVENTION OF ORGANISED CRIME BILL [B118-98], JOINT MEETING, JUSTICE PORTFOLIO COMMITTEE & SECURITY & JUSTICE SELECT COMMITTEE, PARLIAMENT OF SOUTH AFRICA (Sept. 30 1998).

³²⁶ DELANO COLE VAN DER LINDE, CRIMINAL GANG ACTIVITIES: A CRITICAL AND COMPARATIVE ANALYSIS OF THE STATUTORY FRAMEWORK UNDER SOUTH AFRICAN CRIMINAL LAW, (Dec. 2018) (Ph.D. dissertation, Stellenbosch University). For instance, in a September 1998 hearing, the bill was criticized by the West Cape Anti-Crime Forum, and the National Association of Democratic Lawyers (NADEL) rejected the bill as a violation of human rights. This prompted some representatives to criticize NADEL as undermining victims' rights. HEARINGS, PREVENTION OF ORGANISED CRIME BILL [B118-98], JOINT MEETING, JUSTICE PORTFOLIO COMMITTEE & SECURITY & JUSTICE SELECT COMMITTEE, PARLIAMENT OF SOUTH AFRICA (Sept. 30 1998).

Prosecuting Authority (NPA) established an Asset Forfeiture Unit to administer the new law's asset forfeiture provisions.³²⁷

v. Extensiveness and Rollback

Even as the POCA was being debated, legislators recognized the need for specialized law enforcement units.³²⁸ Preliminary steps had been taken prior to democratization, when the government established the Organised Crime Intelligence Unit of the police in 1991.³²⁹ In 1999, the ANC-led government established the Directorate of Special Operations (DSO), an elite unit that operated under the NPA rather than the police,³³⁰ and which was responsible for investigating and prosecuting high-level crimes, with a particular focus on organized crime and corruption.³³¹ Widely known as the Scorpions, the DSO was an elite unit of highly specialized investigators, prosecutors, and other law enforcement officials.³³² The Scorpions were widely considered to be among the most effective law enforcement units in the country and were generally trusted by the public.³³³ They were also noteworthy for their willingness to target the corrupt activities of high-level political figures, including Winnie Madikizela-Mandela, the former wife of Nelson Mandela; Jackie Selebi, the former national commissioner of police; and

³²⁷ ANNALISE KEMPEN, TAKING THE PROFIT OUT OF CRIME- THE ASSET FORFEITURE UNIT, THE NATIONAL PROSECUTING AUTHORITY. This unit is still active *Asset Forfeiture Unit: Making Crime Unprofitable*, NATIONAL PROSECUTING AUTHORITY, <https://www.npa.gov.za/asset-forfeiture-unit> (accessed 7 Feb. 2022).

³²⁸ HEARINGS, PREVENTION OF ORGANISED CRIME BILL [B118-98], JOINT MEETING, JUSTICE PORTFOLIO COMMITTEE & SECURITY & JUSTICE SELECT COMMITTEE, PARLIAMENT OF SOUTH AFRICA (Sept. 30, 1998).

³²⁹ Kholofelo A. Mothibi et al., *Organised Crime in South Africa since Transition to Democracy*, 3 SOC. & ANTHROPOLOGY 649 (2015); JOHANN VAN LOGGERENBERG, COP UNDER COVER: MY LIFE IN THE SHADOWS WITH DRUG LORDS, ROBBERS AND SMUGGLERS (2020). The Criminal Intelligence Units grew out of rising police concern with organized crime in the early 1990s. PETER GASTROW, TRIAD SOCIETIES AND CHINESE ORGANISED CRIME IN SOUTH AFRICA (Feb. 2001).

³³⁰ The police service did maintain Organized Crime Investigative Units at this time. JOHAN BURGER, NO-MAN'S-LAND: THE UNCERTAIN EXISTENCE OF SAPS SPECIALISED INVESTIGATIVE UNITS (Aug. 2015).

³³¹ Andrew Kanyegirire, *Investigating the Investigators: A Summary of the Khampepe Commission of Inquiry*, SOUTH AFRICAN CRIME Q. 35 (June 2008); *South Africa: New Specialist Unit to Tackle Crime*, AFRICA NEWS (Sept. 2, 1999).

³³² Farah Khan, *Rights-South Africa: Iron Fist Approach to Crime*, INTER-PRESS SERVICE, Aug. 28, 1999.

³³³ JOHAN BURGER, THE CASE FOR AND AGAINST THE SCORPIONS (2008); Sebastian Berger, *South African Crime-Fighting Unit Stung by its Own Success*, NATIONAL NEWS, July 29, 2008.

African National Congress (ANC) leader Jacob Zuma.³³⁴ Yet this effectiveness was the Scorpions' downfall. In what was widely perceived as retaliation for the investigation into Zuma, the ANC-led parliament dissolved the Scorpions in 2008.³³⁵ The unit officially disbanded in January 2009.³³⁶

It is worth noting that there were allegations that the Scorpions had acted outside their authority, particularly in the anti-corruption sphere. The Khampepe Judicial Commission, which was responsible for inquiring into the Scorpions, concluded that, while they had overstepped their mandate in certain instances, they were nonetheless still a valuable part of the South African law enforcement landscape.³³⁷ The Khampepe Report explicitly recommended keeping the Scorpions in place and recommended against placing them under the authority of the police service.³³⁸ Nonetheless, in 2008 the government replaced the Scorpions with a new specialized policing unit, the Directorate for Priority Crime Investigation (DPCI), known as "The Hawks."³³⁹ Unlike the Scorpions, the Hawks operate as an independent directorate under the South African Police Service, and have been criticized as being subject to more political interference than their predecessors were.³⁴⁰ The Hawks also appear to be less effective than the Scorpions were, at least

³³⁴ JOHAN BURGER, THE CASE FOR AND AGAINST THE SCORPIONS (2008); Sebastian Berger, *South African Crime-Fighting Unit Stung by its Own Success*, NATIONAL NEWS, July 29, 2008.

³³⁵ Wendell Roelf, *South Africa's Scorpion Crimefighters to be Disbanded*, REUTERS, Feb. 12, 2008; Sebastian Berger, *South African Crime-Fighting Unit Stung by its Own Success*, NATIONAL NEWS, July 29, 2008.

³³⁶ *Who Exactly Are the South African Police Unit, the Hawks?*, SA PEOPLE, May 16, 2016.

³³⁷ SISI KHAMPEPE, KHAMPEPE COMMISSION OF INQUIRY INTO THE MANDATE AND LOCATION OF THE DIRECTORATE OF SPECIAL OPERATIONS ("DSO") (Feb. 2006).

³³⁸ SISI KHAMPEPE, KHAMPEPE COMMISSION OF INQUIRY INTO THE MANDATE AND LOCATION OF THE DIRECTORATE OF SPECIAL OPERATIONS ("DSO") (Feb. 2006).

³³⁹ Like the Scorpions, the Hawks are responsible for the investigation of organized crime as well as corruption. *Hawks Directorate for Priority Crime Investigation*, SOUTH AFRICAN POLICE SERVICE, <https://www.saps.gov.za/dpci/index.php> (accessed 7 Feb. 2022).

³⁴⁰ *Who Exactly Are the South African Police Unit, the Hawks?*, SA PEOPLE, May 16, 2016; Kwazi Dlamini, *Scorpions' Downfall Due to Political Interference*, CORRUPTION WATCH (Oct. 10, 2018), <https://www.corruptionwatch.org.za/political-interference-in-south-africas-elite-anti-corruption-unit-leads-to-impunity/> (accessed 22 Feb. 2022).

in terms of law enforcement statistics.³⁴¹ Following the disbandment of the Hawks, arrests declined by 60% and convictions by 83%.³⁴² It should be noted that the NPA maintains the Asset Forfeiture Unit as well as the Organised Crime Component, a unit responsible for prosecuting cases of racketeering, criminal gang activities, and money laundering, as well as predicate offenses associated with criminal gangs or enterprises.³⁴³

Table 3.7: South Africa Onset

South Africa		
	Pre-Apartheid Gang Activity	Post-Apartheid Gang Activity
Affect/Implicate national interests and receive considerable press attention		X
National government responsible		X
Surprising/Unexpected	X	X
Nonpartisan/Distributed across social strata		X
Criminal group's involvement unambiguous	X	X
Outcome	Organised Crime Intelligence Units	Prevention of Organised Crime Act

³⁴¹ *Who Exactly Are the South African Police Unit, the Hawks?*, SA PEOPLE, May 16, 2016; Kwazi Dlamini, *Scorpions' Downfall Due to Political Interference*, CORRUPTION WATCH (Oct. 10, 2018), <https://www.corruptionwatch.org.za/political-interference-in-south-africas-elite-anti-corruption-unit-leads-to-impunity/> (accessed 22 Feb. 2022).

³⁴² *Who Exactly Are the South African Police Unit, the Hawks?*, SA PEOPLE, May 16, 2016. A full analysis of the cause of this decline is beyond the scope of this project. *Hawks Directorate for Priority Crime Investigation*, SOUTH AFRICAN POLICE SERVICE, <https://www.saps.gov.za/dpci/index.php> (accessed 7 Feb. 2022).

³⁴³ *Organised Crime Component*, NATIONAL PROSECUTING AUTHORITY OF SOUTH AFRICA, <https://www.npa.gov.za/organised-crime-component> (accessed 7 Feb. 2022); NATIONAL PROSECUTING AUTHORITY OF SOUTH AFRICA, ANNUAL REPORT 2020/21: RECLAIMING OUR ROLE AS LAWYERS FOR THE PEOPLE, 54. It should be noted that the NPA has had an organized crime unit since its earliest days. In October 1998, the Special Investigating Directorate: Organised Crime and Public Safety was established within the NPA. JEAN REDPATH, *FAILING TO PROSECUTE? ASSESSING THE STATE OF THE NATIONAL PROSECUTING AUTHORITY IN SOUTH AFRICA* (2012).

vi. [Analysis](#)

South Africa's experience is largely consistent with my theory. The massive growth in crime that the country experienced in the early 1990s translated into public perception of a national threat in the aftermath of democratization. The rising fear of crime accords with my expectations of a perception-shifting event. 1) As in Germany, fear of crime took place in the context of significant national transition, in which preventing unrest was a particularly significant national interest. 2) In the context of the emergent democratic state, the secure management of this transition to democracy was one for which the national government was responsible. 3) As the police and public had not seen organized crime as a problem, its emergence in these years was unexpected. 4) Public outrage was nonpartisan and distributed across social strata, although there is some evidence that white South Africans had higher levels of fear than non-white South Africans. 5) Although understanding of organized crime in South Africa was (and remains) limited, there seems to have been little doubt that criminal organizations and gangs were responsible for at least some of the rising crime rate.

Admittedly, the situation in South Africa was complex. The downfall of the apartheid regime, massive socio-political restructuring, and severe levels of violence likely all played into an atmosphere of public anxiety that was less tied to organized crime per se than to a generalized sense of insecurity. Nevertheless, survey results from the time make clear that crime was a key driver of that sense of insecurity. The country's adoption of the Prevention of Organized Crime Act and the establishment of the Scorpions are therefore consistent with the logic of shifting threat perceptions as a key determinant of the establishment of organized crime legal institutions.

Additionally, the fate of the Scorpions demonstrates the willingness of elites to roll back institutional development when it becomes too threatening. It was the ANC-led parliament that

worked to establish the Scorpions and to give them the resources and independence to be an effective law enforcement agency. However, once the Scorpions began to strike key figures of the ANC, they became a threat to the elites, and were disbanded in favor of a less threatening anti-crime force. Although the threat caused by the Scorpions came mostly from their prosecutions in the anti-corruption sphere (rather than their organized crime work), their dissolution nonetheless indicates the vulnerability of institutions that threaten the interests of the powerful. While South Africa retains competent enforcement entities in both its policing and prosecutorial systems, the dismantling of the Scorpions is nonetheless important as an example of rollback. By removing an effective law enforcement agency and replacing it with a weaker one, South Africa appears to have undermined its ability to combat criminal organizations.

IV. Analysis

This chapter provides a brief overview of the development of anti-organized crime legal institutions in seven diverse cases. Encompassing democracies from all regions of the world, with a mix of government and legal structures, as well as criminal organizations, it provides preliminary evidence for my theory, and particularly for my explanation of the onset of institutional reform. In this section, I reflect on some of the key takeaways of these cases for my theory.

a. Difficulty of Reform

The cases provide strong support for the argument that institutional reform is often quite difficult to realize. Although many of the reforms analyzed passed by significant majorities, that is only part of the store. The development of anti-organized crime institutions in many cases required years to be realized and often met significant resistance. In Australia, for instance, it took a series of investigations at the state and federal level to make the case for anti-organized

crime reform. In both Canada and Germany, early law enforcement efforts to push for new weapons to combat organized crime received little traction for years. In Japan, where organized crime existed openly and was relatively accepted, there does not appear to have been significant demand for reform prior to the 1980s.

The reasons for resistance vary significantly across contexts. In Australia, the tension between state and federal police as well as Labor concerns about political exposure seem to have undermined early reformist campaigns. In Colombia, the Extradition Treaty of 1979 was seen as a violation of national sovereignty. Indeed, even after the Treaty was signed, the Betancur government initially refused to use it. In Australia, Germany, and South Africa, decisionmakers expressed concerns that new laws would threaten citizens' rights. In India, a preference for state-level reform seems to have been substituted for most national institutional development.

Of the cases considered in this chapter, South Africa is arguably the one in which institutional development was easiest. Organized crime was not considered a major policy issue until shortly before democratization. Nonetheless, anti-organized crime institutions were developed very quickly in the post-apartheid government. Even the resistance described in the preceding paragraph appears to have been limited. The political context surrounding the development of new government institutions is somewhat atypical, but it shows that there may be circumstances in which these institutions may be less controversial.

b. Onset

In six of the seven cases, at least one national-level legal institutions was developed in the wake of one or more high-profile events that shifted public perception of organized crime from a local to a national threat. In the wake of such shifts, politicians that had been uninterested in countering organized crime found it difficult not to support the creation of more robust laws and

policing mechanisms, even when strong concerns were raised about the potential risks of such reforms.

1. Perception-Shifting Events

The cases demonstrate that institutional development is most likely to occur where public perception of organized crime shifts in the direction of seeing organized crime as a national threat. The causes of this shift may vary considerably. In Canada and Colombia, particularly high-profile acts of violence were responsible for the adoption (or in Colombia's case, implementation) of reform. In Australia and Japan, revelations of the economic and political power of criminal groups played a greater role. Moreover, it does not appear to be the case that a single identifiable organized criminal group is necessary to drive this shift. In Germany and South Africa, broad perceptions of criminal organizations' involvement in rising crime rates appear to have been sufficient for this shift. It should be noted, however, that both of these countries were experiencing significant political transitions at the time, which may have contributed to the public's unease and to the demand for national governmental action.

In addition to these periods of perception shift, it is important to note key instances of non-shift. Japan has had a highly visible and powerful criminal organization for centuries. As such, the late development of Japanese anti-organized crime institutions is particularly striking. The Japanese public did not demand significant public crackdown on the yakuza until the end of the twentieth century, when the group broke accepted social norms by engaging in violence and infiltration of the legal economy. It was at this point that the public mobilized for significant anti-yakuza institutional development. In Canada, mafia groups operated from at least the times of Prohibition, but did not cause the same form of institutional development as the bikers did.

These organizations, which might have been expected to drive a strong law enforcement response, did not do so in the absence of significant public pressure.

India, of course, is the main counterexample. Not only did this country not experience a shift after the event most likely to change public opinion (the 1993 bombings), but the institutions it did establish appear to have been largely elite driven and relatively uninfluenced by popular understandings of the threat of organized crime. As such, my theory does not account well for institutional development in this case.

2. [Pressure on Neutrals](#)

Given the somewhat abbreviated nature of these case studies, I cannot claim to fully capture the political factors behind institutional development. However, the cases generally show that early supporters of reform seize on perception-shifting events to drive neutral actors to accept their positions. In some contexts, such as Australia, Canada, and to some extent Germany and South Africa, the early reformers are law enforcement rather than political figures. In others, such as Colombia and Japan, political figures play a more significant role.

In three of the cases, one political faction seizes on the issue of organized crime and used it to exert pressure on other parties. In Australia, the Liberal party attacked Labor as corrupt and soft on crime in the wake of the Costigan Commission. In Canada, the Bloc Québécois used the issue of criminal activity to advance its electoral prospects. The imminence of the Canadian federal election seems to have been particularly consequential in this context. In Germany, the questions of institutional development were more closely divided, with the left-wing factions supporting stronger law enforcement powers, and the Liberals resisting on civil libertarian grounds. Within these contexts, the reformist factions were able to use the momentum of public perception shifts to build majorities for institutional development.

In four cases, partisan divides appear to play a less significant role. India, which experienced weak institutional development, does not appear to have made this a significant issue of national politics. In Colombia and South Africa, by contrast, the development of new institutions was a significant issue, but appears to have been broadly accepted across parties, rather than becoming a partisan wedge issue. In Japan, the LDP seized on reform as a means of shoring up public confidence in the midst of scandals. Although this ultimately led the *yakuza* to back a victorious opposition party, at the time of the initial reforms, the LDP's position appears to have been broadly supported, as the Boryokudan Countermeasures Law was passed unanimously by the Japanese parliament.

Even in the cases where party politics were less important, the shift in neutral alignment was significant. In Colombia and Japan, political majorities had resisted institutions prior to the shift in public threat perception. The changing circumstances of increasingly violent criminal groups seem to have driven otherwise skeptical decisionmakers to adopt reform. This pattern is admittedly somewhat less obvious in South Africa, where organized crime was a relatively new national topic, and so political realignment was less apparent. In India, this shift did not occur.

3. Rollback and Extensiveness

The cases of Colombia and South Africa also show the possibility for institutional rollback where elites are threatened. In the former case, a criminal organization threatened the interests of elites as long as the hated extradition treaty was in effect, while in the latter, a powerful and independent police force targeted corrupt political leaders. In both cases, the threatening institution was removed in spite of (or perhaps because of) its effectiveness. In the South African case, this occurred despite generally high public support for the *Scorpions*. As such, these cases demonstrate the mechanisms by which even effective institutions can be dismantled.

Although these cases provide important evidence for my theoretical mechanisms regarding the onset of institutional development, there are limits to how much they can tell about the extensiveness of development. Broadly speaking, states that have sustained a high perception of organized crime as a national threat have also shown the most extensive institutional development. These include Australia, Canada, Colombia, Japan, and South Africa. This is consistent with my theoretical expectations and provides some evidence for this portion of my theory. Nonetheless, as I note at the outset of this chapter, my ability to analyze the extensiveness of institutional development across a global array of cases is limited, and thus I limit my analysis of the extensiveness of institutional development at this time.

4. [International Pressure](#)

International pressure does seem to play some role in many countries' institutional development. In Colombia, US pressure was critical to the adoption of the extradition treaty, and its re-enshrinement after Escobar's death. Japan and Canada also appear to have responded to US pressure to take steps against organized crime, while Germany has been criticized by its European neighbors for its relatively lax institutions. India also appears to have developed its only anti-organized crime institutions in part as a response to international concerns about its role in the drug trade.

While international factors, and particularly US pressure, clearly played a role in the establishment of legal institutions, they did not explain the onset of such institutions as consistently as domestic factors. It seems that international forces may contribute to institutional development, but states are usually able to resist such pressure where their publics do not also demand reform. Nonetheless, these cases do show that international pressure can be an important

part of the process of anti-organized crime institutional development, and I shall return to a closer examination of the role of international forces in the concluding chapter.

I now turn to my main case studies to provide the detailed analysis necessary to demonstrate my causal logic. The next two chapters will explore the development of the antimafia legal system in Italy. The following chapter will trace the establishment of the United States' anti-organized crime regime.

Chapter IV: Onset in Italy—Passing the Rognoni-La Torre Law

If it is true that there is a power, this power is only that of the state, its institutions and its laws; we cannot further delegate this power to abusers, to bullies, or to the dishonest.

--General Carlo Alberto Dalla Chiesa, Prefect of Palermo

I. Introduction

On the 3rd of September, 1982, Italy was shaken by the news of a brutal murder. General Carlo Alberto dalla Chiesa, the prefect of Sicily, had been murdered along with his young wife Emanuela Setta Carraro, while driving in their car in the center of Palermo. Sicily was in the midst of an ongoing criminal conflict. For several years, the island's infamous organized criminal group, Cosa Nostra,¹ had been engaged in a brutal clan war between the established clans in Palermo and a particularly violent faction from the town of Corleone that was attempting to take control of the entire organization. As the Corleonesi consolidated power, they sought to assert their control beyond the criminal world. Unusually for mafia conflicts, violence was not confined to members of the Mafia or innocent bystanders but had become a war against the Italian state. Beginning in the 1970s, and with increasing frequency thereafter, members of the Mafia had begun identifying and assassinating prominent individuals that posed a threat to them, including government officials. These victims, the so-called "excellent cadavers,"² included many high-level and nationally recognizable individuals, including police captains, judges, and even the President of the Region of Sicily.

¹ Cosa Nostra is the name by which the Sicilian Mafia calls itself, though the group is often known as the Mafia. I will use the terms Cosa Nostra and Mafia interchangeably throughout this paper.

² ALEXANDER STILLE, EXCELLENT CADAVERS 6 (2011) (1995).

In response to the growing challenge to the government, the head of the Sicilian branch of the Communist Party (*Partito Comunista Italiano*, hereinafter PCI)³ and member of the Chamber of Deputies⁴ Pio La Torre had introduced a law designed to combat the Mafia's existence. The law put forward by La Torre in 1980 made the act of being a member of a mafia-type group a crime and gave the state the power to seize the assets of suspected mafiosi. Though the mounting casualties had led some members of the governing Christian Democracy party (*Democrazia Cristiana*, hereinafter DC) to support new antimafia legislation, La Torre's proposal gained little traction in the Italian legislature. For more than two years, it failed to come for a vote. On April 30, 1982, Pio La Torre joined the ranks of the excellent cadavers when he was gunned down in the streets of Palermo along with his driver, Rosario di Salvo. Even in the months after La Torre's murder, the antimafia legislation he had advocated seemed to be further stymied in Parliament. Indeed the law was deferred by the legislature twice in 1982, in February and August.

Dalla Chiesa's death changed everything. On September 13, 1982, the Italian parliament passed law 646/82. Commonly known as the Rognoni-La Torre Law, this legislation was the result of a combination of La Torre's bill with a related bill submitted by the Christian Democrat Minister of Interior Virginio Rognoni. Two years of advocacy and La Torre's own death had been insufficient to motivate Parliament to pass this law. However, it was passed in just ten days after the murder of Dalla Chiesa. The Rognoni-La Torre law provided the legal basis for Italy's enhanced prosecutorial campaign against the Mafia in the 1980s and was foundational to the extensive antimafia legal apparatus the state subsequently developed.⁵

³ The Communist Party was the second-largest party in the Italian government at this time.

⁴ The lower house of the Italian legislature.

⁵ The Rognoni-La Torre Law is certainly not the only legal institution to be developed to combat the Mafia. Indeed, shortly after its passage, Parliament also passed a law extending the policing power of the Prefect of Sicily, the role

Italy has a long history of organized crime as well as deeply entrenched systems of corruption. Certain wings of the DC had historically maintained ties with Cosa Nostra, particularly in the South of Italy.⁶ Even in the face of mounting violence and blatant corruption, reform had been impossible for political leaders of the postwar era. Even the murder of La Torre, a member of parliament who had been the chief architect of antimafia reform did not motivate change. Yet following the murder of Dalla Chiesa four months later, the Italian legislature was able and willing to adopt a law that rendered virtually every member of the mafia vulnerable to criminal prosecution and many of the group's financial resources susceptible to seizure. What determined the point at which Parliament was prepared to make such significant change in the ability to prosecute organized crime?

In this chapter, I seek to explain the timing of the passage of the Rognoni-La Torre Law. I will focus exclusively on the timing of the initial reform and discuss the extensiveness of Italy's antimafia apparatus in the next chapter. I argue that the development of the passage of this law was quite difficult to realize. While a minority of reformers actively promoted antimafia reform in the 1970s and early 1980s, the majority were either opposed to this agenda or neutral. The ability of the reformers to achieve their goal relied upon sustained shifts in public perception of the threat posed by mafia groups from a local issue to a national threat. Where such a shift occurs, democratic pressures force decisionmakers out of the neutral camp and into the pro- or anti-reform camps. In this way, marked shifts in public threat perception can lead to the development of institutions out of a need to "do something" about the problem.

Dalla Chiesa held at the time of his death. Though no single reform can be said to define Italy's antimafia legal regime, the Rognoni-La Torre has arguably had the greatest long-term impact on Italy's ability to prosecute these organizations. As such, this paper focuses on the development of the Rognoni-La Torre Law.

⁶ ALEXANDER STILLE, *EXCELLENT CADAVERS* 19 (2011) (1995); ALISON JAMIESON, *THE ANTIMAFIA* Ch. 1 (1999).

If my theory is correct, I expect that the development of legal institutions in Italy should have been difficult to achieve. I would expect a sustained campaign to establish such institutions, met by significant resistance. Given that the antimafia movement in Italy was historically tied to the PCI, I would expect the highest level of resistance to come from the PCI's opposition, particularly the dominant DC. Moreover, I expect institutional reform to occur only when the public goes from seeing organized crime as a local problem to a national threat. Accordingly, at the outset of my period of study, I expect that the public will see crime as an issue that only affects certain populations. Though a small number of leaders with reformist sympathies will be active early, the majority of the population and national level decisionmakers are expected to be neutral or hostile to the idea of institutional development to address organized crime.

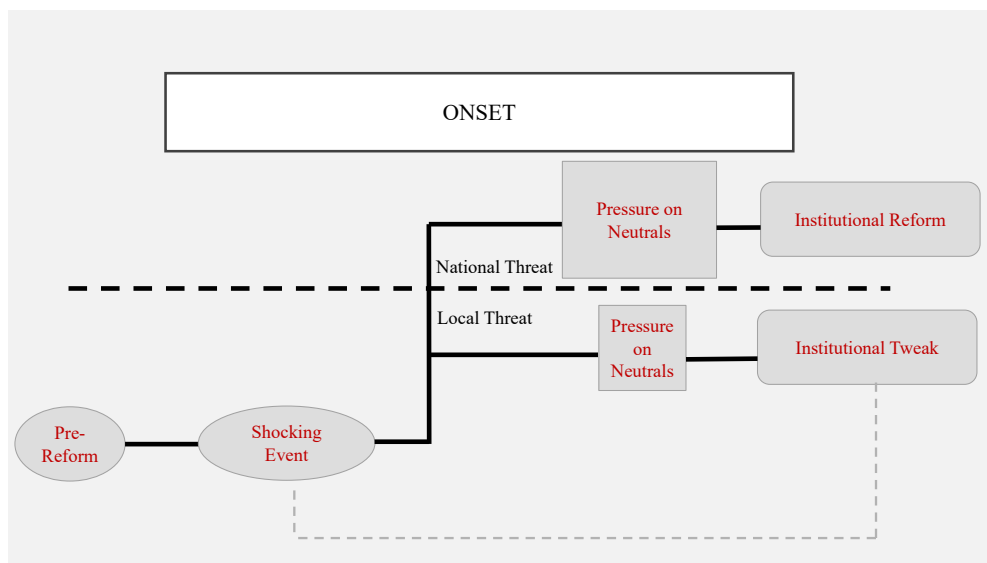
I expect that shifts in public attitudes will follow high-profile events that bring the issue of organized crime to the center of the national conversation. These events will meet five criteria. 1) They will affect or implicate national interests, including important national figures or parties, and will receive considerable attention from the national press. 2) The national government will be seen as responsible for addressing the event in question. 3) These events will be surprising or unexpected. 4) Public outrage will be nonpartisan and distributed across social strata. 5) The criminal group's involvement in the event will be perceived as relatively unambiguous.

One event may not lead to institutional reform. However, high-profile events that do not by themselves shift public threat perception may nonetheless drive smaller-scale changes, known as institutional tweaks. Moreover, if organized crime remains a significant issue over time, this may drive shifts in public perception of the threat of organized crime and lead to institutional reform. Such sustained public perception of a national threat should lead to pressure on leaders to eliminate the threatening group. In such circumstance, I expect neutral decision makers to face

increased pressure to take a stand on anti-organized crime reforms. As a result, I expect to see shifts in leader discourse as attention rises, with decisionmakers who had previously paid little attention to organized crime or who had opposed reform beginning to publicly acknowledge the need to combat it at a national level.

This chapter will proceed as follows: Section II provides a description of the key elements of the Rognoni-La Torre law; Section III provides an overview of the methodology; Section IV traces the historical development of Italy’s antimafia institutions from 1945-1980; Section V discusses the implications of the case for my theory; Section VI concludes.

Figure 4.1: Reform Onset



II. The Rognoni-La Torre Law

In this section, I outline the key features of the Rognoni-La Torre Law, Italy’s signature legislation to facilitate the prosecution of members of the mafia. As will be demonstrated below, this law subjects mafiosi to significant risk of incarceration by directly criminalizing membership in mafia-type associations. Moreover, it allows the state to preventively seize and confiscate the

assets of suspected mafiosi. As such, this legislation satisfies both potential elements of a permissive law.

a. 416-bis

Although it was neither the first nor the last law to target Cosa Nostra, the Rognoni-La Torre law was the most sweeping and severe antimafia law up to that point. In particular, this law offered two significant innovations to the Italian penal code. The first, codified in article 416-bis, was the criminalization of membership in a mafia-type association (*associazione di tipo mafioso*). The second was the institution of preventive patrimonial measures, which allowed the government to seize and confiscate the assets of suspected mafiosi.

416-bis amended a 1930 law that defined criminal associations (*associazione per delinquere*). In the Italian context, criminal association occurs “[w]hen three or more people join for the purpose of committing multiple crimes.”⁷ In these cases, promoters, leaders, or organizers of a criminal association are subject to imprisonment of three to seven years, while mere participants may be imprisoned for one to five years.⁸ This law proved insufficient to prosecute mafia crimes for several reasons. First of all, it was intended to punish illegal activity. However, much of the activity conducted by members of the Mafia, such as running legitimate business or seeking public contracts, has the appearance of legality.⁹ The *mens rea* element of this crime further complicated matters. In order to convict an individual of criminal association, it is necessary to prove that he joined the association with the specific intent of committing the crime

⁷ (*Quando tre o più persone si associano allo scopo di commettere più delitti*).

⁸ Legge 31 maggio 1965, n. 575, G.U. June 5, 1965, n.138 (It.)

⁹ Ciro Grandi, *The Contribution of Italian Case Law in Defining the Notion of “Mafia,”* LA LEGISLAZIONE PENALE 1, 2 (2016). Though engaging in those activities in a corrupt manner could be criminal, the ability of the Mafia to intimidate potential witnesses generally frustrated attempts to prove cases against them.

in question.¹⁰ As the Mafia often relies on the effective use of violence and intimidation to prevent potential witnesses from cooperating with the police, it was often impossible for prosecutors to prove either the illicit nature of Mafia activities or members' intent to participate in any crimes committed.¹¹

416-bis was designed to foreclose these loopholes by defining a mafia-type association as something distinct from "simple" criminal association and penalizing it accordingly.¹² 416-bis defines a "mafia-type"¹³ association as a group of three or more people¹⁴ who behave according to the following precepts:

"The association is of the mafia type when those who are part of it make use of the intimidating force of the associative bond, and the condition of subjugation and *omertà* [the mafia code of silence] that derives from it to commit crimes; to acquire direct or indirect management or in any case control economic activities, concessions, authorizations, contracts and public services; to make unfair profits or advantages for themselves or for others; or in order to prevent or hinder the free exercise of the vote or to obtain votes for themselves or others on the occasion of electoral consultations"¹⁵

Unlike criminal association, a mafia-type association is not defined by the criminal activities in which the group engages, but by the method in which it relates to the broader society. The key

¹⁰ Ciro Grandi, *The Contribution of Italian Case Law in Defining the Notion of "Mafia,"* LA LEGISLAZIONE PENALE 1, 3 (2016).

¹¹ Ciro Grandi, *The Contribution of Italian Case Law in Defining the Notion of "Mafia,"* LA LEGISLAZIONE PENALE 1, 3 (2016).

¹² The idea of a mafia association had existed in Italian law prior to the passage of 416-bis. See Legge 31 maggio 1965, n. 575, G.U. June 5, 1965, n.138, art. 1 (It.). However, as discussed, the term mafia-type association was not defined, and was consequently subject to highly variable interpretations within Italian courts. Legislators drew on these previous interpretations in crafting 416-bis. Ciro Grandi, *The Contribution of Italian Case Law in Defining the Notion of "Mafia,"* LA LEGISLAZIONE PENALE 2, 4 (2016).

¹³ Although 416-bis was a direct response to the violence of the Sicilian group Cosa Nostra, Italy has a number of other organized criminal groups that utilize similar methods, which are collectively referred to as being of a mafia-type. The most significant are Cosa Nostra, the Camorra of Campania, and the 'Ndrangheta of Calabria.

¹⁴ Art. 416-bis C.p (It.).

¹⁵ Art. 416-bis C.p (It.). *L'associazione è di tipo mafioso quando coloro che ne fanno parte si avvalgono della forza di intimidazione del vincolo associativo e della condizione di assoggettamento e di omertà che ne deriva per commettere delitti, per acquisire in modo diretto o indiretto la gestione o comunque il controllo di attività economiche, di concessioni, di autorizzazioni, appalti e servizi pubblici o per realizzare profitti o vantaggi ingiusti per sé o per altri, ovvero al fine di impedire od ostacolare il libero esercizio del voto o di procurare voti a sé o ad altri in occasione di consultazioni elettorali.*

elements of a mafia-type organization are the use of 1) intimidation,¹⁶ 2) subjugation,¹⁷ and 3) *omertà* (the law of silence).¹⁸ Accordingly, where it may be shown that a group relies on those three methods, even if the activities they are engaged in might otherwise appear to be legal, that group may be considered a mafia-type association.¹⁹ The consequence of this legal formulation was that, rather than have to prove crimes in order to prove the existence of a mafia-type association, Italian prosecutors were able to target the association itself as a means of combating the more difficult-to-prove crimes in which the group is engaged.²⁰

It should be noted that the text of 416-bis suggests that mere membership in a group that uses the mafia method is sufficient to leave an individual subject to prosecution. The conduct necessary for an individual to be considered part of a mafia association is the subject of some dispute. Case law has tended to support the principle that an accused mafioso must have a relatively stable and defined role and make at least some sort of practical contribution to the

¹⁶ The force of intimidation is understood as the ability to induce fear in people based on the associative bond of the group. Avv. Prof. Antonello Madeo, *Le Fattispecie di Stampo Mafioso e La Direzione Distrettuale Antimafia*, L'Università degli Studi della Toscana, slide 32 (Mar. 28, 2019). This provision has typically been used to link mafia groups to specific territories, as it is argued that only with the passage of time and the establishment of authority can this tactic be used effectively. As such, Italian courts were historically hesitant to recognize as mafia-type associations organizations that had only recently left their territory of origin, though this has changed in recent years. *Ciro Grandi, The Contribution of Italian Case Law in Defining the Notion of "Mafia,"* LA LEGISLAZIONE PENALE 1, 7 (2016) (citing Cass. 13 febbraio 2006 n. 19141, CEDCass, m. 234403 (It.)).

¹⁷ Subjugation is understood as subordination of a population deriving from a belief in the concrete and unavoidable danger presented by the association. Avv. Prof. Antonello Madeo, *Le Fattispecie di Stampo Mafioso e La Direzione Distrettuale Antimafia*, L'Università degli Studi della Toscana, slide 33 (Mar. 28, 2019).

¹⁸ *Omertà* is a code of silence within the mafia that flows from the group's solidarity, and which is designed to hinder state investigation and repression. Avv. Prof. Antonello Madeo, *Le Fattispecie di Stampo Mafioso e La Direzione Distrettuale Antimafia*, L'Università degli Studi della Toscana, slide 33 (Mar. 28, 2019). Over time, intimidation has emerged as the most significant of the three factors, with subjugation and *omertà* often seen as consequences that follow from the force of intimidation. Avv. Prof. Antonello Madeo, *Le Fattispecie di Stampo Mafioso e La Direzione Distrettuale Antimafia*, L'Università degli Studi della Toscana, slide 41 (Mar. 28, 2019); Pietro Pomanti, *Principio di Tassatività e Metamorfosi della Fattispecie: l'Art. 416 bis c.p.*, ARCHIVIO PENALE 1, 16 (2017).

¹⁹ Ilaria Merenda and Costantino Visconti, *Metodo Mafioso e Partecipazione Associativa nell'Art. 416-bis: Tra Teoria e Diritto Vivente*, DIRITTO PENALE CONTEMPORANEO 1, 2 (2019).

²⁰ ALISON JAMIESON, *THE ANTIMAFIA* 29 (1999); Avv. Prof. Antonello Madeo, *Le Fattispecie di Stampo Mafioso e La Direzione Distrettuale Antimafia*, L'Università degli Studi della Toscana, slide 41 (Mar. 28, 2019).

group.²¹ However, this requirement is often satisfied by demonstrating that the accused mafioso has taken an oath of loyalty to the group or engaged in some other form of membership ritual.²² Importantly, where membership in a mafia-type association can be shown, courts often assume the requisite *mens rea* necessary for criminal liability.²³

By defining mafia criminality according to the methods the group uses rather than the illegality of its activities, and by creating a broad understanding of the relevant conduct for participation in a mafia-type association, 416-bis made it far easier for prosecutors to target mafia organizations as groups and to implicate a significant number of their members, including the high-level leaders who were least likely to participate directly in ordinary crimes. As such, this law provided Italian antimafia prosecutors with new strategic opportunities to combat organized crime.

b. Misure di Prevenzione

The Rognoni-La Torre Law offered prosecutors a second tool that would significantly enhance their ability to damage the mafia, namely the power to preventively seize the assets of suspected mafiosi. Under Italian law, it is possible to take pre-emptive administrative steps against an individual who has been accused, but not convicted, of a crime. In the context of the mafia, preventive measures predate the Rognoni-La Torre Law. Perhaps the most famous was Law 1423/1956, which established the policy of *soggiorno obbligato*, or internal exile, a measure

²¹ Ciro Grandi, *The Contribution of Italian Case Law in Defining the Notion of "Mafia,"* LA LEGISLAZIONE PENALE 1, 20 (2016) (citing Cass., sez.un., 12 dicembre 2005, n. 33748, Foro it. II, 80 (It.), with commentary by Giovanni Fiandaca and Costantino Visconti, *Il Patto di Scambio Politico Mafioso al Vaglio delle Sezioni Unite* (2006)).

²² Ciro Grandi, *The Contribution of Italian Case Law in Defining the Notion of "Mafia,"* LA LEGISLAZIONE PENALE 1, 21 (2016) (citing Court of Cassation 22 dicembre 1987 n. 13070, CEDCass, m. 177303. Engaging in a membership ritual is generally held to be sufficient, but not necessary, for proving membership in a mafia association).

²³ Ciro Grandi, *The Notion of Mafia in Italian Criminal Legislation and Case Law, in REDEFINING ORGANISED CRIME: A CHALLENGE FOR THE EUROPEAN UNION?* 267, 269 (Stefania Carnevale et al. eds., 2017).

which was extended in Law 575/1965²⁴ to include those suspected of mafia association.²⁵

Soggiorno obbligato allowed courts to require individuals who were deemed a threat to public safety to leave their hometowns and relocate to distant municipalities. Law enforcement officials used this measure with the intent of separating mafiosi from their territorial strongholds, on the theory that doing so would reduce their ability to exercise power.²⁶

The Rognoni-La Torre Law extended the logic of prevention to the financial sphere. The government would be able to seize, not just the persons of suspected mafiosi, but their assets as well. In addition to limiting the movement of individuals, this law enabled investigators to administratively seize and confiscate the assets of those under investigation for mafia association. Seizure is a temporary measure, used when a suspect's assets do not match his legitimate sources of income. Confiscation, by contrast, is a permanent measure.²⁷ For this process to be triggered, the prosecutor or chief of police requests an investigation into the assets, standard of living and property of an individual suspected of being a member of a mafia-type association. If sufficient circumstantial evidence exists to suggest the property was acquired illegally, a proposal for seizure is presented to a specialized court. If the court approves the

²⁴ Legge 31 maggio 1965, n. 575, G.U. June 5, 1965, n.138 (It.)

²⁵ Legge 31 maggio 1965, n. 575, G.U. June 5, 1965, n.138 (It.); Ciro Grandi, *The Notion of Mafia in Italian Criminal Legislation and Case Law*, in REDEFINING ORGANISED CRIME: A CHALLENGE FOR THE EUROPEAN UNION? 267, 269 (Stefania Carnevale et al. eds., 2017).

The Rognoni-La Torre Law also further extended the measures considered in the 1956 and 1965 laws.

²⁶ Though this law did undermine the organizations of the established Sicilian families initially, it also had the unintended consequence of effectively exporting mafia groups to parts of Italy where they had previously lacked any presence. SALVATORE LUPO, HISTORY OF THE MAFIA 229-30 (Antony Shugaar trans., 2009) (1993); cf Federico Varese, *How Mafias Migrate: The Case of the 'Ndrangheta in Northern Italy*, 40 L. & SOC'Y REV. 411-44 (2006). Varese argues that internal exile alone is insufficient to explain the presence of mafia groups in unexpected areas. Nevertheless, it is at least part of the explanation.

²⁷ Francesco Calderoni and Fiammetta Di Stefano, *The Administrative Approach in Italy*, in ADMINISTRATIVE MEASURES TO PREVENT AND TACKLE CRIME 239, 241 n.9 (A.C.M. Spapens et al. eds., 2015). By allowing investigators to seize and confiscate assets preventively, the law is designed to prevent mafiosi from engaging in additional criminal activity while they are being investigated, tried, and sentenced. Avv. Prof. Antonello Madeo, *Il Punto sulle Misure di Prevenzione Patrimoniali Post Sentenza De Tommaso*, Scuola di Polizia Economico-Finanziaria della Guardia di Finanza, slide 5 (May 23, 2019).

seizure, the property can be seized. Within one year after the initial seizure, that same court must render a final decision on the property, either releasing it to the accused or confiscating it.²⁸

When assets are seized, the burden of proving that they were legitimately obtained falls on the suspect.²⁹ Even without a conviction, seized assets may be confiscated if a suspect cannot prove their origins. Moreover, this law allows investigators to go to lending houses and public administration entities in order to gain information.³⁰ Given the importance of financial investigation in pursuing Mafia crimes and the centrality of finances to the operation of the Mafia, the ability to seize and confiscate assets without having to go through a full trial, significantly enhanced the ability of Italian prosecutors to impose real costs on the Mafia.³¹

III. Methodology

In this chapter, I assess Italy's 1982 adoption of the Rognoni-La Torre Law, the initial legal reform in the fight against organized crime. According to my theory, this reform should have taken place in the wake of a salience-creating event or series of events that shifted the perception of the organized criminal group from a local problem to a national threat. I argue that the murder of General Dalla Chiesa was crucial to explaining the timing of the law's passage, as this event marked a shift in public understanding of Cosa Nostra as a national problem, one for

²⁸ Pino Arlacchi, *Effects of the New Anti-mafia Law on the Proceeds of Crime and on the Italian Economy*, U.N. Off. Of Drugs & Crime (Jan. 1984), https://www.unodc.org/unodc/en/data-and-analysis/bulletin/bulletin_1984-01-01_4_page008.html (accessed 22 Feb. 2022).

²⁹ Legge 13 settembre 1982, n.646, G.U. 14 Sept, 1982, art. 14, n.253 (It.). This shift in the burden of proof allows investigators to remove assets from mafia control without having to litigate the origin of individual assets. Avv. Prof. Antonello Madeo, *Le Fattispecie di Stampo Mafioso e La Direzione Distrettuale Antimafia*, L'Università degli Studi della Tuscia, slide 10-11 (Mar. 28, 2019).

³⁰ Francesco Calderoni and Fiammetta Di Stefano, *The Administrative Approach in Italy*, in ADMINISTRATIVE MEASURES TO PREVENT AND TACKLE CRIME 239, 241 n.9 (A.C.M. Spapens et al. eds., 2015).

³¹ For a discussion of the importance of financial investigation to mafia prosecution, see generally Giovanni Falcone and Giuliano Turone, *Tecniche di Indagine in Materia di Mafia*, 1 RIVISTA DI STUDI E RICERCHE SULLA CRIMINALITÀ ORGANIZZATA 116 (2015) (June 1982). For a discussion of Falcone's role in establishing financial investigations as a central means of combatting the mafia, see ALEXANDER STILLE, EXCELLENT CADAVERS 33-34 (2011) (1995).

which the central government bore significant responsibility. Though previous bursts of Mafia activity and the murder of other high-level state officials had led to public outcry and some tweaking of existing legal institutions to facilitate prosecution of mafiosi, reformers had been unable to pass laws that targeted the Mafia as a whole. It was only in the wake of Dalla Chiesa's murder that Parliament was sufficiently pressured to pass legal reform that rendered mafia groups vulnerable to prosecution and mafia assets subject to confiscation.

In order to assess the salience and perceived threat of various Mafia activities, I consult the online archives of major Italian newspapers, particularly *Corriere della Sera* and *La Stampa*.³² These are prominent papers with national circulation and relatively centrist political affiliation.³³ Since I am interested in national responses to Mafia activity, I focus on news sources with a national readership. Moreover, because I am able to access complete archives of these papers, I am able to trace their coverage of key events throughout my period of study. In order to assess the ways in which political parties presented these events, I supplement these centrist news sources with papers of the two main political parties, the communist-affiliated *L'Unità* and the Christian Democrat-affiliated *Il Popolo*. I discuss the media response to each high-profile Mafia killing in Sicily between 1971 and 1982 in order to demonstrate the stark difference between Dalla Chiesa's murder and previous similar acts of violence.

In the Italian context, the most important events fixing public attention on organized crime were primarily acts of violence on the part of the Mafia. I focus primarily on articles from the days immediately following key acts of Mafia violence, including high profile inter-Mafia killings as well as the murders of prominent state officials and civilians. This allows me to assess

³² Other media sources are considered, particularly when they appear in archival records. However, the newspapers discussed in this paragraph are the only ones that are considered systematically in this chapter. In Chapter V, I also evaluate *La Repubblica*, the archives of which only date back to 1984.

³³ JOSÉ L. ALVAREZ ET AL., *THE MANAGEMENT PUBLISHING INDUSTRY IN EUROPE*, 72-73 (Oct. 1999).

the media and public response to Mafia violence in the immediate aftermath of visible violence. High-profile acts of violence typically occur relatively suddenly, and consequently be identified with a specific moment. However, the most salacious aspects of a crime may not be immediately apparent but may only be revealed after subsequent investigation. For instance, it may not be apparent at the moment of an attack whether a criminal group is responsible. Even if the perpetrator is identifiable, it may not be obvious whether a victim was innocent or affiliated with the criminal group. In order to account for the ways in which public attention may be affected by the findings of subsequent investigations into mafia violence, I further expanded my search to include articles three months out from the main attack.³⁴

I analyze these newspapers for two main purposes: to present the facts of the murders as the Italian public would have seen them and to assess whether newspapers describe attacks as indicative of problems in Sicily or in Italy as a whole. In doing so, I attempt to understand how the Italian public would have perceived the issue of Mafia violence. Of course, this is not an ideal metric. Media narratives are largely driven by elite actors cannot be considered fully representative of the general public. Moreover, Italian newspapers were themselves affiliated with political groups, and therefore cannot be said to fully reflect the opinions of the Italian public. I also note examples of public mobilization as evidence of public opinion, including strikes and protests, where they are found.³⁵ Unfortunately, there is not consistently available

³⁴ The imposition of the three-month time frame is admittedly somewhat arbitrary, as the release of new information is not strictly temporally limited. However, I confine my search to this time in order to avoid capturing the effects of too many subsequent events. In short, later mafia attacks may reference earlier ones, bringing the earlier ones back to public attention. In such a situation, it becomes somewhat difficult to assess the impact of the earlier attack separately from the later one. Because most of the attacks carried out during the relevant time frame are separated by at least three months, I impose this time limitation on my searches. This system does not prevent all overlap in attacks (for instance, the attack on Angelo La Barbera in Milan occurred only one month before the Ciaculli bombing. Boris Giuliano and Cesare Terranova were also killed slightly more than two months apart). However, it is adequate to separate all other attacks mentioned, thereby balancing the need to consider later-revealed information with the objective of avoiding overlapping coverage.

³⁵ Of course, strikes and protests are themselves often organized by political actors, so this metric is also imperfect.

public opinion data on attitudes around crime for the time that I am studying. A cross-section of media presentations therefore allows me to present a plausible, if incomplete, depiction of the narratives present in Italian society at the time.

In assessing the government response, I rely on a combination of archival documents, legislative records, and secondary source material. In addition to the news sources described above, which provide accounts of political activity, I also draw on government and party records gathered from national archives over the course of approximately three months in Rome. In particular, I drew on the Ministry of Interior records at the Archivio Centrale dello Stato. I also considered the records of the PCI, available at the Fondazione Gramsci, and records of the DC, available at the Istituto Luigi Sturzo. In addition, I consult publicly available records of legislative materials, including parliamentary committee reports, debates, and newspaper reports on official statements. Finally, I include statements from current and former legal practitioners who I interviewed during field research trips to Palermo.³⁶ Using this material, I process trace the government response to varying levels of Mafia violence, observing the relationship between instances of Mafia violence and the advance of antimafia legislation.³⁷

IV. Murder in Palermo: The Passage of the Rognoni-La Torre Law

In the postwar period, Italy experienced several waves of visible Mafia violence. There were, accordingly, several opportunities for Parliament to pass laws to facilitate the prosecution of organized crime. In this section, I describe each period of Mafia activity and the subsequent state response. Particularly striking were the state's different responses to the murders of Pio La Torre and Carlo Alberto Dalla Chiesa. Taking place approximately four months apart, they occurred in

³⁶ For purposes of confidentiality, the names of these individuals have been removed.

³⁷ David Collier, *Understanding Process Tracing*, 44 PS: POL. SCI. & POL. 823 (2011).

otherwise very similar political climates. Nevertheless, while the government responded to La Torre's murder with only tweaks to Sicilian law enforcement capabilities, it adopted long-sought permissive laws after Dalla Chiesa's death.

a. *The Early Postwar Era: The Parliamentary Antimafia Commission and 575/1965*

i. Cosa Nostra in Sicily and in Italian Politics

Italy has a long history of organized crime, but the three main groups operating in the country are the Sicilian Cosa Nostra, the Neapolitan Camorra, and the Calabrian 'Ndrangheta.³⁸ Cosa Nostra, which developed from local land protection schemes in Sicily, has historically functioned as a fairly cohesive and hierarchical entity with strong ties to the Sicilian political system. In addition to engaging in extortion and trafficking, it served as a central powerbroker on the island.

From a political standpoint, passing legislation designed to combat the Mafia faced serious hurdles. Factions of the Christian Democracy party, which had long dominated Italian politics, had historically maintained some connections with the Mafia, particularly in the South of Italy, engaging in a system of patronage politics in exchange for vote mobilization.³⁹

According to the *pentito* (state's witness) Antonino Calderone, the average mafioso could guarantee between 40 and 50 votes for their preferred candidate.⁴⁰ There were between 1,500 and

³⁸ In this dissertation, I focus primarily on the activities of Cosa Nostra, as violence in Sicily appears to have been the driving force behind political decision-making in Italy at the time. However, the other groups were also active during this time, and where relevant, I mention events involving them as well.

³⁹ For discussion of the Christian Democracy party's relationship with Cosa Nostra, see JOHN DICKIE, *COSA NOSTRA* 203 (2004); Giuseppe De Feo and Giacomo Davide De Luca, *Mafia in the Ballot Box*, 9 AM. ECON. J.: ECON. POL'Y 134 (2017); Jane Schneider: *Fifty Years of Mafia Corruption and Anti-mafia Reform*, 59 CURRENT ANTHROPOLOGY S16 (2018); LETIZIA PAOLI, *MAFIA BROTHERHOODS: ORGANIZED CRIME, ITALIAN STYLE*, Chapter 5 (2003).

⁴⁰ PINO ARLACCHI, *GLI UOMINI DEL DISONORE. LA MAFIA SICILIANA NELLA VITA DEL GRANDE PENTITO*, 183 (2010).

2,000 mafiosi in Palermo alone, ensuring 75,000-100,000 votes and consistent DC domination in Sicily.⁴¹

The faction of the DC led by Giulio Andreotti benefitted particularly from this arrangement. A conservative Catholic and staunch realist, Andreotti was a dominant figure in the Italian postwar political landscape.⁴² The South, and particularly Sicily, provided Andreotti with an important constituency.⁴³ This provided Andreotti with a strong incentive to maintain ties with Cosa Nostra. Indeed, in 2003 the Court of Cassation confirmed that Andreotti had maintained ties with the Mafia until 1980.⁴⁴ Given Andreotti's power within the DC and the Italian government more broadly, the reliance of his faction on Cosa Nostra would make reform very difficult.

The result was that Cosa Nostra acquired a status of near-impunity in Sicily. Though individual crimes (particularly those committed by low-level members of the groups) were occasionally prosecuted, there was little possibility of targeting the groups systematically. In fact, for much of the twentieth century, some public figures claimed that Cosa Nostra didn't exist as a coherent organization, or at least that much of what was called "mafia" activity was merely an over-hyped stereotype of Sicilian criminality.⁴⁵

⁴¹ PINO ARLACCHI, *GLI UOMINI DEL DISONORE. LA MAFIA SICILIANA NELLA VITA DEL GRANDE PENTITO*, 183 (2010); JANE C. SCHNEIDER AND PETER T. SCHNEIDER, *REVERSIBLE DESTINY: MAFIA, ANTIMAFIA, AND THE STRUGGLE FOR PALERMO*, 52–53 (2003); GIOVANNI FALCONE & MARCELLO PADOVANI, *COSE DI COSA NOSTRA*, 124 (2017) (1991).

⁴² For a discussion of Andreotti's role in postwar Italian politics, *see e.g.*, Antonio Varsori, *Bettino Craxi and Giulio Andreotti*, in *THE OXFORD HANDBOOK OF ITALIAN POLITICS* 378 (Erik Jones and Gianfranco Pasquino eds., 2015); Massimo Franco, *C'ERA UNA VOLTA ANDREOTTI* (2019); ANTONELLA BECCARIA AND GIACOMO PACCINI, *DIVO GIULIO: ANDREOTTI E SESSANT'ANNI DI POTERE IN ITALIA* (2012).

⁴³ Antonio Varsori, *Bettino Craxi and Giulio Andreotti*, in *THE OXFORD HANDBOOK OF ITALIAN POLITICS* 378, 380 (Erik Jones and Gianfranco Pasquino eds., 2015).

⁴⁴ While the Court found that Andreotti was guilty of criminal association prior to 1980, the statute of limitations prevented him from serving time. The court did not find sufficient evidence of criminal ties after 1980 to convict. *Suprema Corte di Cassazione, Sezione Seconda Penale, sentenza n.49691/2004* (Presidente: G.M. Cosentino; Relatore: M. Massera) Depositata in Cancelleria il 28 dicembre 2004, 37 (It.).

⁴⁵ ALEXANDER STILLE, *EXCELLENT CADAVERS* 28 (2011) (1995).; JANE C. SCHNEIDER AND PETER T. SCHNEIDER, *REVERSIBLE DESTINY: MAFIA, ANTIMAFIA, AND THE STRUGGLE FOR PALERMO*, 103-105 (2003). For instance, the

As a result of these ties, the Mafia gained access to lucrative public contracts and political influence in exchange for providing the reliable supply of votes that allowed the DC to regularly defeat its Communist rivals.⁴⁶ Consequently, DC (or at least certain wings of the DC) often had an interest in suppressing measures that threatened Cosa Nostra's interests. The strength of this alliance had to be overcome for any successful legislative endeavor to occur.

Within Italian politics, the loudest and most consistent antimafia voice was that of the PCI.⁴⁷ Historically antagonistic to the Mafia, which had tended to represent the interests of aristocratic landlords at the expense of peasants, the PCI consistently advocated for aggressive antimafia measures. Importantly, the PCI wanted to implement those measures at the national level. Although they acknowledged the roots of mafia-type criminality in the impoverished *Mezzogiorno* region,⁴⁸ the PCI recognized that this group had a presence in cities throughout Italy and worried that its influence in politics was similarly extensive.⁴⁹ In a 1980 report on the state of organized crime, the PCI stated that

“The national dimension of the mafia lies precisely in its state level [presence] in the sense that it works with other forces for certain social and institutional balances and because it works to prevent the development of democracy throughout the country. The coalition of powerful forces in which the mafia is inserted does not only work at Sicilian or Calabrian government addresses but at national government addresses.”⁵⁰

archbishop of Palermo, Ernesto Ruffini, claimed that concerns about the Mafia in Sicily were merely a concession to propagandists of the north who “wish Sicily ill.” JANE C. SCHNEIDER AND PETER T. SCHNEIDER, *REVERSIBLE DESTINY: MAFIA, ANTIMAFIA, AND THE STRUGGLE FOR PALERMO*, 105 (2003). Claiming to defend the Sicilian reputation would become a common approach of politicians who wished to deny accusations of mafia connection. For example, Giulio Andreotti relied on such a defense in denying the connection of his long-time ally Salvo Lima (a known mafia affiliate) with Cosa Nostra. JOHN DICKIE, *COSA NOSTRA* 321 (2004).

⁴⁶ ALEXANDER STILLE, *EXCELLENT CADAVERS* 19-20 (2011) (1995); In the context of the Cold War, such a pact was considered by some to be the lesser of two evils. The Italian Communist Party was the strongest in Western Europe, and the possibility of its electoral victory threatened to jeopardize Italy's relationship with the United States.

⁴⁷ In addition to the PCI, the Socialist Party (*Partito Socialista Italiano*, PSI) was likewise staunchly antimafia, for similar ideological reasons.

⁴⁸ *Mezzogiorno* is the Italian term for the South of Italy.

⁴⁹ *Mafia e Criminalità Organizzata*, Direzione Partito Comunista Italiano, Sezione Problemi dello Stato, Bollettino n. 1, 2, Fondazione Gramsci (1980).

⁵⁰ *Mafia e Criminalità Organizzata*, Direzione Partito Comunista Italiano, Sezione Problemi dello Stato, Bollettino n. 1, 2, Fondazione Gramsci (1980) (“*La dimensione nazionale della mafia sta proprio nel suo livello statale nel senso che opera con altre forze per certi equilibri sociali ed istituzionali e perchè lavora per impedire lo sviluppo*”).

ii. [The Parliamentary Antimafia Commission](#)

In order to understand the passage of the Rognoni-La Torre Law, it is worth considering the motivation behind previous reform efforts and the extensiveness of those efforts. In general, legislative efforts to combat the Mafia have been responsive to swells of violence by the criminal group. In the post-war years, the most high-profile violence with which the Mafia was associated was directed at peasants advocating for land reform. Indeed, several prominent agrarian trade unionists were murdered by the Mafia.⁵¹ Resistance to the mafia was historically the province of the left wing of Italian politics, including the Communist and Socialist parties. Inspired by American congressional investigations into organized crime, Italian Communists in the 1950s began to call for a parliamentary commission of inquiry.⁵² However, little progress towards such a commission was made over the course of the decade.

By the early 1960s, the political landscape was more favorable towards leftist demands. The DC was experiencing internal divisions, with some factions considering allying with the Italian Socialist Party (*Partito Socialista Italiano*, hereinafter PSI).⁵³ At the same time, the Sicilian Regional Assembly, which was governed by a center-left coalition of Socialists and Christian Democrats, voted unanimously to request a commission of inquiry. According to Dickie (2004), “[e]ven the mafia’s own politicians voted in favour because they now considered an inquiry so inevitable that opposition at this stage would be both useless and conspicuous.”⁵⁴ In

della democrazia in tutto il Paese. Il blocco di forze dominanti nel qual è inserita la mafia non è funzionale soltanto ad indirizzi di governo siciliani o calabresi ma ad indirizzi di governo della nazione.”)

⁵¹ For a discussion of the events surrounding Portella della Ginestra, see JOHN DICKIE, *COSA NOSTRA* 209-216 (2004). The involvement of the Mafia in the Portella della Ginestra massacre is shrouded in mystery. The Mafia historically maintained a close relationship with bandits and mafiosi were likely involved in covering up the events of the massacre, if not the event itself. At any rate, they are widely perceived as being associated with suppressing peasant reform in general, and this event in particular.

⁵² JOHN DICKIE, *COSA NOSTRA* 251 (2004).

⁵³ JOHN DICKIE, *COSA NOSTRA* 251 (2004)

⁵⁴ JOHN DICKIE, *COSA NOSTRA* 251 (2004)

December 1962, the Italian Parliament officially approved the new commission.⁵⁵ Yet despite the passage of the law, no activity was done for several months.

At the same time as the commission was being approved, tensions were brewing within the Mafia. In December 1962, these broke out in a series of murders that led to increased pressure for the formation of a commission.⁵⁶ Two events were particularly significant. In May 1963, Cosa Nostra boss Angelo La Barbera was shot in a residential neighborhood of Milan.⁵⁷ In this case, it was less the fact of the shooting that drew public attention than the fact that it had occurred in a major Northern city.⁵⁸ Press reports emphasized the fact that the shooting was a product of conflict in Sicily but expressed concern about the connection between Palermo and Milan.⁵⁹ Nonetheless, *Corriere della Sera* assured its readers that such violence was an aberration, as it was essentially confined to the south:

“As for the Milanese episode, it should be noted that, fortunately, it was an isolated event that occurred only for convenience of time and place. If the old and new “honored society” had spread its elements throughout the peninsula, its tragic feuds remained well localized. Perhaps soon, even the shooting in Viale Regina Giovanna will remain just an isolated page of the news: the victim and the main witness, after the necessary ‘treatment’ in San Vittore, will be transferred to Palermo.”⁶⁰

⁵⁵ Legge 20 dicembre 1962, n. 1720 G.U. Dic. 29, 1962, n.331 (It.).

⁵⁶ JOHN DICKIE, *COSA NOSTRA* 252 (2004). For a discussion of the events of the First Mafia War, see JOHN DICKIE, *COSA NOSTRA* Ch. 8 (2004).

⁵⁷ *Scema da Gangster Stanotte a Porta Venezia a Milano*, LA STAMPA, May 24 1963, at 5; *L'attentato al Mafioso di Milano Chiude una Lunga Catena di Delitti*, LA STAMPA, May 31, 1963, at 10; *La Condanna Morte del La Barbera fu Pronunciata dalla Mafia di Cinisi*, CORRIERE DELLA SERA, May 30, 1963.

⁵⁸ JOHN DICKIE, *COSA NOSTRA* 246 (2004).

⁵⁹ *La Barbera fu Condannata a Morte dal “Tribunale” della Malavita di Palermo*, CORRIERE DELLA SERA, May 25, 1963; *Il Siciliano Crivellato da Sei Pallattole Ha Risposto alla Polizia: “Non So Niente,”* CORRIERE DELLA SERA, May 25, 1963 (Noting that “the war between mafia ‘clans’ had moved to Milan”) (“*La guerra tra le ‘cosche’ mafiose si è trasferita a Milano*”); *Giovane Crivellato di Rivoltellate nell’auto da Misteriosi Sicari Scesi da Altre Vetture*, LA STAMPA, May 25, 1963, at 5 (Noting that “the mafia arrived even in the center of Milan”) (“*La mafia è arrivata persino nel centro di Milano*”).

⁶⁰ *La Barbera, “Capobanda dei Mafiosi” Verrà Tradotto Quanto Prima a Palermo*, CORRIERE DELLA SERA, May 31, 1963 (“*Quanto all’episodio Milanese, c’è da osservare che, per fortuna, si è trattato di un fatto isolato e accaduto solo per comodità di tempo e di luogo. Se l’onorata società’ vecchia e nuova aveva sparso I suoi elementi per tutta la penisola, le sue tragiche faide erano rimaste ben localizzate. Presto forse, anche la sparatoria di viale Regina Giovanna rimarrà solo una pagina isolata di cronaca: la vittima e il principale testimone, dopo le necessarie ‘cure’ a San Vittore, verranno trasferiti a Palermo.*”).

The second significant event occurred on June 30, 1963, when two car bombs were exploded. The first, in the town of Villabate, killed a baker and a mechanic.⁶¹ The second occurred in Ciaculli, killing seven police and military officials.⁶² The attacks aroused significant public attention.⁶³ *Corriere della Sera* described “the horror aroused in the public opinion” as a result of the attacks.⁶⁴ Papers referred to the attack as the worst crime since the days of the Sicilian bandits and the funeral of the slain police officers attracted a crowd of approximately 100,000.⁶⁵ In the wake of this attack, politicians and the press began to call for the new Antimafia Commission to investigate.⁶⁶ Within a week of the Ciaculli bombing, the parliamentary commission finally began to work.⁶⁷

iii. [Law 575/1965](#)

From this point on, the existence of the Mafia could not be denied. The reports of this commission made the power of the Mafia increasingly visible and resulted in Italy’s first legislation explicitly designed to combat the group. In 1965, the Italian Parliament passed Law 575/1965,⁶⁸ *Disposizione Antimafia e Misure di Prevenzione*.⁶⁹ This law extended pre-existing

⁶¹ JOHN DICKIE, *COSA NOSTRA* 242 (2004).

⁶² For a detailed discussion of the bombings, see JOHN DICKIE, *COSA NOSTRA* 241-47 (2004). Dickie suggests that the killing of the seven officials was accidental, which would be consistent with the Mafia’s historic reluctance to kill state officials. JOHN DICKIE, *COSA NOSTRA* 247 (2004).

⁶³ *Esplodono a Palermo Due Auto Caricate a Dinamite: Nove Morti*, LA STAMPA, July 2, 1963, at 5; *Dopo La Strage di Palermo*, LA STAMPA, July 3, 1963, at 4; *Le Due Auto Cariche di Tritolo Fatte Esplodere dalla Mafia*, LA STAMPA, July 1, 1963, at 3; *Sette Militari Uccisi a Palermo in un Orrendo Attentato Dinamitardo*, CORRIERE DELLA SERA, July 1, 1963; G. Frasca Polara, *Strage Mafiosa: 7 Morti a Palermo*, L’UNITÀ July 1, 1963.

⁶⁴ *Scoprire e Punire La Mafia Omicida*, CORRIERE DELLA SERA, July 2-3, 1963 (“l’orrore suscitato nella opinione pubblica”).

⁶⁵ JOHN DICKIE, *COSA NOSTRA* 243 (2004).

⁶⁶ *Scoprire e Punire La Mafia Omicida*, CORRIERE DELLA SERA, July 2-3, 1963; *La Polizia nei Covi dei Mafiosi: Altre Retate, Altri 30 “Fermi,”* CORRIERE DELLA SERA, July 4-5, 1963 (Noting that the commission could conduct patrimonial investigations into the mafia); Napoleone Colajanni, *Le Radici della Mafia*, L’UNITÀ, July 3, 1963. Colajanni also points to ties between the DC and the mafia as “an organic fact” (“*un fatto organico*”).

⁶⁷ JOHN DICKIE, *COSA NOSTRA* 252 (2004); JOHN DICKIE, *BLOOD BROTHERHOODS: A HISTORY OF ITALY’S THREE MAFIAS* 384 (2014); *Iniziata a Roma I Lavori della Commissione Anti-Mafia*, CORRIERE DELLA SERA, July 7, 1963.

⁶⁸ Legge 31 maggio 1965, n. 575, G.U. June 5, 1965, n.138 (It.).

⁶⁹ *Disposizioni Against the Mafia and Preventive Measures*.

laws against socially dangerous individuals to those “of a mafia type,”⁷⁰ allowing for the use of special prosecutorial tools, including surveillance and *soggiorno obbligato*, in investigations of these individuals.⁷¹ This law was significant, as it was the first time that the category of a mafia association had been recognized in Italian law.⁷² Unfortunately, the practical effectiveness of the law was limited, as it did not define “mafia-type” organizations, and therefore could not criminalize membership in such an organization.⁷³ In the immediate aftermath of the First Mafia War, Cosa Nostra made a concerted effort to lay low and keep its visibility to a minimum, and the majority of government officials showed little interest in further reform.⁷⁴ In Sicily itself, efforts to prosecute members of the organization in a series of large trials ended in near total failure. Judge Cesare Terranova, who led the prosecution effort,⁷⁵ was ultimately unable to overcome the effects of Mafia intimidation and the resulting lack of adequate evidence needed to win his case.⁷⁶

iv. [The Heroin Trade and Shifting Mafia Economy](#)

In the 1970s, the Mafia’s quiescence ended as the nature of the group’s economic activities changed. For most of its history, the Mafia had primarily profited from extortion,⁷⁷

⁷⁰ Legge 31 maggio 1965, n. 575, G.U. June 5, 1965, n.138, art. 1 (It.).

⁷¹ Alessandro Quattrocchi, I Nuovi Profili di Contrasto alla Mafia, tra Associazionismo Antiracket, Consumo Critico e Agricoltura Libera 6 (2011) (Unpublished manuscript, Fondazione Falcone) (on file with the Fondazione Falcone). Quattrocchi provides an excellent overview of the development of legal measures to combat the mafia that go beyond the scope of this dissertation.

⁷² Ciro Grandi, *The Notion of Mafia in Italian Criminal Legislation and Case Law*, in REDEFINING ORGANISED CRIME: A CHALLENGE FOR THE EUROPEAN UNION? 267 (Stefania Carnevale et al. eds., 2017).

⁷³ Legge 31 maggio 1965, n. 575, G.U. June 5, 1965, n.138 (It.)

⁷⁴ ALEXANDER STILLE, EXCELLENT CADAVERS 103 (2011) (1995). *Corriere della Sera* explicitly linked the Mafia’s quiescence to its attempt to let public outrage subside. Mario Cervi, *La Mafia “in Letargo” a Palermo per Sopravvivere alla Repressione*, CORRIERE DELLA SERA, Jan. 24, 1965.

⁷⁵ Under the Italian inquisitorial system at the time, prosecutors were part of the judiciary.

⁷⁶ JOHN DICKIE, COSA NOSTRA 255-57 (2004).

⁷⁷ GIOVANNI FALCONE & MARCELLO PADOVANI, COSE DI COSA NOSTRA, 98-101 (2017) (1991). For a detailed analysis of the Sicilian Mafia as a business of private protection, see generally DIEGO GAMBETTA, THE SICILIAN MAFIA (1996).

tobacco smuggling,⁷⁸ and skimming from public works projects.⁷⁹ However, the closure of heroin refineries in Marseilles (the so-called “French Connection”) created an opportunity for Sicily to establish itself as the crucial intermediate stop in trafficking heroin to the United States.⁸⁰ In 1975, a Turkish smuggler who had supplied the Marseilles refineries approached the Mafia about the possibility of developing a new drug route through Sicily.⁸¹ Cosa Nostra, with its ties to American organized crime, established a drug distribution network so extensive that by 1982, the Mafia controlled as much as 80% of the heroin sent to the Northeast of the United States.⁸²

The result was an explosion of wealth within Cosa Nostra, which created openings for significant rivalry over access to profits.⁸³ A particularly violent Mafia faction from Corleone, under the leadership of Salvatore “Totò” Riina, began a coup within the Mafia, wiping out most of the existing leadership of Cosa Nostra in a bloody campaign often known as the Second Mafia War.⁸⁴ Indeed, it is estimated that as many as 1,000 members of the Mafia and their families were killed in this internal conflict.⁸⁵ More shockingly, given the Mafia’s general reluctance to attract negative attention from the state, the Corleonesi began killing government officials seeking to address the growing violence, the so-called “excellent cadavers.” Between 1970 and

⁷⁸ JOHN DICKIE, *COSA NOSTRA* 277 (2004).

⁷⁹ JANE C. SCHNEIDER AND PETER T. SCHNEIDER, *REVERSIBLE DESTINY: MAFIA, ANTIMAFIA, AND THE STRUGGLE FOR PALERMO*, 55-56 (2003). When faced with financial difficulties, Cosa Nostra would also sometimes turn to kidnapping for ransom. JOHN DICKIE, *COSA NOSTRA* 277 (2004).

⁸⁰ JOHN DICKIE, *COSA NOSTRA* 278 (2004). The Mafia had engaged in drug dealing prior to this time. However, they primarily engaged in the drug trade at an individual level or offered protection to drug dealers. The key difference in the heroin trade was that it established Cosa Nostra as a drug trafficking organization. JOHN DICKIE, *COSA NOSTRA* 280 (2004).

⁸¹ JOHN DICKIE, *COSA NOSTRA* 278 (2004).

⁸² JOHN DICKIE, *COSA NOSTRA* 278 (2004). This network ultimately formed the basis for the so-called Pizza Connection case in the United States.

⁸³ SALVATORE LUPO, *HISTORY OF THE MAFIA* 242 (Antony Shugaar trans., 2009) (1993).

⁸⁴ For a description of the Second Mafia War, as well as the traditional structure of Cosa Nostra, see ALEXANDER STILLE, *EXCELLENT CADAVERS* Ch. 7 (2011) (1995).

⁸⁵ ALISON JAMIESON, *THE ANTIMAFIA* (1999).

1982, a series of police officers, prosecutors, judges and politicians were killed by Cosa Nostra.⁸⁶ It was in this increasingly bloody context that the Italian Parliament passed the Rognoni-La Torre Act.⁸⁷

v. Analysis

a. **The role of public opinion**

In the immediate postwar period, Cosa Nostra had an opportunity to gain power, in large part through its connections with certain factions in the Christian Democracy party. Although the Mafia was opposed by the left-wing parties, particularly the Communists and the Socialists, it was able to avoid significant repression through the legal system as a result of a combination of DC dominance and the criminals' own relative quiescence. Both of those factors began to change in the early 1960s, with the left gaining political power and Cosa Nostra engaging in bouts of visible violence. Given how closely intertwined these two phenomena were, it is somewhat difficult to say with certainty to what degree the measures implemented in this time were a product of party politics vs. rising public attention to organized crime.

Certain factors point in each direction. The law enacting the Parliamentary Antimafia Commission was passed prior to the onset of the First Mafia War and appears to have been a response to growing pressure from left-wing parties, particularly within Sicily, rather than a dramatically rising sense of public awareness of organized crime. However, the commission was not enacted until violence rose sufficiently to gain public attention. Law 575/1965 was likewise enacted in the wake of this episode of visible violence. As such, it is difficult to draw firm conclusions from this period.

⁸⁶ ALISON JAMIESON, *THE ANTIMAFIA* 27 (1999). This only includes official state representatives killed by the Sicilian Mafia. For a list of all innocent victims of mafia violence through 2018, see *Vittime Mafia – Per Non Dimenticare*, VITTIME MAFIA (Nov. 28, 2018), <https://vittimemafia.it/vittime/> (accessed 22 Feb. 2022).

⁸⁷ ALEXANDER STILLE, *EXCELLENT CADAVERS* 76 (2011) (1995).

Assuming that public opinion played at least some role in the push for reform, it is worth examining how the events of the First Mafia War fit with the five elements of shifting threat perception identified by my theory. The attack in Milan, as well as the bombings of Villabate and Ciaculli clearly meet two of the criteria, and probably a third. 1) *They were surprising events.* Organized crime had typically been seen as relegated to the South of Italy, making shootings in Milan unexpected. In addition, mafia groups typically did not target public officials, which made the Ciaculli bombing in particular quite unusual.⁸⁸ 2) *The mafia's involvement in the attacks was perceived as being unambiguous.* Both attacks were almost immediately attributed to Sicilian organized crime, and this attribution was never seriously questioned. 3) *Outrage was nonpartisan and evenly distributed across social strata.* This factor is somewhat borderline. The attacks were covered at a national level, and do not seem to have implicated strongly partisan interests. The La Barbera shooting in particular seems to have caused Northern Italians to be concerned about their own vulnerability to mafia violence. Nonetheless, concern was still primarily regional. Northern Italians were assured that violence was to be understood as a Sicilian phenomenon following the Milan attacks. Moreover, although massive numbers of Sicilians turned out to attend the funerals of the bombing victims, there is little evidence that the public in the North was similarly mobilized.

Two factors are clearly not met. 4) *The events will affect or implicate national interests and will receive considerable attention from the national press.* Although the attacks did receive national press attention, they did not clearly implicate national interests. The attacks were primarily local events, bound up in a conflict among Sicilian criminals, which primarily affected Sicilians. Even the violence in Milan was portrayed by the press as an anomalous spillover of the

⁸⁸ JOHN DICKIE, *COSA NOSTRA* 295 (2004) (noting that from 1893 to 1971, Cosa Nostra had only targeted two government officials for assassination).

Sicilian problem, rather than a sign that the Mafia was a national issue. 5) *The national government will be seen as responsible for addressing the event in question.* Although there was certainly pressure for the national government to adopt some measures to combat organized crime, the Mafia was covered primarily as a Sicilian problem, to be handled by Sicilian police and magistrates. La Barbera's attack was described as an instance of Sicilian criminal violence that had incidentally spilled over onto Milanese streets. The bombings, while horrifying, were likewise consistent with a portrayal of the Mafia as a particularly Sicilian pathology. As such, the issue of organized crime remained primarily a question for Sicilian law enforcement, rather than a problem demanding national reform.

b. Type of reform

Both the establishment of the Parliamentary Antimafia Commission and law 575/1965 fell short of being permissive laws or competent enforcement by the terms of my theory. First of all, the Commission was primarily an investigative body, and while it could recommend new laws, it could not pass them. It also could not conduct arrests or prosecutions, and therefore could not be considered a competent enforcement body.⁸⁹ Yet despite its shortcomings, the Parliamentary Antimafia Commission made significant contributions. Simply by producing the reports that it did, the Commission greatly increased the Italian public's awareness of the Mafia as a phenomenon.⁹⁰ As Italian politicians (particularly mafia-connected politicians) often tried to downplay the Mafia threat, there was considerable value in the thorough, well-supported

⁸⁹ The vast majority of the work it produced was informative. It produced forty-two volumes, which amounted to roughly thirty thousand pages of documentation regarding the history and development of Cosa Nostra. In some ways, this was arguably counter-productive. The sheer volume of material produced made it difficult to assess the best course of action against the Mafia and may have been overwhelming in its scope. As this material was primarily descriptive and historical, it also was not necessarily geared towards a legal antimafia regime. *La Commissione Parlamentare Antimafia*, CAMERA DEI DEPUTATI, https://www.camera.it/bicamerali/antimafia/sportello/dossier/dossier1_4.html. (accessed 22 Feb. 2022).

⁹⁰ JOHN DICKIE, COSA NOSTRA 254 (2004).

documentation of the phenomenon that the Commission provided. In addition, the Commission made practical recommendations for legal reforms to combat organized crime. These included modifying the criminal law to include specific antimafia provisions; improving institutional coordination to more effectively work against the Mafia; facilitating coordination among the various Italian police forces;⁹¹ and improving controls over public procurement.⁹²

Law 575/1965 likewise cannot be considered a permissive law. As it failed to define the mafia, it could not criminalize membership in the organization. Particularly in light of the difficulty of securing witness testimony against organized crime, this law did not open up all members of the mafia to the likelihood of prosecution. In addition, it did not render their assets vulnerable to seizure. However, by placing the term mafia in the Italian penal code and by providing enhanced investigative tools, this law was nonetheless significant. Both the Parliamentary Antimafia Commission and 575/1965 laid important foundations for future antimafia reform and should be considered institutional tweaks.

The Parliamentary Antimafia Commission and Law 575/1965 foreshadowed the Rognoni-La Torre Law in a few critical ways. First, the slowness and reactivity with which these institutions were developed was a familiar pattern in the antimafia movement. Only when the Mafia demonstrated its willingness to use violence beyond that which was expected did the political establishment offer any kind of legislative response. Moreover, it is worth noting that when the Mafia threat was not sustained, the legal-institutional response itself weakened. While the First Mafia War generated sufficient political pressure to mobilize the institutionalization of the Parliamentary Antimafia Commission and Law 575/1965, the Mafia's decision to return to

⁹¹ In particular the state police, the financial police and the *carabinieri* (military police).

⁹² ALISON JAMIESON, *THE ANTIMAFIA* 17 (1999).

non-visibility and the passage of a significant period of time without notable Mafia violence seems to have dulled the enthusiasm for change.

b. The Murders of 1970-1977: Appearance of Anomaly

i. Sporadic Violence

The early years of the Second Mafia War were notable for the absence of action they generated, at least at the level of the national government. In the two decades after the establishment of the Parliamentary Antimafia Commission, it could not be said that either the government or the Italian public was unaware of the existence of Cosa Nostra. Indeed, the national press reported news of Mafia activity in some detail from the 1960s onward.⁹³ The noteworthy attacks of the Corleonesi clan against high-profile public figures began in the 1970s, and they were quickly attributed to the Mafia.⁹⁴ Since the murder of the Sicilian aristocrat and politician Emanuele Notarbartolo in 1893,⁹⁵ Cosa Nostra had generally avoided targeting public officials for assassination.⁹⁶ This, combined with the fact that the earliest attacks of the Second Mafia War were separated from each other by many months if not years, resulted in early reporting of these attacks as anomalies. Indeed, observers of the Corleonesi's campaign of violence in the 1970s attributed the killings to unusual levels of desperation on the part of the criminals, claiming attacks against state officials were something that "the Mafia never does, to avoid incurring the blind repression that they fear more."⁹⁷

⁹³ See e.g., *La Mafia Tradita*, LA STAMPA, Sept. 8, 1976, at 9; *La Mafia e i Politici*, CORRIERE DELLA SERA, May 19, 1982, at 5; *La Mafia e i Suoi Protettori*, L'UNITÀ, May 26, 1972, at 6.

⁹⁴ See e.g., Ettore Serio, *La Mafia he Eliminato un Nemico che la Combatteva da Vent'anni*, CORRIERE DELLA SERA, Aug. 22, 1971, at 2.

⁹⁵ Notarbartolo is considered to be the first "excellent cadaver" in Mafia history. For a discussion of his murder, see JOHN DICKIE, *COSA NOSTRA* 112-130 (2004).

⁹⁶ There were some exceptions, such as the socialist mayor of Corleone Bernardo Verro. Moreover, Cosa Nostra would murder public figures other than public officials. Trade union leaders and overly nosy journalists were still subject to attack.

⁹⁷ Ettore Serio, *La Mafia he Eliminato un Nemico che la Combatteva da Vent'anni*, CORRIERE DELLA SERA, Aug. 22, 1971, at 2 (*cosa che la mafia non fa mai per non scatenare la repressione alla cieca che teme di più*).

One of the earliest crimes to receive any national coverage was the disappearance of the investigative journalist Mauro de Mauro on September 16, 1970.⁹⁸ De Mauro's kidnapping was linked to his reports on mafia activity in Palermo,⁹⁹ with speculation that he had incurred the wrath of a local don through investigations that "ended up passing through the tight links of the Sicilian underworld."¹⁰⁰ Extensive searches were carried out, and the Ministry of Interior sent the director of the national coordination center of policing to aid in the effort.¹⁰¹ However, the kidnapping and subsequent investigation received relatively little attention at the national level.¹⁰²

On May 5, 1971, mafiosi murdered magistrate Pietro Scaglione after he visited his wife's tomb.¹⁰³ Scaglione's death received more attention than de Mauro's, in large part because it was the first murder of a state official by Cosa Nostra since Notarbartolo. The crime was immediately tied to Cosa Nostra, described as a "classic" mafia-style murder.¹⁰⁴ At the same time, rumors circulated that Scaglione may himself have been corrupt and had ties to the Mafia.¹⁰⁵ Even where the press did not accuse Scaglione of mafia involvement, they generally linked the crime to circumstances in Sicily. *L'Unità* tied the murder to the relationship between the mafia and power

⁹⁸ De Mauro was the victim of a *lupara bianca* (literally a "white shotgun") attack, in which the victim is disappeared. His body has never been found.

⁹⁹ *Sparito un Giornalista Autore di una Inchiesta sulla Mafia*, LA STAMPA, Sept. 18, 1970, at 18; Giuliano Marchesini, *Il Giornalista Sequestrato a Palermo Aveva Detto: C'è Uno che mi Ucciderà*, LA STAMPA, Sept. 20, 1970, at 9.

¹⁰⁰ Giuliano Marchesini, *Sapeva Troppo sul Traffico di Droga il Giornalista Scomparso in Sicilia?*, LA STAMPA, Sept. 22, 1970 at 8 (*finivano per passare attraverso le maglie strette della malavita siciliana*).

¹⁰¹ Giuliano Marchesini, *Il Giornalista Sequestrato a Palermo Aveva Detto: C'è Uno che mi Ucciderà*, LA STAMPA, Sept. 20, 1970, at 9.

¹⁰² *L'Ora*, the newspaper for which De Mauro wrote, did feature more prominent coverage of the event.

¹⁰³ JOHN Dickie, *COSA NOSTRA* 296 (2004).

¹⁰⁴ *Ucciso a Palermo il Procuratore Capo della Repubblica*, IL POPOLO, May 6, 1971, at 1; Emanuele Macaluso, *Ucciso il Procuratore di Palermo che Fu Censurato dall'Antimafia*, L'UNITÀ, May 6, 1971, at 1.

¹⁰⁵ Michele Tito, *La Mafia ha Osato*, LA STAMPA, May 6, 1971, at 1; Emanuele Macaluso, *Ucciso il Procuratore di Palermo che Fu Censurato dall'Antimafia*, L'UNITÀ, May 6, 1971, at 1. Subsequent investigations have repudiated this accusation and suggested that Scaglione was an innocent victim of Cosa Nostra. The rumors of his corruption may have been part of a mafia smear campaign.

in Sicilian politics.¹⁰⁶ *Corriere della Sera* similarly hinted at such relationships, but portrayed them as an inevitable reality in Palermo, “that beautiful city incredibly mixed with mafia mentality and activity.”¹⁰⁷ There were some calls by DC senators for Parliament to “immediately shed light on the inconceivable crime in Palermo, through which the legal conscience of the Italian people was offended and which consumed the last limit of provocation and challenge to the power of the State.”¹⁰⁸ Republican Party (*Partito Repubblicano Italiano*, PRI) congressman Aristide Gunella called for exceptional measures to be taken by the government,¹⁰⁹ a sentiment that was echoed publicly by DC political secretary Arnaldo Forlani.¹¹⁰ The Minister of Interior promised that “[t]he state will respond to the Mafia with all the means at its disposal.”¹¹¹ Ultimately, no laws were passed, and the state’s response came in the form of increased prosecution, with dozens of mafiosi rounded up and brought to trial in the wake of the magistrate’s murder.¹¹² Because of the unusual nature of the crime, it was largely dismissed as an anomaly in Mafia behavior.

On October 27, 1972, *L’Ora* journalist Giovanni Spampinato was assassinated in Ragusa by the son of president of the city’s tribunal. Spampinato had spent much of his career investigating neofascism and had uncovered ties between such groups and mafia

¹⁰⁶ Emanuele Macaluso, *Ucciso il Procuratore di Palermo che Fu Censurato dall’Antimafia*, L’UNITÀ, May 6, 1971, at 1; *Un Sistema di Potere*, L’UNITÀ, May 7, 1971, at 1.

¹⁰⁷ Egidio Sterpa, *Il Magistrato degli “Anni Ruggenti,”* CORRIERE DELLA SERA, May 6, 1971, at 5.

¹⁰⁸ *Interrogazioni in Parlamento*, CORRIERE DELLA SERA, May 6, 1971, at 5 (*faccia immediatamente luce sulla inconcepibile crimine di Palermo, attraverso il quale si è offesa la coscienza giuridica del popolo italiano e si è consumato l’ultimo limite di provocazione e di sfida ai poteri dello Stato*).

¹⁰⁹ *Palermo: Nessuno ha Visto*, CORRIERE DELLA SERA, May 6, 1971, at 6.

¹¹⁰ *Forlani Esprime lo Sdegno della DC*, IL POPOLO, May 6, 1971, at 1.

¹¹¹ *La Relazione di Restivo al Senato*, LA STAMPA, May 7, 1971, at 1 (*Lo Stato risponderà alla mafia con tutti i mezzi a disposizione*).

¹¹² Paul Hofmann, *If Surge of Gunfire is a Sign, Mafia is in Trouble*, N.Y. TIMES, May 15, 1973, at 41.

organizations.¹¹³ Spampinato's death received some national coverage, but very little of it linked his death with the mafia.¹¹⁴

On August 20, 1977, *carabinieri* colonel Giuseppe Russo was murdered along with his friend Filippo Costa. The murder was attributed to Russo's doggedness in pursuing the Mafia and his involvement in a number of high-level investigations.¹¹⁵ In particular, there was speculation that the colonel's investigations into public works contracts¹¹⁶ as well as the Mafia's ties to a prominent Milanese construction firm¹¹⁷ had given powerful people in Sicily reason to want Russo dead.¹¹⁸ However, while the killing and subsequent investigation were covered in the national press, they were rarely front-page news, and mobilized little national public outrage. Moreover, as six years had passed between murders, it was still possible to view the attacks as an aberration from the Mafia norm.

On May 9, 1978, the mafia killed Giuseppe "Peppino" Impastato in Cinisi.¹¹⁹ The son of a local mafioso, Impastato had become disgusted by the mafia. He had become active in both

¹¹³ The murder of Giovanni Spampinato is relatively underrecognized, even in contemporary accounts of Mafia violence. For a collection of articles on Spampinato's work and death, see *27 Ottobre 1972 Ragusa. Assassinato Giovanni Spampinato, Giornalista de L'Ora, di Palermo, e de l'Unità*, VITTIME MAFIA, <https://vittimemafia.it/27-ottobre-1972-ragusa-assassinato-giovanni-spampinato-giornalista-de-lora-di-palermo-e-de-lunita/> (accessed 18 Jan. 2022).

¹¹⁴ Ettore Serio, *Giornalista Ucciso a Colpi di Pistola dal Figlio di un Magistrato a Ragusa*, CORRIERE DELLA SERA, Oct. 28, 1972, at 19; *L'assassino del Giornalista di Ragusa Andò all'appuntamento Deciso a Uccidere*, CORRIERE DELLA SERA, Oct. 29, 1972; Antonio Ravidà, *Cronista Che Indaga su un Delitto Ucciso dal Figlio di Un Magistrato*, LA STAMPA, Oct. 28, 1972; Remo Lugli, *Ha Sparato Con Due Pistole Per Uccidere Il Giornalista*, LA STAMPA, Oct. 30, 1972, at 2; Giorgio Frasca Polara, *Preparato a Freddo e da Lungo Tempo L'Assassinio di Giovanni Spampinato*, L'UNITÀ, Oct. 29, 1972, at 7.

¹¹⁵ Ettore Serio, *La Mafia he Eliminato un Nemico che la Combatteva da Vent'anni*, CORRIERE DELLA SERA, August 22, 1971, at 2; Gianuario Carta, *Ucciso il Col. Russo il Nemico della Mafia*, IL POPOLO, Aug. 21 1977, at 1; *Colonnello dei Carabinieri Ucciso in un'Imboscata nel Palermitano*, L'UNITÀ, Aug. 21, 1977, at 5.

¹¹⁶ *Il Colonnello Russo fu Ucciso per un Appalto di 300 Miliardi*, LA STAMPA, Sept. 13, 1977, at 11.

¹¹⁷ *Da Milano L'Ordine "Uccidete Russo!"* CORRIERE DELLA SERA, Sept. 12, 1977 at 13; *Il Colonnello Russo fu Eliminato dalla Mafia degli Appalti*, L'UNITÀ, Dec. 3, 1977, at 5; *Omicidio Russo: Per Favoreggiamento in Carcere un Noto Impresario Milanese*, LA STAMPA, 3 Dec. 1977, at 13.

¹¹⁸ Antonio Ravidà, *Il Colonnello Russo Assassinato in Sicilia Indagava sui Vertici della Grande Mafia*, LA STAMPA, 6 Sept. 1977, at 10; Sergio Sergi, *Il Col. Russo Aveva Scoperto Loschi Traffici negli Appalti?*, L'UNITÀ, Sept. 13, 1977, at 5.

¹¹⁹ For an extensive discussion of Impastato's activism and death, see JOHN DICKIE, *COSA NOSTRA* 268-77 (2004); FELICIA BARTOLOTTA IMPASTATO ET AL., *LA MAFIA IN CASA MIA* (2d ed. 1986).

radical leftist and antimafia politics, and he openly wrote and spoke against the mafia. Following the death of his father,¹²⁰ who had protected him from retribution, Peppino was kidnapped from the headquarters of Radio Aut, the station he had founded, and from which he had publicly condemned the mafia. He was driven to nearby railroad tracks. There he was beaten and dynamite was strapped to his chest and detonated.¹²¹ Impastato's murder was not definitively attributed to the mafia, though the possibility was raised.¹²² Early reports suggested the young radical was either engaged in a terrorist attack or had committed suicide.¹²³ On the day of the murder, *Corriere della Sera*'s headline described Impastato as "a terrorist torn apart by his own bomb,"¹²⁴ although later reports would describe Impastato as having died "under mysterious circumstances."¹²⁵ There were some demonstrations staged on Impastato's behalf in the aftermath of the murder, but support for him seems to have come almost exclusively from the left.¹²⁶

ii. [Analysis](#)

The attacks of the early and mid 1970s were indicators of the fact that Cosa Nostra was becoming increasingly willing to target the state. However, while it is easy to recognize the signs with hindsight, contemporary observers generally saw these killings as mere aberrations from the

¹²⁰ Impastato's father was killed in a car crash. Though initially believed to be an accident, it is now suspected of having been orchestrated by the Mafia. JOHN DICKIE, *COSA NOSTRA* 274 (2004).

¹²¹ JOHN DICKIE, *COSA NOSTRA* 274 (2004).

¹²² *Dilaniato dalla Bomba: Lo Ha Ucciso La Mafia?* LA STAMPA, May 12, 1978, at 21; Silvano Villani, *È Stata La Mafia a Uccidere L'ultrà Dilaniato dalla Bomba?*, CORRIERE DELLA SERA, May 11, 1978.

¹²³ Antonio Ravidà, *Suicidio, Delitto Mafioso, o Attentato?*, LA STAMPA, May 10, 1978, at 13; *Palermo: Manifestazione per il Giovane Ultrà Dilaniato da Una Bomba*, LA STAMPA, May 13, 1978, at 28

¹²⁴ *Terrorista Dilaniato dalla Sua Bomba*, CORRIERE DELLA SERA, May 9, 1978.

¹²⁵ Ettore Serio, *Eletto Il Giovane di Democrazia Proletaria Dilaniato dal Tritolo nei Pressi di Palermo*, CORRIERE DELLA SERA, May 17, 1978, at 4.

¹²⁶ *Palermo: Manifestazione per il Giovane Ultrà Dilaniato da Una Bomba*, LA STAMPA, May 13, 1978, at 28. Giuseppe Impastato's story would eventually become the topic of a very successful Italian film, *I Cento Passi* (The 100 Steps), which would help to make him a symbol of the antimafia movement less rigidly tied to partisan affiliation than he was at the time of his death.

norm. Given the significant amount of time that passed between the killings, this is hardly surprising.

It is also unsurprising that these killings did not lead to significant reform, based on the terms of my theory. At most, these events only met two of the criteria to shift public opinion. 1) *The events will be surprising or unexpected.* The targeted killings of Scaglione and Russo were surprising, as they indicated a new willingness on the part of the Mafia to target state officials for assassination. 2) *The criminal group's involvement in the event will be perceived as relatively unambiguous.* In the killings of De Mauro, Scaglione, and Russo, Cosa Nostra was almost immediately identified as the most likely perpetrator of the crime. It should be noted that in the case of the Scaglione killing, the mafia's motive was not agreed-upon. Many believed (wrongly as it turned out) that the killing was a product of possible corruption on the part of Judge Scaglione. It is possible that this suspicion may have further undermined concern about the Mafia as a broader threat. In the cases of Spampinato and Impastato, it was not clear in the immediate aftermath that the mafia had been directly involved in the killings.

The remaining factors clearly were not met. 3) *The events will affect or implicate national interests, including important national figures or parties, and will receive considerable attention from the national press.* All of the victims were Sicilians interacting with mafia activity in a purely Sicilian context. None of the attacks occurred outside of Sicily, nor did they target national institutions. In addition, while the attacks did receive attention from the national press, it was fairly limited. 4) *The national government will be seen as responsible for addressing the event in question.* The murders were essentially local crime stories, and there was little suggestion that they demanded a government response. 5) *Public outrage will be nonpartisan and distributed across social strata.* There was relatively little public outrage at the national

level in response to these attacks. Instead, it was primarily concentrated within Sicily. In the case of Peppino Impastato, the outrage was also highly partisan, as his supporters were almost all on the far left.

c. *The Murders of 1979: A Pattern Emerges Amidst the Status Quo*

i. Increasing Violence

By 1979, a pattern of violence had begun to emerge, and the narrative of anomaly was no longer plausible.¹²⁷ The Corleonesi killed the Sicilian newspaper *Giornale di Sicilia*'s crime correspondent Mario Francese on January 26th; Secretary of the Sicilian Christian Democracy Party Michele Reina on March 9th; head of the Palermo Flying Squad Giorgio "Boris" Giuliano on July 21st; and Judge Cesare Terranova on September 25th.¹²⁸ Suspicion regarding the deaths of Francese, Giuliano, and Terranova fell on the mafia almost immediately. Francese had reported on mafia corruption and violence, and this was assumed to be the reason for his murder, though it received relatively little national coverage compared to the other victims.¹²⁹ Giuliano's death was linked to his investigation of Mafia crimes and received considerable press.¹³⁰

¹²⁷ The mafia is also suspected of murdering journalist Carmine Pecorelli in this year. However, I do not cover this murder because the perpetrator has never been definitively established. Pecorelli's death was not discussed as a mafia murder at the time, but only following the testimony of Tommaso Buscetta in subsequent years. Buscetta claimed that the murder was carried out at the behest of Giulio Andreotti, though Andreotti was ultimately acquitted of this murder. For a discussion of Buscetta's allegations surrounding the Pecorelli murder, see ALEXANDER STILLE, EXCELLENT CADAVERS 391-97 (2011) (1995). For Andreotti's acquittal, see *generally* Suprema Corte di Cassazione, Sezione Seconda Penale, sentenza n.49691/2004 (Presidente: G.M. Cosentino; Relatore: M. Massera) Depositata in Cancelleria il 28 dicembre 2004 (It.). I also exclude from my analyses the murder of Giorgio Ambrosoli, a Milanese lawyer who was murdered for investigating the corrupt banking practices of Michele Sindona. Ambrosoli was killed by a mafia hitman from New York, who had been hired by Sindona. Given the separation of the American and Sicilian mafias, I do not analyze this as an instance of the rising violence of the Sicilian mafia at the time. For a discussion of the Ambrosoli murder, see ALEXANDER STILLE, EXCELLENT CADAVERS 391-97 (2011) (1995).

¹²⁸ ALISON JAMIESON, THE ANTIMAFIA 27 (1999).

¹²⁹ Ettore Serio, *L'ha Ucciso il Suo Coraggio*, CORRIERE DELLA SERA, Jan. 27, 1979; *Giornalista Ucciso da Killers a Palermo*, LA STAMPA, Jan. 27, 1979, at 1; Antonio Ravidà, *Il Giornalista Ucciso a Palermo: Quasi Certa la Mano della Mafia*, LA STAMPA, Jan. 27, 1979, at 2.

¹³⁰ *Assassinato a Revolverate in un Bar il Capo della Mobile di Palermo*, CORRIERE DELLA SERA, July 21, 1979, at 1; *Il Capo della Mobile di Palermo Ucciso dalla "Mafia della Droga"*, IL POPOLO, July 22, 1979, at 1; Antonio Ravidà, *Dure Parole del Cardinale di Palermo ai Funerali del Vicequestore di Palermo*, LA STAMPA, July 24, 1979, at 9.

Terranova had attempted to prosecute mafiosi in the wake of the First Mafia War and had been an active participant in the Parliamentary Antimafia Commission.¹³¹ As with Giuliano, Terranova's death received considerable attention from the press. Reina's death was something of an outlier in terms of coverage. It was initially believed to have been an act of terrorism and was covered accordingly.¹³² Mafia links to his death were initially speculative but were confirmed over time.¹³³

ii. Media and Political Response

In response to the 1979 murders, some experts, such as the journalist Michele Pantaleone, wrote of the national problem that the Mafia posed.¹³⁴ However, such statements were a minority. In general, the attacks were explicitly described in Sicilian terms.¹³⁵ Covering the totality of high-profile murders that had occurred over the course of the year, *Corriere della Sera* bemoaned the fate of "bitter Sicily, that fights to emancipate and liberate herself from the ruthless pincers of the Mafia."¹³⁶ Individual murders were often simply discussed in the context

¹³¹ Edgarda Ferri, *La Sicilia a Canne Mozza*, CORRIERE DELLA SERA, Sept. 26, 1979, at 3. Early reports also reported that a neofascist group had taken responsibility for the murder of the Communist judge, but they never ruled out the possibility of mafia involvement. *Magistrato Ucciso*, LA STAMPA, Sept. 25, 1979, at 1; *Magistrato Trucidato dalla Mafia; Le BR Preparavano un Attentato*, IL POPOLO, Sept. 26, 1979, at 1.

¹³² Mario Obole, *Imponente Manifestazione di Solidarietà con la D.C.*, IL POPOLO, Mar. 11, 1979, at 1-2. It took several days for the Mafia's involvement to be established in Reina's case, as the left-wing terrorist group Prima Linea initially appeared to have taken credit for the attack. Antonio Ravidà, *Terrorismo Coordinato di Prima Linea-Da Torino a Roma e a Palermo*, LA STAMPA, Mar. 10, 1979, at 2; *Assassinato in Centro a Palermo il Segretario Provinciale della DC*, CORRIERE DELLA SERA, Mar. 10, 1979, at 1.

¹³³ Within days of his murder, Prima Linea had denied involvement, and observers began to speculate that the Mafia had been involved. See Antonio Ravidà, *Si Delinea Più Chiara l'Ombra della Mafia nel Feroce Assassinio di Reina a Palermo*, LA STAMPA, Mar. 14, 1979, at 10; Ulderico Munzi, *Telefonate di Prima Linea a Palermo: "È Stata la Mafia a Uccidere Reina."* CORRIERE DELLA SERA, Mar. 13, 1979, at 6; Sergio Sergi, *Prima Linea Telefona per Smentire: "È Stata la Mafia."* L'UNITÀ, March 13, 1979, at 5; Edgarda Ferri, *La Sicilia a Canne Mozza*, CORRIERE DELLA SERA, Sept. 26, 1979, at 3.

¹³⁴ Michele Pantaleone, *Al di Sopra di Ogni Delitto*, LA STAMPA, Aug. 4, 1979, at 2.

¹³⁵ Edgarda Ferri, *La Sicilia a Canne Mozza*, CORRIERE DELLA SERA, Sept. 26, 1979, at 3.

¹³⁶ Edgarda Ferri, *La Sicilia a Canne Mozza*, CORRIERE DELLA SERA, Sept. 26, 1979, at 3 (*l'amara sicilia che lotta per emanciparsi e liberarsi dalla tenaglia spietata della mafia*).

of the Sicilian-based drug trade.¹³⁷ Though some commemorations and displays of solidarity did occur throughout Italy, the public also showed relatively little outrage.¹³⁸

Nevertheless, the rise in violence did lead to some calls for the state to act. PCI representatives such as Nilde Iotti described the attacks as a threat to Italian democracy requiring the “mobilization of the intellectual and social force of the country.”¹³⁹ At Giuliano’s funeral, which was attended by leading representatives of the regional and national government, the archbishop of Palermo Salvatore Pappalardo called on the State to “do its job . . . protect with a clear and unequivocal political path, with appropriate laws, the dignity and liberty of all citizens.”¹⁴⁰ Minister of the Interior Virginio Rognoni called for improvements to the resources of law enforcement and a streamlining of the system of criminal procedure to more effectively tackle organized crime.¹⁴¹ The PCI wanted a government debate on additional reforms to combat the Mafia, including improved coordination between police and the judiciary.¹⁴² At this point, the communists actually resisted preventive asset confiscation, believing it would only be used against the less powerful, while the well-connected remained untouchable.¹⁴³ Nonetheless, despite these efforts, the 1979 murders did not yield reform.

¹³⁷ Sergio Sergi, *La Lotta al Terrorismo e alla Mafia*, L’UNITÀ, Mar. 16, 1979, at 11; *In Libertà i Tre Sospettati per il Vice Questore Ucciso*, LA STAMPA, July 25, 1979, at 11; *In Sicilia, “Ponte” tra Oriente e USA la Mafia ha un Traffico di Miliardi*, CORRIERE DELLA SERA, Aug. 27, 1979, at 7.

¹³⁸ For instance, trade unionists held an hour-long strike after the death of Terranova. *L’Attentato di Palermo*, IL POPOLO, September 26, 1979, at 4.

¹³⁹ *Commozione e Sdegno nel Ricordo alla Camera*, L’UNITÀ, Sept. 26, 1979, at 2 (*mobilizzazione delle forze intellettuali e sociali del Paese*).

¹⁴⁰ Antonio Ravidà, *Si Delinea Più Chiara l’Ombra della Mafia nel Feroce Assassinio di Reina a Palermo*, LA STAMPA, Mar. 14, 1979, at 10.

¹⁴¹ *Una Società Pulita Contro la Violenza*, IL POPOLO, Sept. 27, 1979, at 1.

¹⁴² Alfonso Madeo, *È Impossibile Vincere la Mafia Senza una Strategia. Perché Non Usare l’Arma dell’Accertamento Fiscale*, CORRIERE DELLA SERA, Oct. 15, 1979, at 7.

¹⁴³ Alfonso Madeo, *È Impossibile Vincere la Mafia Senza una Strategia. Perché Non Usare l’Arma dell’Accertamento Fiscale*, CORRIERE DELLA SERA, Oct. 15, 1979, at 7.

i. Analysis

The attacks of 1979 demonstrated clearly that the mafia was engaged in a pattern of killing high-level leaders. Within the context of the factors for shifting public opinion, they clearly met two of the factors, and began to shift the remaining three. 1) *The events were surprising or unexpected.* The rapid succession of murders of “excellent cadavers” demonstrated that the Mafia had definitively broken with its historic reluctance not to target government officials. 2) *The criminal group’s involvement in the event will be perceived as relatively unambiguous.* With the exception of Reina, whose death was initially attributed to terrorism, all of the murders were linked to the mafia almost immediately.

The remaining factors did not clearly militate in favor of shifting public opinion, though some shifts in attitude are apparent. 3) *They will affect or implicate national interests and will receive considerable attention from the national press.* The murders of 1979, with the possible exception of Mario Francese, did receive considerable press attention. However, all of those killed were still Sicilian journalists and law enforcement operating in a purely Sicilian context. As such, though the crimes received increasing national attention, they could still be largely localized. 4) *The national government will be seen as responsible for addressing the event in question.* In the aftermath of the murders, an increasing number of prominent voices began to describe the mafia as a national problem. These included leaders outside of the PCI, such as Cardinal Pappalardo and Virginio Rognoni. Nonetheless, the murders will still frequently be described as a product of the specifically Sicilian context. 5) *Public outrage will be nonpartisan and distributed across social strata.* The rise in public condemnation from prominent members of society outside of the PCI is some indication that outrage was not strictly confined to the left wing. However, public mobilization to these crimes appears to have primarily occurred within

Sicily or in the context of specific organizing bodies, such as the trade unionists who organized demonstrations after Terranova's murder. As such, the response to these killings remained stratified, though arguably less than in the past.

As discussed above, this period saw a rise in public denunciations of organized crime and calls for national action. The PCI, which had historically advocated for measures to combat organized crime, remained foundational to the reformist movement. However, it is in this period that the expansion of this movement becomes visible. The emergence of politicians within the DC such as Virginio Rognoni publicly calling for national action against the mafia indicates a movement of some neutrals towards antimafia reform.

d. The Murders of 1980: Reformists Arise

i. Violence Continues

The pattern of violence continued the following year with the murders of the president of the Sicilian Region, Piersanti Mattarella on January 6th; *carabiniere* captain Emanuele Basile on May 4th; and Palermo chief prosecutor Gaetano Costa on August 6th.¹⁴⁴ Mattarella was a rising star in the Christian Democracy Party who worked reasonably closely with the PCI, and who was attempting to clear up public contracts in Sicily.¹⁴⁵ Basile, a commander in the Palermo suburb of Monreale, was investigating the drug trafficking networks of some of the most highly-placed Mafia bosses.¹⁴⁶ Costa had signed arrest warrants in a major trans-Atlantic Mafia drug trafficking case, the only prosecutor willing to do so.¹⁴⁷

¹⁴⁴ ALISON JAMIESON, *THE ANTIMAFIA* 27 (1999).

¹⁴⁵ JOHN DICKIE, *COSA NOSTRA* 323-24 (2004); ALEXANDER STILLE, *EXCELLENT CADAVERS* 31 (2011) (1995).

¹⁴⁶ ALEXANDER STILLE, *EXCELLENT CADAVERS* 47-51 (2011) (1995); Bruno Tucci, *Sapeva Troppo: E la Mafia Elimina a Palermo Ufficiale dei Carabinieri che Tiene in Braccia la Figliolotta*, *CORRIERE DELLA SERA*, May 5, 1980, at 1.

¹⁴⁷ ALEXANDER STILLE, *EXCELLENT CADAVERS* 34 (2011) (1995); Felice Cavallaro, *Ucciso a Palermo il Procuratore Capo: Indagava sulla Mafia Internazionale*, *CORRIERE DELLA SERA*, Aug. 7, 1980, at 1; Remo Lugli, *Ucciso Perché Era Giunto Vicino al Cuore della Mafia*, *LA STAMPA*, August 8, 1980, at 1.

ii. Reactions to the Murders

These murders were certainly covered in the national press.¹⁴⁸ Following Mattarella's murder, PCI Senator Ugo Pecchioli warned in somewhat theatrical terms that "[a] message to the whole country has arrived from Sicily. But deciphering it for now is very difficult."¹⁴⁹ Some political leaders even expressed concern that the attack might herald an alliance between the Mafia and political terrorist groups.¹⁵⁰ Mattarella's killing was even described as the "worst political crime after [the murder of Prime Minister Aldo] Moro."¹⁵¹ This was an incredibly serious charge, as Moro's death at the hands of the Red Brigades (*Brigate Rosse*) was arguably one of the most traumatic events in postwar Italian history. However, even the murder of the most prominent politician in Sicily did not lead to reform.¹⁵²

Despite the frequent comparisons of Mattarella's killing to Moro's, his murder was nonetheless still covered as primarily a Sicilian crisis. *Corriere della Sera* stated that "[e]ven without knowing the instigators and perpetrators of the crime, any serene observer of Sicilian things can suspect that he was killed by one of those mafia forces that oppose change in Sicily with gun in hand. One of those forces that have sucked blood from Sicilians and want to continue sucking it."¹⁵³ Such crimes had come to be almost expected in Palermo, a "city that grows

¹⁴⁸ See e.g., *Le Cento Braccio della Mafia*, CORRIERE DELLA SERA, July 31, 1971, at 14; *Dure Parole del Cardinale di Palermo ai Funerali del Vicequestore Ucciso*, LA STAMPA, July 24, 1974, at 18; *Terremoto nella Mafia in Sicilia: 36 Arresti per il Capitano Ucciso*, LA STAMPA, May 6, 1980, at 1.

¹⁴⁹ Sandra Bonsanti, *L'incontro Terrorismo-Mafia Rende Più Grave La Tensione*, LA STAMPA, Jan. 8, 1980, at 2 ("Dalla Sicilia è arrivato un messaggio a tutto il Paese. Ma decifrarlo per ora è molto difficile.").

¹⁵⁰ Sandra Bonsanti, *L'incontro Terrorismo-Mafia Rende Più Grave La Tensione*, LA STAMPA, Jan. 8, 1980, at 2.

¹⁵¹ *Assassinato il Capo del Governo Siciliano: È il Più Grave Delitto Politico Dopo Moro*, L'UNITÀ, Jan. 7, 1980, at 1. This comparison was made several times. See "*Questo è un Piccolo Delitto Moro*," LA STAMPA, Jan. 7, 1980, at 2; Giovanni Spadolini, *Da Moro a Mattarella: Terrorismo e Politica*, LA STAMPA Jan. 14, 1980, at 1; *Pertini: Il Criminale Agguato Mi Getta nel Più Profondo Dolore*, CORRIERE DELLA SERA, Jan. 7, 1980, at 2.

¹⁵² *Pertini: Il Criminale Agguato Mi Getta nel Più Profondo Dolore*, CORRIERE DELLA SERA, Jan. 7, 1980, at 2.

¹⁵³ Roberto Ciuni, *Uomo Nuovo*, CORRIERE DELLA SERA, Jan. 7, 1980, at 2. ("Pur non conoscendo mandanti ed esecutori del delitto, qualsiasi sereno osservatore delle cose siciliane può pendare che l'ha ucciso una di quelle forze mafiose che si oppongono con la pistola in mano al cambiamento della Sicilia. Una di quelle forze che hanno succhiato il sangue ai siciliani e vogliono continuare a succhiarlo").

despite a thousand difficulties and contradictions, and where the Mafia has always represented, with its hidden weaves and its blackmail, an element of stop and delay.”¹⁵⁴ In such a city, mafiosi were simply “an endemic and hereditary fact with which healthy forces have always engaged in a very difficult struggle.”¹⁵⁵ Sicilian regional DC secretary Rosario Nicoletti asked what there was left to do in Sicily.¹⁵⁶ Likewise, after the murders of Basile and Costa, mafia violence was presented as an exacerbation of Sicilian violence, a threat largely confined to “bloody Palermo.”¹⁵⁷ Palermitan prosecutor Guido Lo Forte described the public mood in a similar way, noting that the “murder of magistrates had become an endemic phenomenon, and frustration and resignation had succeeded emotion and anger.”¹⁵⁸

Some prominent individuals did not take this line. Speaking to journalists at Costa’s funeral, Virginio Rognoni publicly stated that he was convinced that the Mafia was a great national problem.¹⁵⁹ Sicilian judges spoke openly of the need for national legislative reform to carry out their work.¹⁶⁰ Vice President of the *Consiglio Superiore della Magistratura*¹⁶¹ Ugo Zilletti argued at this point that the mafia had become a national (and indeed international) problem, stating that

¹⁵⁴ Remigio Cavedon, *Oscuro Intreccio di Trame*, IL POPOLO, Jan. 8, 1980, at 1 (*una città che cresce, pur tra mille difficoltà e contraddizioni e dove la mafia ha da sempre rappresentato, con i suoi intrecci occulti e i suoi ricatti, un elemento di freno e di ritardo*).

¹⁵⁵ Remigio Cavedon, *Oscuro Intreccio di Trame*, IL POPOLO, Jan. 8, 1980, at 1 (*un fatto endemico ed ereditario con le quali le forze sane hanno sempre impegnato una lotta durissima*).

¹⁵⁶ Bruno Tucci, *Ucciso il Presidente DC della Regione Siciliana: È il Più Grave Delitto Politico Dopo il Caso Moro*, CORRIERE DELLA SERA, Jan. 7, 1980, at 1 (“*Che cosa ci rimane da fare in questa Sicilia?*”).

¹⁵⁷ *Attacco di Fanfani a Rognoni: “Perché Costa Senza Scorta?”*, LA STAMPA, Aug. 8, 1980, at 1. By the end of 1980, the mounting death toll of public officials, which now included magistrates Gaetano Costa and Cesare Terranova, led to further scrutiny of the Mafia problem, including questions about the level of protection that Sicilian public officials who took an antimafia stand were receiving.

¹⁵⁸ Remo Lugli, *Istruttorie e Processi Rapidi la Miglior Risposta alla Mafia*, LA STAMPA, Aug. 9, 1980, at 2 (*L’uccisione dei magistrati sta diventando un fenomeno endemico, all’emotività e alla rabbia subentrano frustrazione e rassegnazione*).

¹⁵⁹ Vincenzo Vasile, *I Magistrati Accusano: “Lo Stato è Ancora Assente nella Lotta Contro la Mafia”*, L’UNITÀ, Aug. 9, 1980, at 1.

¹⁶⁰ Vincenzo Vasile, *I Magistrati Accusano: “Lo Stato è Ancora Assente nella Lotta Contro la Mafia”*, L’UNITÀ, Aug. 9, 1980, at 1.

¹⁶¹ The governing body of the Italian judiciary.

The mafia has always been considered a regional phenomenon linked to Sicily. Instead, it has become international, it has changed its size, behavior and thickness. The killing of a magistrate like Costa not only affects Sicily and the judiciary but affects the state. The killing of Scaglione was an extreme point, that of Costa is almost a rule.¹⁶²

In the immediate aftermath of Mattarella's murder, the government increased police resources to Sicily, sending over 200 additional security forces to the island.¹⁶³ After Basile's murder, coordinated police action led to the arrest of over 30 mafiosi.¹⁶⁴ Following Mattarella's murder, both Rognoni and Pio La Torre advocated for the passage of special measures to combat the Mafia.¹⁶⁵ Rognoni noted the increasing prevalence of violence throughout Italy, even "in areas that had been immune."¹⁶⁶ He also warned that the building pressure of violence was likely to build significant public resentment, noting that

"it is necessary not to forget that every episode of violence exercised against protagonists, interpreters, operators and servants of the democratic order, whatever the purpose that the principals and perpetrators of the attacks propose, contains in itself such a charge of intimidation and alarm to become terroristic, if only for the devastating effects on public opinion, in popular consciousness, in the very fabric of institutions."¹⁶⁷

¹⁶² Remo Lugli, "Istruttorie e Processi Rapidi la Miglior Risposta alla Mafia", LA STAMPA, Aug. 9, 1980, at 2. (*La mafia è sempre stata considerata un fenomeno regionale legato alla Sicilia. Invece, è diventato internazionale, ha cambiato dimensione, comportamento, spessore. L'uccisione di un magistrato come Costa non colpisce solo la Sicilia e solo la magistratura, ma colpisce lo Stato. L'uccisione di Scaglione era un punto estremo, quella di Costa è quasi una regola*).

¹⁶³ Rognoni: *Occorre Realizzare Misure di Vera Solidarietà*, IL POPOLO, Jan. 9, 1980, at 9.

¹⁶⁴ Reports vary as to whether 32, 36, or 37 were arrested. *Basile, Mattarella: Gli Stessi Assassini?*, IL POPOLO, May 6, 1980, at 1; Francesco Santini, *Terremoto nella Mafia in Sicilia: 36 Arresti per il Capitano Ucciso*, LA STAMPA, May 6, 1980, at 1; *Dopo l'Uccisione del Capitano Basile Trentasette Arrestati: Presi I Killer?*, CORRIERE DELLA SERA, May 6, 1980, at 7.

¹⁶⁵ Rognoni: *Occorre Realizzare Misure di Vera Solidarietà*, IL POPOLO, Jan. 9, 1980, at 9; Pio La Torre, *Sull'Assassinio del Presidente della Regione Siciliana Piersanti Mattarella*, Speech in the Camera dei Deputati (Jan. 8, 1980), in *PIO LA TORRE LEGISLATORE CONTRO LA MAFIA: INTERVENTI E DISCORSI PARLAMENTARI 294* (Carlo Ruta ed., 2014).

¹⁶⁶ Rognoni: *Occorre Realizzare Misure di Vera Solidarietà*, IL POPOLO, Jan. 9, 1980, at 9 ("in zone che prima ne erano immuni").

¹⁶⁷ Rognoni: *Occorre Realizzare Misure di Vera Solidarietà*, IL POPOLO, Jan. 9, 1980, at 9 ("È necessario, tuttavia, non dimenticare che ogni episodio di violenza esercitato contro protagonisti, interpreti, operatori e servitori dell'ordinamento democratico, quale che sia lo scopo che mandanti ed esecutori degli attentati si propongono, contiene in sé una tale carica di intimidazione e di allarme da diventare terroristico, non fosse altro che per gli effetti devastanti sull'opinione pubblica, nella coscienza popolare, nel tessuto stesso delle istituzioni").

In the wake of the murder of Mattarella, members of the PCI called for the violence to be viewed as a national attack.¹⁶⁸ Nilde Iotti argued that Palermitan public order was “made particularly precarious by the persistence of a mafia power system against which the mobilization of powers of the state and the national consciousness is not still adequate.”¹⁶⁹ After the murder of Costa, the Regional Communist Committee of Sicily and the PCI Federation of Palermo publicly condemned the inaction of the central government.¹⁷⁰

One additional response to the Mattarella murder took place outside of public view. In the wake of the murder of the young DC politician, Giulio Andreotti began to cut ties with Cosa Nostra.¹⁷¹ According to *pentiti*, Andreotti had met with leaders of the Mafia to discuss the threat Mattarella posed, though he believed the issue could be handled politically.¹⁷² Members of the Mafia were considering the murder of Matarrella in 1979 and, while Andreotti urged against this approach, he did not inform anyone of the plan.¹⁷³ Nonetheless, when Mattarella was killed, Andreotti was alarmed, and began to distance himself from the criminal organization.¹⁷⁴ As such, the murder of Mattarella likely weakened the resistance of a significant political contingent towards eventual repression of Cosa Nostra.

iii. Legislation

¹⁶⁸ *Pertini: Il Criminale Agguato Mi Getta nel Più Profondo Dolore*, CORRIERE DELLA SERA, Jan. 7, 1980, at 2.

¹⁶⁹ *Nilde Iotti: È in Giuoco la Democrazia*, L'UNITÀ, Jan. 8, 1980, at 5 (*resa particolarmente precaria dal persistere di un sistema di potere mafioso contro il quale la mobilitazione dei poteri dello Stato e della coscienza nazionale non è ancora adeguata*).

¹⁷⁰ “*Le Complicità, Le Protezioni di Chi Doveva Invece Operare*”, L'UNITÀ, Aug. 8, 1980, at 2.

¹⁷¹ Suprema Corte di Cassazione, Sezione Seconda Penale, sentenza n.49691/2004 (Presidente: G.M. Cosentino; Relatore: M. Massera) Depositata in Cancelleria il 28 dicembre 2004, 32 (It.).

¹⁷² Suprema Corte di Cassazione, Sezione Seconda Penale, sentenza n.49691/2004 (Presidente: G.M. Cosentino; Relatore: M. Massera) Depositata in Cancelleria il 28 dicembre 2004, 32 (It.); JOHN DICKIE, COSA NOSTRA 324 (2004). Andreotti's main contact in Cosa Nostra appears to have been Stefano Bontate, who was losing power to the Corleonesi faction at the time and would eventually be murdered by them.

¹⁷³ ANTONELLA BECCARIA AND GIACOMO PACCINI, *DIVO GIULIO: ANDREOTTI E SESSANT'ANNI DI POTERE IN ITALIA* (2012).

¹⁷⁴ Suprema Corte di Cassazione, Sezione Seconda Penale, sentenza n.49691/2004 (Presidente: G.M. Cosentino; Relatore: M. Massera) Depositata in Cancelleria il 28 dicembre 2004, 32-33 (It.).

One member of the PCI was particularly committed to combatting the mafia. Pio La Torre was the head of the Sicilian PCI. As a young man, he had been sent to organize workers in Corleone after the mafia had murdered Placido Rizzoto, the town's trade union leader.¹⁷⁵ La Torre had spoken out against the mafia in this context, and had directly experienced Cosa Nostra's power to intimidate those who lived under its control.¹⁷⁶ As Regional Secretary of the PCI in Sicily, he had worked to provide the Parliamentary Antimafia Commission with documentation of the history and politics of the Mafia in west Sicily.¹⁷⁷ Elected to the Chamber of Deputies in 1972, La Torre began his legislative career on the Parliamentary Antimafia Commission,¹⁷⁸ where he contributed to an important minority report.¹⁷⁹ As such, Pio La Torre was a paradigmatic reform leader in Parliament at the time.

In a speech before the Chamber of Deputies in the wake of Mattarella's murder, La Torre, while acknowledging the Sicilian roots of the Mafia, nonetheless decried the government's failure to see these murders as an attack "against the democratic institutions of our country."¹⁸⁰ La Torre was particularly critical of the delay in "considering what was happening in Sicily, in Palermo, as something atypical and therefore different from the more general subversive attack against Italian democracy."¹⁸¹ La Torre took on the project of developing legislation that would

¹⁷⁵ GIUSEPPE BASCIETTO AND CLAUDIO CAMARCA, *L'UOMO CHE INCASTRÒ LA MAFIA: PIO LA TORRE*, 116 (2018).

¹⁷⁶ GIUSEPPE BASCIETTO AND CLAUDIO CAMARCA, *L'UOMO CHE INCASTRÒ LA MAFIA: PIO LA TORRE*, 141-42 (2018).

¹⁷⁷ VITO LO MONACO & VINCENZO VASILE, *PIO LA TORRE*, Ch. 3 (2012).

¹⁷⁸ VITO LO MONACO & VINCENZO VASILE, *PIO LA TORRE*, Ch. 2 (2012).

¹⁷⁹ COMMISSIONE PARLAMENTARE ANTIMAFIA, *RELAZIONE DI MINORANZA DEI DEPUTATI LA TORRE, BENEDETTI, MALAGUGINI E DEI SENATORI ADAMOLI, CHIAROMONTE, LUGNANO, MAFFIOLETTI NONCHÉ DEL DEPUTATO TERRANOVA*, Legislatura VI, 567-609 (Feb. 4, 1976).

¹⁸⁰ Pio La Torre, *Sull'Assassinio del Presidente della Regione Siciliana Piersanti Mattarella*, Speech in the Camera dei Deputati (Jan. 8, 1980), in *PIO LA TORRE LEGISLATORE CONTRO LA MAFIA: INTERVENTI E DISCORSI PARLAMENTARI 292* (Carlo Ruta ed., 2014).

¹⁸¹ Pio La Torre, *Sull'Assassinio del Presidente della Regione Siciliana Piersanti Mattarella*, Speech in the Camera dei Deputati (Jan. 8, 1980), in *PIO LA TORRE LEGISLATORE CONTRO LA MAFIA: INTERVENTI E DISCORSI PARLAMENTARI 292* (Carlo Ruta ed., 2014) (*Si è indugiato nel considerare quanto andava accadendo in Sicilia, a Palermo, come qualcosa di atipico e quindi di diverso dal più generale attacco eversivo contro la democrazia italiana*).

criminalize mafia association.¹⁸² On March 31, 1980, Pio La Torre deposited his draft law in the Chamber of Deputies.¹⁸³

iv. Analysis

The 1980 murders raised the profile of Mafia violence considerably. Particularly significant was the murder of Mattarella, who, as President of the Sicilian Region was the most powerful political figure killed up until that point. In light of the significant attention that his death received and the regular comparisons of this murder with events as devastating as the murder of Aldo Moro, it is worth considering why reform was not implemented at this stage.

Of the five factors I outline, three were definitively met, one was borderline, and one was not met. 1) *These events were surprising*. Despite the increasing violence of the Mafia, the murder of a politician as powerful as Mattarella represented an unprecedented increase in the audacity of Mafia killing. 2) *Public outrage was nonpartisan and distributed across social strata*. There is no evidence that the killings were perceived in a partisan manner, despite the political affiliation of the political target. Communist and DC leaders expressed similar outrage, as did press outlets of all political affiliations. 3) *The criminal group's involvement in the event was perceived as relatively unambiguous*. Though terrorist ties were suspected in the Mattarella murder, the mafia was blamed early on in all three cases.

4) *The national government will be seen as responsible for addressing the event in question*. This factor was not clearly met by the end of 1980, as the murders were still discussed primarily in the Sicilian context. However, demands for national involvement were growing at this time,

¹⁸² Giovanni Falcone and Paolo Borsellino, two prosecutors at the Tribunal of Palermo helped to craft this legislation. Falcone and Borsellino would become two of the leading figures in the antimafia movement. GIUSEPPE BASCIETTO AND CLAUDIO CAMARCA, L'UOMO CHE INCASTRÒ LA MAFIA: PIO LA TORRE, 220 (2018).

¹⁸³ Disposizioni Contro la Mafia, Proposta di Legge, Camera dei Deputati, VIII Legislatura, N. 1581 (Mar. 31, 1980).

many PCI leaders and even some prominent members within the DC calling for national action.

5) *They will affect or implicate national interests and will receive considerable attention from the national press.* Although the murders did receive considerable press coverage, they were not clearly attacks on national figures. Once again, all of the victims were Sicilian officials operating within a Sicilian context. Even Mattarella, though a powerful figure within Sicilian politics, was decidedly rooted in Sicily. As such, the violence could still be seen as attacks on the Sicilian establishment.

Although the Mafia could not definitively be called a national threat, it was certainly drawing increasing national attention. Moreover, it had demonstrated a willingness to attack prominent members of the DC establishment, as well as law enforcement who directly threatened it.¹⁸⁴ In this context, political leaders were increasingly willing to advocate for reform. Such a reformist stance had become well-entrenched within the PCI, but this period saw increasing calls for reform from within the DC as well as from the judiciary. As such, this period should be understood as a continuation of the shifting of neutrals in the direction of reform.

e. April 1982: The Murder of Pio La Torre and Stagnation

i. [La Torre's Death](#)

The early 1980s would have seemed to be an auspicious time for the passage of a law such as La Torre's. In June of 1981, for the first time in 35 years, Italy had a prime minister who was not of the Christian Democrat party.¹⁸⁵ Within the DC, a faction that was not electorally dependent on the South was gaining power. Such a contingent would theoretically be more able

¹⁸⁴ Indeed, it had first done so the year previously with the murder of Michele Reina, though the attribution was somewhat obscured in that case.

¹⁸⁵ Giovanni Spadolini was a member of the Italian Republican Party (*Partito Repubblicano Italiano*--PRI). However, the continuing power of the DC should not be dismissed, as they continued to hold the majority of positions in the Council of Ministers.

to align themselves with the antimafia movement. Perhaps most significant among these was Minister of the Interior Rognoni.¹⁸⁶ In November of 1981, Rognoni presented his own draft law, focusing on preventive financial measures.¹⁸⁷

Yet despite these circumstances, La Torre's law languished in parliamentary purgatory. Following its deposition, it was deferred for a vote in February of 1982.¹⁸⁸ On April 30, 1982, La Torre himself was murdered along with his driver, Rosario Di Salvo. The murder was probably an attempt by the Mafia to prevent the passage of his law.¹⁸⁹ La Torre was the first Member of the Italian Parliament to have been killed by the Mafia, making him the most high-profile excellent cadaver up to this point.

ii. Reaction

Pio La Torre's death resulted in nationwide demonstrations, though they were composed primarily of PCI supporters.¹⁹⁰ In Rome, the Communist youth movement organized a protest of thousands.¹⁹¹ In the press, the murder was described in national terms to a somewhat greater degree than prior attacks. *Corriere della Sera* described La Torre's death as "hitting not only his party. It is a loss for the national Parliament, for Italian democracy, and for the entire system of ideal values in which he believed."¹⁹² Official statements in the wake of La Torre's death reflected a mixed perception of the Mafia danger. Some reporters pointed to the PCI's growing

¹⁸⁶ ALEXANDER STILLE, *EXCELLENT CADAVERS* 90 (2011) (1995).

¹⁸⁷ Disposizioni in Materia di Misure di Prevenzione di Carattere Patrimoniale ed Integrazioni alla Legge 27 dicembre 1956, n. 1423, Disegno di Legge, Camera dei Deputati VIII Legislatura, N. 2982 (Nov. 20, 1981). Rognoni's draft law would ultimately be combined with La Torre's to make the Rognoni-La Torre Law.

¹⁸⁸ Atti Parlamentari, Camera dei Deputati, VIII Legislatura, 39972 (Feb. 2, 1982).

¹⁸⁹ ALISON JAMIESON, *THE ANTIMAFIA* 26 (1999).

¹⁹⁰ Daniela Pasti, *E Spadolini Invia Subito Dalla Chiesa*, *LA REPUBBLICA* May 1, 1982, at 5, (found at Istituto Luigi Sturzo); *Manifestazioni Ovunque: A Migliaia Sotto la Direzione del PCI*, *L'UNITÀ*, May 1, 1982, at 1.

¹⁹¹ *Roma Contro gli Assassini*, *L'UNITÀ*, May 1, 1982, at 10.

¹⁹² Alfonso Madeo, *Un Altro Delitto Politico*, *CORRIERE DELLA SERA*, May 1, 1982, at 1 ("non colpisce soltanto il suo partito. È una perdita per il Parlamento nazionale, per la democrazia italiana, per l'intero Sistema di valori ideali nel quale credeva.").

efforts to resist the mafia as the factor motivating the murder of La Torre.¹⁹³ The PCI condemned the national government, with Communist member of the Chamber of Deputies Giancarlo Pajetta asking “Why did the crimes that preceded this go unpunished? Those who should intervene - how do they intervene? We must make the Constitution that the Republic gave itself work.”¹⁹⁴ Government officials, including the Prime Minister and the President of the Republic, acknowledged La Torre’s death as an attack against the state and parliament.¹⁹⁵

Even as there was growing acknowledgment of the national scope of the organized problem, official statements and press coverage still presented La Torre’s death as evidence of the particular instability of the Mezzogiorno and the unique problems that Sicily faced.¹⁹⁶ Prime Minister Spadolini, commenting on La Torre’s murder as well as a terrorist attack that had taken place in Naples several days before, described the attacks as “two crimes that follow a destabilization plan for the entire Mezzogiorno at a time when a new phase of government policy is launched aimed at meeting the needs of the southern regions.”¹⁹⁷ Even *L’Unità*, which promoted a national response to the Mafia, emphasized the Sicilian dimension of La Torre’s murder, describing his work as dedicated to the “human and civil progress of Sicily against the

¹⁹³ Alfonso Madeo, *Un Altro Delitto Politico*, CORRIERE DELLA SERA, May 1, 1982, at 1.

¹⁹⁴ Ezio Mauro, *Mattarella, Costa, Terranova, ora La Torre. Il PCI Chiede Una Risposta Decisa dello Stato*, LA STAMPA, May 1, 1982, at 7 (*Perchè i delitti che hanno preceduto questo sono rimasti impuniti? Quelli che dovrebbero intervenire—come intervengono? Dobbiamo far funzionare la Costituzione che la Repubblica si è data*).

¹⁹⁵ Daniela Pasti, *E Spadolini Invia Subito Dalla Chiesa*, LA REPUBBLICA, May 1, 1982, at 5; *Il Presidente: Un Gravissimo Attacco alle Istituzioni e al Parlamento*, IL MESSAGGERO, May 1, 1982, at 3, (found at Istituto Luigi Sturzo).

¹⁹⁶ *Una Catena di Spietate “Esecuzioni”*, IL MESSAGGERO, May 1, 1982 at 3, (found at Istituto Luigi Sturzo).

¹⁹⁷ *Spadolini Convoca Dalla Chiesa da Oggi Prefetto di Palermo*, LA STAMPA, May 1, 1982, at 7. (*due delitti che obediscono a un piano di destabilizzazione dell’intero Mezzogiorno in un momento in cui si avvia una nuova fase della politica di governo volta a sovvenire ai bisogni delle regioni meridionali*).

mafioso criminal organization”¹⁹⁸ and his murder as a “shot against that Sicily that he spoke of more than any other.”¹⁹⁹

In the wake of La Torre’s death, the PCI continued to advocate for the passage of his law and for greater investigations into the mafia.²⁰⁰ The PCI in Trapani explicitly linked the prospects of investigations with public opinion, arguing that “[m]oreover, it is within a framework of awareness and participation of public opinion that the conditions can be created for an effective intervention of the judiciary: the fight against the terrorism of the BR [Red Brigades] has known important judicial victories precisely because of the support of the democratic public opinion.”²⁰¹ Nevertheless, the PCI’s efforts did not immediately prevail. Indeed, when La Torre’s law came up for discussion in the Chamber of Deputies in August of 1982, it was deferred.²⁰² In the summer of 1982, congressional records show little development of antimafia legislation beyond promises of further considerations of proposed amendments and perhaps a return to discussion.²⁰³ Instead, the government emphasized a law enforcement response, sending General Carlo Alberto dalla Chiesa, the hero of the fight against the Red Brigade terrorist group, to Palermo to act as chief law enforcement officer in Sicily.²⁰⁴

¹⁹⁸ *La Sfida si È Fatta Più Alta: Occorre una Riscossa Unitaria*, L’UNITÀ, May 1, 1982, at 1 (*per il progresso umano e civile della Sicilia, contro l’organizzazione criminale mafiosa*).

¹⁹⁹ Emanuele Macaluso, *Questo Compagno, Questo Fratello Indominato*, L’UNITÀ, May 1, 1982, at 1 (*ha sparato contro quella Sicilia che lui esprimeva più di ogni altro*). L’Unità did also consistently refer to the Mafia as a problem that was not limited to Sicily.

²⁰⁰ UGO PECCHIOLI, L’IMPEGNO DEI COMUNISTI NELLA LOTTA CONTRO LA MAFIA, LA CAMORRA, IL TERRORISMO, E PER LA SICUREZZA DEMOCRATICA E IL RINNOVAMENTO DELLO STATO, Report to the PCI Central Committee, 19–20, (11 May 1982), (found in Fondazione Gramsci).

²⁰¹ *A Tre Mesi Dall’Assassinio di Pio La Torre* (July 30, 1982), in *CONTRO LA MAFIA 1980-1984: I QUATTRO PRINCIPALI DOCUMENTI DELLA FEDERAZIONE TRAPANESE DEL P.C.I.*, p. 5 (Sept. 1984), (from Archivio Centrale dello Stato, Ministero del Interno, Folder 32, 767) (“è in un quadro di consapevolezza e partecipazione dell’opinione pubblica che si possono creare le condizioni per un’efficace intervento della Magistratura: la lotta contro il terrorismo delle BR [Brigate Rosse] ha conosciuto importanti vittorie giudiziarie proprio per il sostegno dell’opinione pubblica democratica.”)

²⁰² Atti Parlamentari, Camera dei Deputati, VIII Legislatura, 50949, (Aug. 2, 1982).

²⁰³ Camera dei Deputati, Commissioni Riunite (Interni-Giustizia), VIII Legislatura, 50, (Aug. 5, 1982).

²⁰⁴ Remigio Cavedon, *Per Difendere il Sistema*, IL POPOLO, May 2, 1982, at 2; *Spadolini Convoca Dalla Chiesa da Oggi Prefetto di Palermo*, LA STAMPA, May 1, 1982, at 7.

iii. Analysis

The difficulties in securing the passage of La Torre's law persisted despite the politically ideal circumstances for the passage of the law. Individuals and parties most likely to support antimafia reform were ascending to power. The mounting violence against public institutions in Sicily provided ample reason to justify concern about the Mafia as a social threat, at least in Sicily. The relentless murders of Sicily's most prominent citizens, and particularly the high-profile, nationally salient killing of Pio La Torre removed any possibility that the broader Italian public was unaware of the power of the Mafia in Sicily.

Of the five factors I outline, three are met and two are borderline. 1) *These events were surprising*. The murder of a member of parliament was arguably an even more audacious murder than the slaying of the President of the Republic. 2) *The criminal group's involvement in the event was perceived as relatively unambiguous*. The killing of La Torre was immediately blamed on Cosa Nostra. 3) *They will affect or implicate national interests and will receive considerable attention from the national press*. This factor does seem to have been met. La Torre's death was met with significant press coverage. La Torre himself was a member of parliament, and as such, part of the federal government. More than any other individual murdered thus far, Pio La Torre, as a member of the Chamber of Deputies, was a national figure.

4) *Public outrage was nonpartisan and distributed across social strata*. Although Communist and DC leaders expressed similar outrage, public demonstrations were primarily concentrated among members of the left. This is not to suggest that non-Communists were not disturbed by La Torre's murder, but they appear to have been less mobilized than members of the political left. 5) *The national government will be seen as responsible for addressing the event in question*. Pio La Torre's status as a national politician made his death a matter of some

concern for the national government. Nonetheless, it should be noted that he was still a Sicilian, his politics were deeply rooted in the issues facing Sicily, and he was murdered in Sicily. These factors may have somewhat dimmed the degree to which his murder was seen as the responsibility of the national government.

The murder of Pio La Torre was followed by an increase in rhetoric about the threat which Cosa Nostra posed to Italy, rather than Sicily alone. The government reacted to the severity of the situation in part by sending the celebrated general Carlo Alberto Dalla Chiesa to take control of law enforcement in Sicily. Yet despite the attack against La Torre himself, his law could not advance through parliament. Thus the reformers had not yet succeeded in pushing enough neutrals to support such objectives as those submitted by Pio La Torre.

f. September 1982: The Murder of Carlo Alberto Dalla Chiesa and Reform

i. [Dalla Chiesa's Work and Death](#)

After La Torre's death, the focus of attention turned to the new sheriff in town: General Carlo Alberto Dalla Chiesa. Dalla Chiesa was a national hero who had led Italy's fight against communist terrorists in the 1970s. Following the murder by the Red Brigades of Prime Minister Aldo Moro in 1978, a number of specialized laws were passed, and General Dalla Chiesa, as head of the *carabinieri*,²⁰⁵ was given essentially free hand in fighting the terrorists.²⁰⁶ In response to the growing Mafia violence, Prime Minister Spadolini asked Dalla Chiesa to serve as the Prefect of Sicily, assuming the position of chief law enforcement officer on the island.²⁰⁷ Dalla Chiesa's first official act was attending La Torre's funeral.²⁰⁸ Yet despite this inauspicious beginning, significant hope was attached to his arrival. Described as "the most famous

²⁰⁵ The *carabinieri* are Italy's military police force.

²⁰⁶ ALEXANDER STILLE, EXCELLENT CADAVERS 64 (2011) (1995).

²⁰⁷ ALEXANDER STILLE, EXCELLENT CADAVERS 65 (2011) (1995).

²⁰⁸ ALEXANDER STILLE, EXCELLENT CADAVERS 65 (2011) (1995).

carabinieri general in Italy,”²⁰⁹ some hypothesized that Dalla Chiesa would bring to bear policing strategies sufficient to contain the Mafia metastasis.²¹⁰

There were early signs that this hope would not be realistic. Dalla Chiesa expected to have extensive powers in Sicily similar to those he had enjoyed in the fight against the Red Brigades. Though promised, they were never granted.²¹¹ Dalla Chiesa was left largely isolated, despite regular appeals for support. Powerful factions, particularly within the Christian Democracy party, began publicly criticizing him and undermining his mission in Sicily.²¹² In his own reflections, Dalla Chiesa stated his belief that Italian politicians did not have any real will to fight the Mafia, but that they were interested in “the use and exploitation of [Dalla Chiesa’s] name to silence the irritation of the political parties.”²¹³

Nevertheless, Dalla Chiesa did launch a serious investigation into the Mafia, and spoke openly about the threat it posed. This included making public statements about the degree to which the Mafia was present throughout Italy, rather than just the “traditional” areas of the Mezzogiorno.²¹⁴ On the 3rd of September 1982, Carlo Alberto Dalla Chiesa was gunned down along with his bodyguard, Domenico Russo, and his wife, Emanuela Setti Carrara.²¹⁵

ii. Reaction

In the aftermath of Dalla Chiesa’s murder, the Italian population reacted with unprecedented outrage, despite attempts by some in the government to discredit the slain

²⁰⁹ *Anticipati i Tempi: Dopo l’Incontro con il Presidente del Consiglio Subito in Sicilia*, IL MESSAGGERO, May 1, 1982, at 3, (found at Istituto Luigi Sturzo).

²¹⁰ *La Strategia Antimafia di Dalla Chiesa*, CORRIERE DELLA SERA, May 18, 1982, at 5.

²¹¹ ALEXANDER STILLE, EXCELLENT CADAVERS 65 (2011) (1995); ALISON JAMIESON, THE ANTIMAFIA 26 (1999). Virginio Rognoni was himself criticized for his opposition to providing Dalla Chiesa with some of these powers. Henry Kamm, *Italy Gives Wide Powers to Anti-mafia Chief*, N.Y. TIMES, at A7 (Sept. 7, 1982).

²¹² ALEXANDER STILLE, EXCELLENT CADAVERS 68-69 (2011) (1995).

²¹³ Reprinted in ALEXANDER STILLE, EXCELLENT CADAVERS 70 (2011) (1995).

²¹⁴ ALEXANDER STILLE, EXCELLENT CADAVERS 67 (2011) (1995).

²¹⁵ Dalla Chiesa’s body was thrown over Carrara’s as he attempted to shield her from the bullets.

general.²¹⁶ Demonstrations occurred in response to the bloodshed.²¹⁷ Workers across Sicily launched a brief strike against the mafia,²¹⁸ and trade unionists organized demonstrations against the Mafia.²¹⁹ Senators of the far-right Movimento Sociale Italiano (MSI) party called for Rognoni's resignation over the murder.²²⁰ MSI Member of the Chamber of Deputies Giorgio Almirante stated that Dalla Chiesa "was sent by a political class who didn't support him when he fought against the [Red Brigades], who sabotaged him in the fight against the mafia by denying him the means [to combat it]."²²¹ The murder even attracted international attention, as it was covered in the British, French and American press.²²² *Corriere della Sera* described the perception of the Mafia ambush as

"a manifestation of blatant power, in the hasty and admonitory style of a simple message: here, we can kill whoever we want, when and where we want. . . It was logical that the state took this to have the character of an unprecedented challenge to its institutions and its most dedicated men"²²³

²¹⁶ In the immediate aftermath of Dalla Chiesa's death, there were also high-profile attempts to discredit him. His former boss, the Sicilian general Umberto Capuzzo described him as an old man who had gone mad for a younger woman and had run unnecessary risks in his campaign against the Mafia. Famed Sicilian author Leonardo Sciascia claimed Dalla Chiesa had not properly understood the Mafia. ALEXANDER STILLE, *EXCELLENT CADAVERS* 66-67 (2011) (1995).

²¹⁷ Andrea Purgatori, "Qui è Morta la Speranza dei Palermitani Onesti" È Stato Scritto da Qualcuno sul Luogo del Delitto, *CORRIERE DELLA SERA*, Sept. 6, at 3; *Cordoglio e Dolore fra I Politici Spadolini: Raccogliere la Sfida*, *LA STAMPA*, Sept. 4, 1982 at 37.

²¹⁸ Andrea Purgatori, "Qui è Morta la Speranza dei Palermitani Onesti" È Stato Scritto da Qualcuno sul Luogo del Delitto, *CORRIERE DELLA SERA*, Sept. 6, at 3.

²¹⁹ Telegram to the Minister of the Interior from Alto Commissario De Francesco (Oct. 16, 1982) (found in Archivio Centrale Dello Stato, Ministry of Interior, Folder 33, 301).

²²⁰ *Proteste al Senato, Cacciato un Missino*, *LA STAMPA*, Sept. 4, 1982, at 38.

²²¹ *Cordoglio e Dolore fra I Politici Spadolini: Raccogliere la Sfida*, *LA STAMPA*, Sept. 4, 1982, at 37 (è stato mandato al massacro da una classe politica che non lo sopportava quando lottava contro le br, che lo ha sabotato nella lotta contro la mafia negandogli i mezzi.).

²²² *Un Accorto Messaggio Inviato dal Pontefice*, *CORRIERE DELLA SERA*, Sept. 5, 1982, at 3; Lorenzo Bocchi, "Le Monde:" *Abbattuto un Simbolo dello Stato*, *CORRIERE DELLA SERA* Sept. 5, 1982, at 3; *Su Tutti i Quotidiani dell'Inghilterra la Drammatica Notizia*; *CORRIERE DELLA SERA* Sept. 5, 1982, at 3; *In America Ricordate per la Collaborazione nel Liberare Dozier*, *CORRIERE DELLA SERA* Sept. 5, 1982, at 3.

²²³ Alfonso Madeo, *Guerra Perduta*, *CORRIERE DELLA SERA*, Sept. 5, 1982, at 3 (una manifestazione di Potenza plateale, nello stile sbrigativo e ammonitore di un messaggio elementare: ecco, possiamo uccidere chi vogliamo, quando e dove vogliamo . . . Era logico che lo Stato ne assumesse il carattere di una sfida senza precedent alle sue istituzioni e ai suoi uomini più impegnati).

Members of the clergy also spoke out. At the funeral mass for the victims, Archbishop of Palermo Salvatore Pappalardo decried the “slow and uncertain” actions of the State that had opened the door for the Mafia to strike.²²⁴ The archbishop of Milan, Carlo Maria Martini, decried the “connivance,” “inexplicable delays,” and “missing collaboration” on the part of the government that had left Dalla Chiesa exposed.²²⁵ Indeed, Dalla Chiesa’s death even merited a message from the Pope.²²⁶

The rhetoric of political leaders also intensified in the aftermath of the murder. As with Mattarella, Dalla Chiesa’s murder was compared in severity to the assassination of Aldo Moro four years earlier.²²⁷ Clelio Darida, the DC Minister of Justice, said that the Mafia had to be considered enemy number one in Italy, a more dangerous foe than the terrorists who had previously dominated national security attention.²²⁸ Giorgio La Malfa, a Chamber of Deputies member from the Italian Republican Party (*Partito Repubblicano Italiano*, hereinafter PRI), stated that this murder would prove to be a grave error by the Mafia, as the fight against them had now become the government’s top priority.²²⁹ Members of the Senate discussed the

²²⁴ Henry Kamm, *Italy’s Anger Rises at General’s Murder*, N.Y. TIMES, Sept. 5, 1982.

²²⁵ Gianluigi Da Rold, *Anche l’Arcivescovo di Milano ha Lanciato Accuse ai Politici*, CORRIERE DELLA SERA, Sept. 6, 1982, at 3 (*connivenze; ritardi inspiegabili; collaborazioni mancate*).

²²⁶ *Un Accorto Messaggio Inviato dal Pontefice*, CORRIERE DELLA SERA, Sept. 5, 1982, at 3. Though expressing sorrow and deploring the murder of Dalla Chiesa, the pontiff’s message did not directly condemn the government.

²²⁷ Alfonso Madeo, *Guerra Perduta*, CORRIERE DELLA SERA, Sept. 5, 1982, at 3; *Uno Sbaglio Come per Moro*, LA STAMPA, Sept. 5, 1982, at 1.

²²⁸ *Uno Sbaglio Come per Moro*, LA STAMPA, Sept. 5, 1982, at 1. There are reasons to doubt Darida’s sincerity on this point. While Minister for Justice, he told a convention of Sicilian magistrates that their goal should not be to eliminate the Mafia, but to confine it to its “natural limits.” He also denied repeated requests from the Palermo investigative office for a computer to process the overwhelming amount of information necessary to prosecute Mafia cases. ALEXANDER STILLE, *EXCELLENT CADAVERS* 76-77 (2011) (1995).

²²⁹ *Uno Sbaglio Come per Moro*, LA STAMPA, Sept. 5, 1982, at 1.

importance of meeting the expectations of public opinion.²³⁰ Vice-secretary of the PSI Claudio Martelli called for extraordinary measures to combat the criminal group.²³¹

iii. The Legislative Response

a. **The Rognoni La Torre Law**

In the aftermath of Dalla Chiesa's murder, Law 646/82 was immediately moved to the top of the parliamentary agenda. This law, which combined the proposals submitted by La Torre in 1980 and Rognoni in 1981, was known as the "Rognoni-La Torre Law." The law was presented for Committee debate in the Chamber of Deputies on September 7, 1982 and in the Senate four days later.²³² Though some deputies, such as Francesco Antonio de Cataldo decried what they say as the "demagogic" nature of a bill that jeopardized liberty,²³³ the vast majority spoke of the symbolic and practical benefits of the law; the threat posed by the Mafia to Italian democracy;²³⁴ and the need to honor those who had died for it, particularly La Torre and Dalla Chiesa.²³⁵ This sentiment proved decisive. On September 13, 1982, the Rognoni-La Torre Law was officially passed by Parliament.

b. **The Alto Commissario**

It is worth briefly addressing another measure adopted by the Italian government in the wake of Dalla Chiesa's murder. On September 6, the Council of Ministers established the role of

²³⁰ Commissioni Riunite (Affari Costituzionali-Giustizia), 3 (Sept. 11, 1982), (found in Archivio Centrale Dello Stato, Ministry of Interior, Folder 36, 133). This particular quote was from debates on a different package of laws also considered in response to the Dalla Chiesa murders. Given its closeness in time and contextual similarity to the debates surrounding the Rognoni-La Torre Law, it provides insight into the considerations decisionmakers weighed at the time.

²³¹ *Uno Sbaglio Come per Moro*, LA STAMPA, Sept. 5, 1982, at 1.

²³² Camera dei Deputati, Commissioni Riunite (Interni-Giustizia), VIII Legislatura, 130 (Sept. 7, 1982).

²³³ Camera dei Deputati, Commissioni Riunite (Interni-Giustizia), VIII Legislatura, 126-27 (Sept. 7, 1982).

²³⁴ See e.g., Camera dei Deputati, Commissioni Riunite (Interni-Giustizia), VIII Legislatura, 121-22, 129 (Sept. 7, 1982).

²³⁵ Camera dei Deputati, Commissioni Riunite (Interni-Giustizia), VIII Legislatura, 124 (Sept. 7, 1982).

*Alto Commissario per il coordinamento della lotta contro la delinquenza mafiosa*²³⁶ (High Commissioner for Coordination of the Fight Against Mafia Crime, hereinafter Alto Commissario)²³⁷ by decree-law.²³⁸ The Alto Commissario, which was intended to fill General Dalla Chiesa's role, was assigned the task of coordinating the various police forces' fight against mafia groups, and was given the power to carry out investigations of public administration, banks, and credit institutions.²³⁹ This newly created office was given many of the powers that Dalla Chiesa himself had sought and been denied.²⁴⁰

The effectiveness of the Alto Commissario was questioned shortly after it was established.²⁴¹ Nevertheless, this position was significant, and should be discussed in the context of my theory. The Alto Commissario was a coordinating body for the Italian police, which was intended to facilitate investigations into organized crime. It was not a separate, specialized policing body. As such, it cannot be considered a unit of competent enforcement. However, by enhancing the powers of the police to target organized crime, it represents a significant institutional tweak. It would also lay the foundation for the development of later bodies of competent enforcement, particularly the Direzione Investigativa Antimafia. This relationship will be considered at length in the following chapter.

²³⁶ High Commissioner for the coordination of the fight against mafia criminality

²³⁷ Decreto-legge 6 settembre 1982, n. 629, convertito con modificazioni dalla L. 12 ottobre 1982, n. 726, G.U. Oct. 12, 1982, n.281 (It.).

²³⁸ The decree-law (*decreto-legge*) is a provisional measure within Italian law which allows the Executive Branch to enact a law in the absence of Parliamentary approval in cases of emergency. The decree-law has the full force of law for 60 days, after which it must be approved by Parliament. Art. 77 Costituzione [Cost.] (It.).

²³⁹ Decreto-legge 6 settembre 1982, n. 629, convertito con modificazioni dalla L. 12 ottobre 1982, n. 726, G.U. Oct. 12, 1982, n.281, art. 1 (It.). For a discussion of the Alto Commissario's powers, particularly in relation to the judiciary, *see also* Giovanni Falcone, *Rapporti Dell'Autorità Giudiziaria Con L'Alto Commissario e gli Organi di Polizia in Relazione ai Poteri di Indagine e di Accertamento Previsti dalla Legge e con Riguardo, Altresì al Funzionamento della Banca dei Dati*, in *La Legge 13 Settembre 1982, N. 646: Problemi Interpretativi e Applicativi*, Consiglio Superiore della Magistratura, Seminario di Studio Per Magistrati "Simonetta Lamberti" (Dec. 17-19 1982).

²⁴⁰ ALEXANDER STILLE, *EXCELLENT CADAVERS* 76 (2011) (1995); ALISON JAMIESON, *THE ANTIMAFIA* Chapter 2 (1999).

²⁴¹ For a discussion of these critiques, *see* Chapter V.

iv. [Dalla Chiesa's Death as Turning Point](#)

There is considerable evidence to suggest that Dalla Chiesa's death was the turning point in the government's decision to adopt the Rognoni-La Torre law. Participants in the antimafia effort remember the murder of Dalla Chiesa as the key event that made legislative change possible. For instance, a former magistrate in the antimafia pool states that while it is impossible to state for certain, it is unlikely that the Rognoni-La Torre Law would have passed without Dalla Chiesa's murder.²⁴² This magistrate notes in particular that antimafia members of the DC, such as Virginio Rognoni, became most active in securing the passage of the law after Dalla Chiesa's slaying.²⁴³ Another lawyer who was involved in the Maxiprocesso in a civil capacity argues somewhat more forcefully that Dalla Chiesa's death was absolutely the cause of the Rognoni-La Torre Law.²⁴⁴

Contemporary records of the passage of the law generally support this viewpoint. Publicly, the major parties agreed that this attack made it necessary to pass this measure as soon as possible.²⁴⁵ During debates, legislators spoke openly about Dalla Chiesa's murder as the motivating force behind the law's advance.²⁴⁶ Christian Democrat Senator Learco Saporito acknowledged that the debates over the law were occurring in the face of a rush to action, noting

²⁴² Author interview, Jan 29, 2022. The antimafia pool of Palermo was responsible for conducting the investigations of the Maxiprocesso.

²⁴³ Author interview, Jan 29, 2022.

²⁴⁴ Author interview, Jan 19, 2022.

²⁴⁵ *Prima Sì all'Antimafia Sarà Legge in Settimana*, LA STAMPA, Sept. 8, 1982, at 1.

²⁴⁶ It should be acknowledged that some legislators resisted this characterization. Socialist Senator Francesco Jannelli (Iannelli) stated that "Such measures - I say it immediately - I think are not dictated by an understandable state of emotionality following the murder of Pio La Torre and General Dalla Chiesa. Instead, they arise from a detailed evaluation of the characters, of the modus operandi, of the field of activity of those mafia-type associations". Senato, Commissioni Riunite (Affari Costituzionali-Giustizia), VIII Legislatura, 178 (Sept. 11, 1982) ("*Tali misure — lo dico subito — credo non siano dettate da un comprensibile stato di emotività a seguito dell'omicidio di Pio La Torre e del generale Dalla Chiesa. Esse nascono invece da una circostanziata valutazione dei caratteri, del modus operandi, del campo di attività di quelle associazioni di tipo mafioso*"). Likewise, Christian Democrat member of the Chamber of Deputies claimed that "My decision is neither impromptu. . . nor forced by the need to take some emotional and dramatic of the assassination of General Dalla Chiesa. This is a conscious and politically motivated membership." Camera dei Deputati, Commissioni Riunite (Interni-Giustizia), VIII Legislatura, 123 (Sept. 7, 1982) ("*La mia decisione non è né estemporanea . . . né obbligata dalla necessità di prendere qualche emotiva e drammatica dell'assassinio del Generale Dalla Chiesa. Si tratta di una adesione consapevole e politicamente motivata*").

“It is a red-hot climate, and I would say poisoned by very recent events, such as the killing of the prefect Dalla Chiesa and his wife, and of the very serious injury of his driver.²⁴⁷ A climate in which, in the face of these facts, the reactions of political forces were immediate, although not always converging on the analyses and, above all, on the decision to adopt.”²⁴⁸

Ugo Pecchioli (PCI) traced the “tormented” history of the law, tying its advancement explicitly to rising violence:

The late honorable Pio La Torre proposed [his draft bill] on March 31st of 1980, two and a half years ago. The Government a year and a half later presented their bill and only after the assassination of Pio La Torre did the parliamentary process begin with difficulty. And again, only after the assassination of General Dalla Chiesa did this provision find its sanction definitive.²⁴⁹

Marco Boato, a member of the Radical Party (Partito Radicale, hereinafter PR) in the Chamber of Deputies was critical of the manner in which the law had been considered:

I would like to point out that we arrive late and badly to approve this provision, which was also necessary, on the mafia and also the hasty way in which the discussion has taken place in recent days, a way - I say this without polemic towards anyone in particular, but of all without distinction - in some ways demagogic, that demonstrates the validity of my affirmation: the mere fact that the assassination of General Dalla Chiesa and his wife was necessary to ensure that the Commissions convened to continue the process of the provision it is enlightening with regards to the way in which we have moved up until now with respect to the mafia phenomenon.²⁵⁰

²⁴⁷ Domenico Russo lived for twelve days after the shooting, so at the time of Saporito’s statement, he was still alive. He would succumb to his injuries four days after these remarks were made.

²⁴⁸ Senato, Commissioni Riunite (Affari Costituzionali-Giustizia), VIII Legislatura, 162 (Sept. 11, 1982) (“È un clima arroventato, e direi avvelenato, da fatti recentissimi, quali l’uccisione del prefetto Dalla Chiesa e della moglie, e del ferimento gravissimo dell’autista. Un clima nel quale, a fronte di questi fatti, le reazioni delle forze politiche sono state immediate, anche se non sempre convergenti sulle analisi e, soprattutto, sulle decisioni da adottare.”)

²⁴⁹ Senato, Commissioni Riunite (Affari Costituzionali-Giustizia), VIII Legislatura, 173 (Sept. 11, 1982) (“Lo propose il 31 marzo del 1980, quindi due anni e mezzo fa, il compianto onorevole Pio La Torre. Il Governo [sic] un anno e mezzo dopo presentò il suo disegno di legge e soltanto dopo l’assassinio di Pio La Torre si avviò faticosamente l’iter parlamentare. E ancora, solo dopo l’assassinio del generale Dalla Chiesa questo provvedimento trova la sua sanzione definitiva.”).

²⁵⁰ Camera dei Deputati, Commissioni Riunite (Interni-Giustizia), VIII Legislatura, 119-20 (Sept. 7, 1982). (“Innanzitutto desidero rilevare che arriviamo tardi e male ad approvare questo provvedimento, che pure era necessario, sulla mafia ed anche il modo affrettato in cui la discussione in questi giorni si è svolta, un modo—lo dico senza polemica nei confronti di nessuno in particolare, ma di tutti indistintamente—per certi versi demagogico, dimostra la fondatezza della mia affermazione: il solo fatto che sia stato necessario l’assassinio del generale Dalla Chiesa e di sua moglie per far sì che le Commissioni si convocassero per proseguire l’iter del provvedimento è illuminante del modo in cui ci si è mossi fino ad ora rispetto al fenomeno mafioso.”).

v. [Dalla Chiesa as Representative of the State](#)

Yet it was not only legislators who linked the passage of the Rognoni-La Torre Law to Dalla Chiesa's murder. Contemporary observers outside the Parliament likewise spoke of the Dalla Chiesa murder as a key turning point in the battle against organized crime, and often linked the importance of this attack to Dalla Chiesa's status as a representative of the state. In September 1982, the Calabrian Regional Counsel stated that the Dalla Chiesa murders "created the political and operational conditions for a coherent struggle of the powers of the State against phenomena of mafia terrorism that are at the limit of the compatibility of civil coexistence."²⁵¹ At the November 1982 Regional Convention of the Sicilian Christian Democrats, Regional Secretary Rosario Nicoletti stated that "The Dalla Chiesa crime constitutes the highest challenge to the institutions [of the Italian state] because it was intended to strike the most qualified attempt of the State to respond to the problem of the mafia."²⁵² A September 1985 article of the newspaper *La Nazione* described how

"[i]n the history of a country there are moments in which the idea of the rule of law is no longer embodied in real institutions, but in single men who know how to authentically represent that value in the eyes of the people. The death of General Dalla Chiesa and of the men of the Mobile²⁵³ are true historical 'events,' because they have generated an awareness and set ordinary people in motion beyond the mediation of the parties."²⁵⁴

²⁵¹ Consiglio Regionale della Calabria, Ordine del Giorno N. 38, 1 (Sept. 15, 1982) (found in Archivio Centrale Dello Stato, Ministry of Interior, Folder 34, 1,040) ("create le condizioni politiche ed operative di una lotta coerente dei poteri dello Stato contro fenomeni di terrorismo mafioso che sono al limite della compatibilità della convivenza civile.").

²⁵² Rosario Nicoletti, Introduzione, Convegno Regionale Della D.C. Siciliana Sul Tema: "Lotta Alla Mafia," 8 (Nov. 13-14 1982) (found in Archivio Centrale Dello Stato, Ministry of Interior, Folder 33, 13) ("Il delitto Dalla Chiesa costituisce la sfida più alta alle istituzioni perchè si è inteso colpire il tentativo di risposta più qualificato dello Stato al problema della mafia.").

²⁵³ The Squadra Mobile, or Flying Squad, of Palermo. This was an elite police unit that conducted many investigations of Cosa Nostra, and lost several officers as well.

²⁵⁴ Nicola Matteucci, *L'evento e la Chiacchiera*, LA NAZIONE, Sept. 4, 1985, at 5 (found in Archivio Centrale Dello Stato, Ministry of Interior, Folder 34, 290) ("Nella storia di un paese vi sono momenti in cui l'idea di Stato di diritto non s'incarna più nelle istituzioni reali, ma in sigoli uomini che sanno rappresentare agli occhi della gente in modo autentico quel valore. La morte del generale dalla Chiesa e degli uomoni della Mobile sono veri "eventi" storici,

Angelo Ganazzoli, a member of the Sicilian Regional Assembly from the PSI, gave a particularly incisive assessment of the purpose of the killing in 1985, noting the importance of Dalla Chiesa's status as a national figure:

“With the Dalla Chiesa crime, the mafia wanted to demonstrate that it was unwilling to retreat in the face of any obstacle: even a figure of national importance such as General Dalla Chiesa could be eliminated without too much ceremony. The ultimate meaning of the challenge is very clear: powerful organized interests want the sovereignty of the State and its laws on the Island to be only nominal, uniting against any attempt to regulate economic dynamics and against any judicial initiative aimed at ascertaining their possible illicit implications.²⁵⁵”

vi. [The Role of Public Opinion](#)

Italian decisionmakers appear to have considered shifts in public opinions to be a significant factor in considering when to implement antimafia reforms. A former leader within the Sicilian PCI argues that the murder of Dalla Chiesa caused a public reaction that transformed the political landscape.²⁵⁶ A former member of the antimafia pool likewise recalls that public opinion pushed politicians to make difficult reforms, and that indeed were required to accept change because of public pressure.²⁵⁷ In October 1982, the Prefecture of Verona, an area with little historic mafia involvement, described the reforms as

“the decisive and prompt response of the State to the unscrupulous attempts of certain criminal associations to transfer behaviors typical of anomalous, circumscribed communities, into the broader fabric of national society. . . Such a response [the passing of new laws] is therefore required, also according to the indications unanimously

perchè hanno generato una presa di coscienza e messo in movimento ben oltre le mediazioni partitiche la gente comune,”).

²⁵⁵ Assemblea Regionale Siciliana, IX Legislature, 323 Seduta, Resoconto Sommario, Comunicazioni sulla Situazione Socio-economica della Sicilia con Particolare Riguardo all'ordine Pubblico 7 (Sept. 26 1985) (found in Archivio Centrale Dello Stato, Ministry of Interior, Folder 34, 1,124) (“*Con il delitto Dalla Chiesa, la mafia ha voluto dimostrare di non essere disposta ad arretrare di fronte a nessun ostacolo: anche un personaggio di rilievo nazionale quale appunto era il Generale Dalla Chiesa, poteva essere eliminato senza troppi complimenti. Il senso ultimo della sfida è molto chiaro: potenti interessi organizzati vogliono che la sovranità dello Stato e delle sue leggi nell'Isola sia soltanto nominale, coalizzandosi contro ogni tentativo di disciplinare le dinamiche economiche e contro ogni iniziativa giudiziaria tendente ad accertare i loro eventuali risvolti illeciti.*”).

²⁵⁶ Author interview, Feb. 1, 2022.

²⁵⁷ Author interview, Jan. 29, 2022.

expressed by the institutional democratic representatives, by political forces, by workers' organizations, by bodies and associations from all over the nation.²⁵⁸

In a memo to the Alto Commissario from the Minister of the Interior, the Minister stated that

“The recent dramatic episodes that occurred in Sicily, which have created justified alarm in public opinion, bring to the attention of those responsible for the protection of public order and security the need for an overall review of the organization and of the methods of action for a prudent search for more and more suitable measures to effectively counteract the disturbing phenomenon.”²⁵⁹

Sicilian Regional Assemblyman Angelo Ganazzoli argued that there were two serious threats to the effort to combat the mafia:

“The first danger is that the political forces and national public opinion end up getting used to the conception of the two Italys, with a civilized Italy in the north of Rome and the south of the country condemned to a condition of structural backwardness. The other danger, no less serious, is that of the exclusive prevalence of the military response logic on the part of the State, which would inevitably lead to the exhaustion of autonomous democratic institutions.”²⁶⁰

²⁵⁸ Memo from the Prefettura di Verona to The President of the Provincial Administration of Verona, Misure Contro le Associazioni di Tipo Mafioso, la Camorra, o Altre Associazioni Criminose Comunque Localmente Denominate (Oct. 20, 1982) (found in Archivio Centrale dello Stato, Ministero dell'Interno, Folder 34, 1,013) (“*la decisa e pronta risposta dello Stato allo apregiudicato tentative di talune associazioni criminali di trasferire comportamenti e fatti di costume, propri di anomale, circoscritte comunità, nel più ampio tessuto della società nazionale. . . Siffatta risposta esige pertanto, secondo anche le indicazioni unanimemente manifestate dalle rappresentanze democratiche istituzionali, dalle forze politiche, dalle organizzazioni dei lavoratori, dagli enti e dalle associazioni di tutta la nazione.*”).

²⁵⁹ Memo from the Ministry of the Interior to the Alto Commissario, Attività di Contrasto alla Criminalità Mafiosa—Linee di Indirizzo—(Oppure Direttive) 2 (date unknown, most likely between 1985 and 1986) (found in Archivio Centrale dello Stato, Ministero dell'Interno, Folder 34, 306) (“*I recenti drammatici episodi verificatisi in Sicilia, che hanno creato giustificato allarme nella pubblica opinione, propongono all'attenzione dei responsabili della tutela dell'ordine e della sicurezza pubblica l'esigenza di un riesame complessivo dell'organizzazione e delle modalità di azione per una oculata ricerca di misure sempre più idonee a contrastare efficacemente l'inquietante fenomeno.*”) This memo was written after the passage of 416-bis, and refers to additional reforms that were being considered at the time.

²⁶⁰ Assemblea Regionale Siciliana, IX Legislature, 323 Seduta, Resoconto Sommario, Comunicazioni sulla Situazione Socio-economica della Sicilia con Particolare Riguardo all'ordine Pubblico 7 (Sept. 26 1985) (found in Archivio Centrale Dello Stato, Ministry of Interior, Folder 34, 1,124) (“*Il primo pericolo è che le forze politiche e l'opinione pubblica nazionale finiscano per assuefarsi alle concezioni delle due Italie, con una Italia civilizzata al Nord di Roma ed il Mezzogiorno del Paese condannato da una condizione di strutturale arretratezza. L'altro pericolo, non meno grave, è quello della prevalenza esclusiva della logica della risposta militare da parte dello Stato, da cui discenderebbe come inevitabile conseguenza l'esautorazione delle istituzioni democratiche autonomistiche.*”).

In short, the first danger that could undermine the institutional fight against organized crime was a loss of Italian public opinion that the issue was a national problem at all.

vii. [The Mafia as a National Threat](#)

Following the murder of Dalla Chiesa, media, political, and bureaucratic leaders increasingly emphasized the national scope of the mafia. The antimafia periodical *I Siciliani* identified the Dalla Chiesa murders as a turning point in public attention, though it argued that they had only raised the profile of the mafia in the national dialogue, rather than made it central:

“[i]f one wants to analyze the coverage of mafia facts by daily news, one can start from an indubitable data point: the Dalla Chiesa murder, that is, the fact of maximum exceptionality in recent years, has 'given a boost' to the news. Not only has it achieved unprecedented qualitative and quantitative attention, but it has transformed the mafia, from a marginal issue, into an important one (not yet central, only more important than before)”²⁶¹

Rosario Nicoletti explicitly criticized the government for treating organized crime as a uniquely Sicilian, rather than national, problem up until that point. In his words, the activities and behaviors of organized crime were “no longer merely a part of the moral and juridical category of a duty of the whole national community to face a serious and worrying local problem that shakes fundamental values of civil life, but of the actual national scope of the phenomenon.”²⁶² In an interview with the Socialist newspaper *Avanti!*, Emanuele De Francesco, the first Alto Commissario, stated bluntly that “[o]nly those who do not want to see can still

²⁶¹ Graziella Priulla, *Ma è Anche Un Problema di Linguaggio*, I SICILIANI, May 1984, at 72-73 (found in Archivio Centrale Dello Stato, Ministry of Interior, Folder 35, 699) (“*Se si vuole analizzare la copertura dei fatti di mafia da parte dell'informazione quotidiana, si può partire da un dato indubitabile: l'omicidio Dalla Chiesa, il fatto cioè di massima eccezionalità degli ultimi anni, ha 'dato una spinta' all'informazione. Non solo ha ottenuto un rilievo qualitativo e quantitativo senza precedenti, ma ha trasformato la mafia, da tema marginale, in tema importante (non ancora centrale, solo più importante di prima)*”).

²⁶² Rosario Nicoletti, Introduzione, Convegno Regionale Della D.C. Siciliana Sul Tema: “Lotta Alla Mafia,” 8 (Nov. 13-14 1982) (found in Archivio Centrale Dello Stato, Ministry of Interior, Folder 33, 13) (“*non appartiene più soltanto alla categoria morale e giuridica del dovere di tutta la comunità nazionale di affrontare un così grave e preoccupante problema locale che scuote valori fondamenali del vivere civile, ma all'effettiva portata nazionale del fenomeno.*”).

think of the mafia, the Camorra, the 'Ndrangheta as relegated to Sicily, Calabria and Campania.

The criminal issue is a topic that affects the entire national territory, albeit to varying degrees.”²⁶³

In a 1983 hearing before the Parliamentary Antimafia Commission, Minister of Interior Oscar Luigi Scalfaro noted that

“Organized crime is widespread not only in the geographic areas that have expressed the traditional forms of associated crime, but has also occurred in other areas of Italy, especially in the richer ones (Lombardy, Piedmont, Liguria and Lazio) where, often, contacts and links have also emerged between urban crime and organizations bearing the connotations of the mafia, the 'Ndrangheta and the Camorra.”²⁶⁴

The municipality of Mesagne, in Apulia, in considering possible measures to combat organized crime, noted that “the Mafia, fueled by the crisis in the country, is no longer confined only to the region of Sicily, but exports violence everywhere.”²⁶⁵ Prime Minister Spadolini acknowledged the importance of the Rognoni-La Torre Law in recognizing the mafia as a national, and even international, problem. According to Spadolini, the new legislation

“was a matter of creating, with the suffrage of the Parliament, an effective, and even a little Jacobin, instrument equipped with the means of control and coordination necessary for a fight against the mafia which, from the regional context, cannot fail to extend to all the national and international connections of the phenomenon. In turn connected with terrorism, with drug trafficking, with all the forms in which the multinationality of the underworld is manifested, of which the mafia is only a historical and conspicuous expression. [The Mafia is] profoundly changed, today, compared to the clichés of the past. It is such as to demand new techniques, new answers.”²⁶⁶

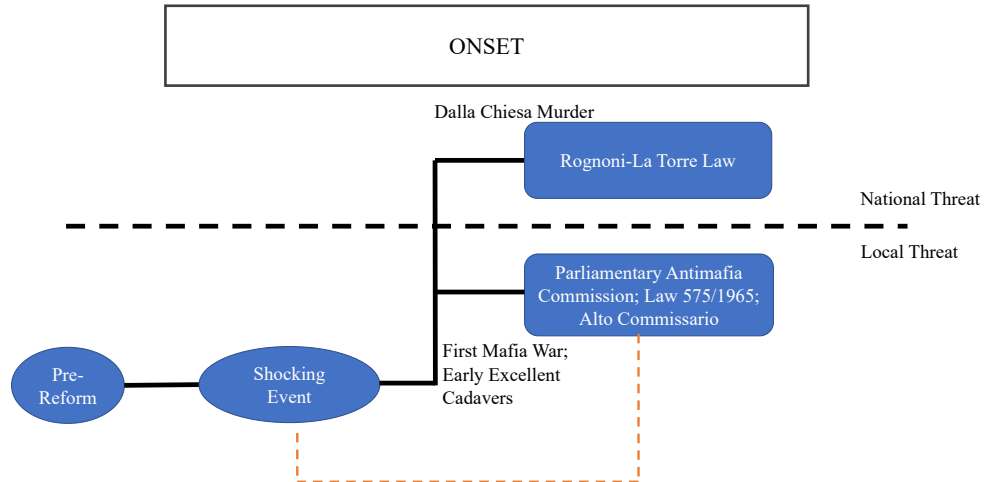
²⁶³ Domenico Bruno, *Lo Stato Contro Il Crimine*, AVANTI!, Jan. 20, 1985, at 14 (found in Archivio Centrale Dello Stato, Ministry of Interior, Folder 34, 236) (“Solo chi non vuole vedere può ancora pensare alla mafia, alla camorra, alla 'ndrangheta relegate in Sicilia, Calabria e Campania. La questione criminale è tema che interessa l'intero territorio nazionale anche se con varie gradazione.”).

²⁶⁴ *Quando Conoscitivo della Delinquenza Organizzata non Limitato alle Regioni Meridionali: Hearing of the Minister Before the Antimafia Commission*, Dossier 11001/119/1 (11) (Sept. 22, 1983) (found in Archivio Centrale Dello Stato, Ministry of Interior, Folder 34, 895) (“La criminalità organizzata è diffusa non solo nelle aree geografiche che hanno espresso le tradizionali forme di malavita associate, ma si è manifestata anche in alter zone d'Italia, precipuamente in quelle più ricche (Lombardia, Piemonte, Liguria e Lazio) dove, spesso, sono emersi anche contatti e collegamenti tra la delinquenza urbana e le organizzazioni recanti le connotazioni proprie della mafia, della 'ndrangheta e della camorra”).

²⁶⁵ Comune di Mesagne, *La Giunta Municipale*, 1 (Dec. 14 1982) (found in Archivio Centrale dello Stato, Ministero dell'Interno, Folder 34, 612) (“la Mafia, alimentata della crisi del paese, non ha più soltanto i confine regionali della Sicilia, ma Esporta violenza dappertutto”).

²⁶⁶ *La Nostra Lotta Tenace e Coerente Contro Tutti I Nemici della Repubblica*, LA VOCE REPUBBLICANA, Sept. 14, 1982, at 5 (found in Istituto Luigi Sturzo) (*Si è trattato di creare, col suffragio del Parlamento, uno strumento*

Figure 4.2: Onset in Italy



V. Analysis

a. Dalla Chiesa's Murder in the Theory

The murder of Carlo Alberto Dalla Chiesa was unique among the mafia assassinations up until this point in that it was the first attack that triggered the passage of legislation designed to facilitate the prosecution of Cosa Nostra as a whole. Contemporary observers linked the rushed passage of the Rognoni-La Torre Law to this specific event and express doubt that it would have been passed in the absence of Dalla Chiesa's killing.²⁶⁷

I argue that the legislative effect of Dalla Chiesa's killing was a result of the impact that this event had on public opinion. The Dalla Chiesa murder, more than any of the attacks carried out

effettivo, anche un po' giacobino, dotato dei mezzi di controllo e di coordinamento necessary per una lotta contro la mafia che dall'ambito regionale non può non estendersi a tutte le connessioni nazionali ed internazionali del fenomeno. A sua volta connesso col terrorismo, col traffico di droga, con tutte le forme in cui si manifesta la multinazionale della malavita di cui la mafia è soltanto una storica e cospicua espressione. Profondamente mutate, oggi, rispetto ai clichés del passato. E tale da esigere nuove tecniche, nuove risposte).

²⁶⁷ Author interviews Jan. 19, 2022; Jan 29., 2022; Feb. 1, 2022. The subjects of these interviews were as follows: a former member of the antimafia pool, a lawyer involved in the Maxiprocesso in a civil capacity, and a former leading figure within the Sicilian PCI.

by Cosa Nostra up until this point, allowed reformers to portray organized crime as a national threat. Unlike previous attacks, the Dalla Chiesa murder satisfied each of the five predictors of threat perception shift.

1) *This event implicated national interests and received considerable attention from the national press.* Carlo Alberto Dalla Chiesa was a uniquely national figure among the excellent cadavers. Even Pio La Torre, who as a member of Parliament was also a national-level politician, was first and foremost a Sicilian leader. As a hero of the Republic and esteemed leader of the carabinieri, Dalla Chiesa was an Italian, rather than uniquely Sicilian, figure. Perhaps more significantly, as Prefect of Palermo he was the representative of the Italian government in Sicily, described as the embodiment of the state. Moreover, his death was widely covered in the national and international press at the time. 2) *The national government will be seen as responsible for addressing the event in question.* Whereas all of the previous victims had taken on the task of fighting the Mafia voluntarily as a part of their roles in Sicilian society (whether as politicians, police officers, journalists, etc.), Dalla Chiesa was sent to Palermo as a representative of the state. As such, he could not be said to have taken the risks upon himself. Perhaps more significant, however, was the fact that Dalla Chiesa was widely reported not to have received the support that he had been promised from the central government. His visible isolation and lack of resources made him vulnerable to attack, and justified placing blame for his murder on the government that had sent him to Palermo and failed to support him while he was there.

3) *These events will be surprising or unexpected.* Although the murder of public officials was becoming somewhat routine by September 1982, Dalla Chiesa's status as a national hero made his murder surprising. 4) *Public outrage will be nonpartisan and distributed across social strata.* Outrage at the murder of Dalla Chiesa was expressed throughout Italy, with

demonstrations occurring throughout the nation. Moreover, this reaction was expressed by members of all parties, and even by leaders within the Catholic Church. 5) *The criminal group's involvement in the event will be perceived as relatively unambiguous.* The murder of Dalla Chiesa was immediately and continuously attributed to the Sicilian Mafia.

In considering the importance of the Dalla Chiesa killing, it is particularly useful to compare it with that of Pio La Torre. These murders took place in very similar contexts. They occurred approximately four months apart, in the same city. In both cases, national leaders were killed, and the same government was in power. Nevertheless, while Pio La Torre's death led to little more than conversation and the continued deferral of the Rognoni-La Torre Law, Dalla Chiesa's killing led to its almost immediate adoption. This provides suggestive evidence that Dalla Chiesa's murder was the critical catalyst for legislative reform.

While Dalla Chiesa's death appears to have been unique in its ability to shift perceptions of the threat posed by Cosa Nostra, I do not wish to discount the importance of the previous campaign of violence. Dalla Chiesa's murder was the culmination of a roughly 12-year campaign of violence on the part of the Mafia against leading figures in law enforcement, journalism, and politics, a campaign which had risen in intensity as criminals killed increasingly high-level figures. Each of these murders contributed to a conversation about mafia violence in Sicily and a sense of organized crime as a significant social issue. The rhetoric surrounding these killings thereby helped to lay the foundation for the impact of Dalla Chiesa's murder. However, it was the Dalla Chiesa killing that was decisive in establishing Cosa Nostra as a national threat.

Table 4.1: Perception-Shifting Events

	First Mafia War	1970-1977 Murders	1979 Murders	Murders of 1980	Pio La Torre	Carlo Alberto Dalla Chiesa
Affect/Implicate national interests and receive considerable press attention					X	X
National government responsible						X
Surprising/Unexpected	X	X	X	X	X	X
Nonpartisan/Distributed across social strata				X		X
Criminal group's involvement unambiguous	X	X	X	X	X	X
Outcome	Parliamentary Antimafia Commission and Law 575/1965	Little Change	Little Change	Little Change	Little Change	Rognoni-La Torre Law

b. *Explaining the Passage of the Rognoni-La Torre Law*

i. The Role of Reformers

For most of the postwar period of Italian history, the political left was staunchly opposed to the Mafia and had sought political measures to combat organized crime. This was particularly true of leftists operating in the South of Italy, where Mafia groups were historically most active, and where they had directly engaged in conflict with the left. Nevertheless, they were unable to overcome the resistance of the dominant Christian Democracy party to such change.

The DC was a complex political animal—it is not the case that the party as a whole was linked to the Mafia.²⁶⁸ However, as discussed above, key factions of the party, particularly those

²⁶⁸ Two of the legal figures interviewed emphasize this point. Author Interviews Jan 19, 2022 and Jan 29, 2022.

which depended on Southern votes, maintained ties with Cosa Nostra affiliates in a complex web of patronage politics. These mafia-dependent factions had an interest in actively suppressing antimafia reform and could be considered anti-reformers. Those without electoral ties to the South, both within the DC and in other parties, had little reason to take strong action against the Mafia, and are best understood as neutrals. Given the dominance of the DC, particularly in the early years of the Italian Republic, it therefore should not be surprising that reformers were able to gain little traction.

As the Mafia began its campaign of violence, its leaders may have expected that their connections with the DC would shield them from damaging legislation. However, as the passage of the Rognoni-La Torre Law shows, reformers' ability to fix public attention on the Mafia as a national threat would make place considerable pressure on neutrals to join their camp.

ii. [Shifting Public Perception](#)

Although reformers had been active since the 1940s, they were unable to achieve any degree of legislative success until the 1960s. More extensive institutional reform would not be achieved until 1982. In each case, the push for reform followed an increase in visible Mafia violence. Particularly important were attacks which took place outside of the South, such as the La Barbera shooting, or those which targeted public officials. These attacks received significant media attention and provided reformers with an opportunity to argue that the problem posed by the Mafia was growing.

As violence escalated in the 1970s and early 1980s, the rhetoric of reform leaders increasingly emphasized the national scope of the Mafia problem. The Mafia was described as a threat to democracy, a force which was moving throughout the entire national territory. Nevertheless, many within the media as well as in government continued to emphasize the

localization of the problem in the troubled South, and particularly in Sicily. Public antimafia mobilization outside of Sicily was primarily partisan in nature, organized by the very left-wing activists who were already predisposed to support reform. It was only with the murder of Dalla Chiesa that this began to change. Anger at the general's death was expressed throughout the country, including with massive demonstrations. The response to this attack was far more widespread than any murder up until that point.

I do not suggest that public opinion was divorced from elite attitudes. Indeed, reformers' rhetoric surrounding organized crime intensified in the wake of Dalla Chiesa's death, emphasizing the national threat posed by the mafia. Reformist politics had preceded the murder of Dalla Chiesa. The shift in rhetorical emphasis towards the national dimension of Cosa Nostra suggests that these leaders found in this moment an advantageous opportunity to influence the public understanding of the problem that organized crime posed.

iii. [Pressure on Neutrals](#)

The success of the Rognoni-La Torre Law was in large part a result of the growing pressure on Italian leaders to show a willingness to take strong action against the Mafia. Yet many politicians within the Italian government were allergic to such an approach. This was particularly exacerbated by the DC's electoral interests in the South. While the DC never publicly opposed antimafia reforms in principle, neutrals were generally able to avoid concrete action beyond public statements of condemnation.

However, as Mafia violence against the state increased, neutrals, particularly within the DC, increasingly faced criticism for failure to take steps to repress the Mafia. Virginio Rognoni, for instance, gradually increased his support for reform by publicly speaking of the mafia as a

national threat, then submitting his draft law and finally by advocating for (and putting his name to) the legislation submitted by Pio La Torre.

The shift among legislators is best demonstrated by contrasting the response to Pio La Torre's death with that of Dalla Chiesa. Members of Parliament avoided taking concrete action on the Law after La Torre's death, even deferring discussion of the topic. The majority of legislators appeared willing to let the law suffocate in committees at this time. Yet after Dalla Chiesa's death, there was a rush to pass this legislation, with leaders openly acknowledging that this murder had made antimafia legislation necessary. These were the same legislators operating at the time of La Torre's death, which suggests that the preferences of parties and individual legislators with regards to reform had not changed. Instead, the pressure that was placed on them by reformers via public outrage appears to have shifted a majority of neutrals to support passage of the Rognoni-La Torre Law. With this legislation, Italy had a permissive law that included both membership liability and asset forfeiture provisions. It did not, at this time, have an institution of competent enforcement. Therefore, as of September 1982, Italy had undergone *weak reform*.

c. Alternative Explanations

I consider two possible alternative explanations for the adoption of the Rognoni-La Torre Law. The first is that party politics, divorced from public preferences, explain the adoption of this law. The second is that the rising violence of Cosa Nostra convinced legislators of the necessity of such reform.

i. Rising Violence and Decisionmaker Learning

One possible counterargument is that legislators were not responding to changes in public threat perception but instead began to favor reform as their own assessment of the problem of organized crime changed. In this account, political leaders may initially be skeptical of anti-

organized crime institutions for various reasons (concerns about civil liberties, cost-consciousness, or even corruption). However, mounting evidence of the power and/or danger of organized crime eventually convinces a sufficiently high number to support reform.

This account may explain the shift of some decisionmakers from neutral to pro-reform. This is particularly true when the Mafia threat was not clear. Thus, some decisionmakers may have been genuinely surprised by Cosa Nostra's reach and audacity after the 1965 attacks, or even after the first high-profile murders committed by the Corleonesi clan. However, as violence rose over the course of the 1970s and early 1980s, it was increasingly difficult to argue that Italian legislators were unaware of the violence posed by Cosa Nostra in Sicily.

Once again, the different responses to the deaths of Pio La Torre and Carlo Alberto Dalla Chiesa are particularly instructive. As outlined above, these murders were very close in time and comparable in terms of the prominence of the individuals targeted. It is difficult to imagine that decisionmakers learned more of Cosa Nostra's capacity for violence from the murder of Dalla Chiesa than they had from La Torre. These individuals did, however, differ in terms of the public response generated by their deaths. Particularly in light of the public acknowledgment by legislators at the time that the Rognoni-La Torre Law was passed as a reaction to Dalla Chiesa's (rather than La Torre's) death, an explanation that accounts for the impact of public response has more explanatory power than one based only on decisionmaker learning.

ii. Party Politics

A potentially more powerful alternative explanation would focus on the role of party politics in explaining the passage of the Rognoni-La Torre Law. In this account, shifts in public perception would not explain legislators' willingness to accept reform. Instead, the rising power of political coalitions within the leading parties created an opening for reformist actors to push

for policies that would repress the mafia. The prominence of Christian Democrats such as Virginio Rognoni, who were less dependent on the Southern vote may have strengthened reformist factions of the DC.²⁶⁹

Perhaps even more important in this account is the impact of parties other than the DC and PCI in the Italian government. During the 1970s, the PCI had attempted to institute a strategy of long-term cooperation with the DC in order to advance some of its policy goals.²⁷⁰ This ultimately failed in the context of violence and political intransigence.²⁷¹ The PCI lost considerable support at the end of the decade, and by the early 1980s was becoming increasingly politically marginalized.²⁷² At the same time, the DC in the following years would find its image tarnished by political scandals²⁷³ and socio-economic unrest.²⁷⁴ In order to maintain control of the government, the DC had to rely on a five party coalition known as the *Pentapartito*.²⁷⁵ Within this coalition, the PSI was most significant, and it was the turn of the Socialists away

²⁶⁹ Stille (2011) describes Rognoni in this way. ALEXANDER STILLE, EXCELLENT CADAVERS 90 (2011) (1995).

²⁷⁰ This was known as the *compromesso storico* (historic compromise). For a discussion of this period, *see generally* Stephen Hellman, *The Compromesso Storico*, in THE OXFORD HANDBOOK OF ITALIAN POLITICS 283 (Erik Jones and Gianfranco Pasquino eds., 2015).

²⁷¹ Stephen Hellman, *The Compromesso Storico*, in THE OXFORD HANDBOOK OF ITALIAN POLITICS 283 (Erik Jones and Gianfranco Pasquino eds., 2015).

²⁷² Stephen Hellman, *The Compromesso Storico*, in THE OXFORD HANDBOOK OF ITALIAN POLITICS 283 (Erik Jones and Gianfranco Pasquino eds., 2015); Martin J. Bull, *The Pentapartito*, in THE OXFORD HANDBOOK OF ITALIAN POLITICS 283, 300 (Erik Jones and Gianfranco Pasquino eds., 2015).

²⁷³ The revelation of the masonic lodge Propaganda Due (P2) implicated many members of the DC and was one of the most significant political scandals of the Italian Republic. Martin J. Bull, *The Pentapartito*, in THE OXFORD HANDBOOK OF ITALIAN POLITICS 296, 297-98 (Erik Jones and Gianfranco Pasquino eds., 2015).

²⁷⁴ Martin J. Bull, *The Pentapartito*, in THE OXFORD HANDBOOK OF ITALIAN POLITICS 296, 297-98 (Erik Jones and Gianfranco Pasquino eds., 2015).

²⁷⁵ The five parties were the DC, PSI, PRI, Italian Social Democratic Party (*Partito Socialista Democratico Italiano*, hereinafter PSDI), and the Italian Liberal Party (*Partito Liberale Italiano*, hereinafter PLI). Martin J. Bull, *The Pentapartito*, in THE OXFORD HANDBOOK OF ITALIAN POLITICS 296 (Erik Jones and Gianfranco Pasquino eds., 2015).

from the Communists that allowed the coalition to function.²⁷⁶ As such, the *pentapartito* represented a relative decline of the DC in favor of the PSI.²⁷⁷

One might argue that the move to adopt antimafia reform was a natural byproduct of this complex political landscape. The PSI had historically opposed the mafia and might have seen its moment of rising political power as a perfect opportunity to secure policy preferences that it had not previously been able to achieve. For the PCI, such an issue would have presented an opportunity to secure policy alignment with one of the main powers in the governing coalition. In this account, the internal dynamics and complex cross-party allegiances of the time would explain the emergence of a coalition willing to support the Rognoni-La Torre Law, rather than shifts in public perception on the issue.

Three factors suggest that this explanation is insufficient. First, during the pentapartito period, the PSI sought to position itself as the alternative to communism, and generally opposed virtually all of the PCI's initiatives.²⁷⁸ The dynamics of the party politics at the time would therefore generally have mitigated against a PCI-PSI alignment. Second, the DC placed considerable importance on the Southern vote and was increasingly concerned about the rise of the PSI as a potential challenger.²⁷⁹ In this context, the DC would have had strong incentives to avoid undermining an electoral stronghold by antagonizing the Mafia.²⁸⁰ The fact that it

²⁷⁶ Stephen Hellman, *The Compromesso Storico*, in THE OXFORD HANDBOOK OF ITALIAN POLITICS 283, 292-93 (Erik Jones and Gianfranco Pasquino eds., 2015).

²⁷⁷ Martin J. Bull, *The Pentapartito*, in THE OXFORD HANDBOOK OF ITALIAN POLITICS 296, 299 (Erik Jones and Gianfranco Pasquino eds., 2015).

²⁷⁸ Stephen Hellman, *The Compromesso Storico*, in THE OXFORD HANDBOOK OF ITALIAN POLITICS 283, 293 (Erik Jones and Gianfranco Pasquino eds., 2015); Martin J. Bull, *The Pentapartito*, in THE OXFORD HANDBOOK OF ITALIAN POLITICS 296, 299 (Erik Jones and Gianfranco Pasquino eds., 2015).

²⁷⁹ Martin J. Bull, *The Pentapartito*, in THE OXFORD HANDBOOK OF ITALIAN POLITICS 296, 299 (Erik Jones and Gianfranco Pasquino eds., 2015); Martin J. Bull and James L. Newell, *Italian Politics and the 1992 Elections: From 'Stable Instability' to Instability and Change*, 46 PARLIAMENTARY AFF. 203, 208, 216 (Apr. 1993) (noting the development of the DC into an increasingly Southern party over the course of the 1980s and early 1990s)

²⁸⁰ Indeed, in the 1983 elections, the DC share of the vote in Palermo declined by over ten percent from what it had been in 1980. At least some observers argued that this was partly a result of the Mafia diverting votes away from the

nonetheless supported reform points to the role of some other source of political pressure. Third, as in the learning alternative, this explanation cannot account for the difference in response to the La Torre and Dalla Chiesa murders. In the four months between these murders, neither the parties in power nor their electoral incentive structures had changed. The fact that the legislature nonetheless moved from neglecting the Rognoni-La Torre Law after La Torre's murder to prioritizing it after Dalla Chiesa's therefore points to the importance of forces outside the political structure itself in motivating reform. My theory, which accounts for shifts in public opinion during that period can therefore explain more than a theory which considers party politics as the central factor motivating the adoption of anti organized crime reform.

VI. Conclusion

It would take some time for the value of the Rognoni-La Torre Law to become clear. Indeed, one of the earliest tests of the law was widely regarded as a failure. Following a series of mass arrests in Naples, prosecutors sought to carry out a large-scale trial (in Italian, a *maxiprocesso*) against members of the Neapolitan Camorra, charging them with mafia-type association.²⁸¹ The trial was riddled with problems, including contradictions among the testimony of *camorristi* witnesses who had turned state's evidence.²⁸² Though convictions were secured in the court of first instance, courts of appeal ultimately had to grant many new trials.²⁸³

Despite this inauspicious beginning, the Rognoni-La Torre Law would prove its worth. Beginning in February 1986, the Palermo Tribunal began a *Maxiprocesso* that would fundamentally alter the landscape of mafia prosecution. 475 suspected members of Cosa Nostra

DC in response to its support for repressive policies. Judith Chubb, *The Christian Democratic Party: Reviving or Surviving*, 1 ITALIAN POL. 69, 78 (1986).

²⁸¹ *Per Cutolo e 97 Camorristi, si Farà un Nuovo Processo*, LA REPUBBLICA, Apr. 11, 1987.

²⁸² For a discussion of this trial, see generally MARCO JACQUEMET, CREDIBILITY IN COURT: COMMUNICATIVE PRACTICES IN THE CAMORRA TRIALS (1996).

²⁸³ *Per Cutolo e 97 Camorristi, si Farà un Nuovo Processo*, LA REPUBBLICA, Apr. 11, 1987.

were tried under 416-bis (along with other applicable statutes). In December 1987, the Tribunal handed down convictions for 338 of the defendants, making this the most successful trial against the Mafia in Italian history.²⁸⁴ In January 1992, the sentences were upheld by the Court of Cassation, rendering the victory final.²⁸⁵

In the years leading up to the Maxiprocesso, Cosa Nostra's campaign of violence would continue. Between the death of Dalla Chiesa and the beginning of the trial, the Mafia would murder a dozen judges and police officers.²⁸⁶ Over time, additional reforms to the Italian legal system would further strengthen law enforcement's toolbox for combating organized crime. Italy would pass a wide array of laws designed to repress organized crime,²⁸⁷ building on the foundations of the Rognoni-La Torre Law.²⁸⁸ New prosecutorial and investigative bodies would also be developed to specialize in Mafia cases.²⁸⁹ The development of these agencies will be the subject of the following chapter.

The adoption of the Rognoni-La Torre law certainly was not inevitable: repeated, high-profile acts of violence had been insufficient to persuade the Italian Parliament to adopt legislation that would allow prosecutors to target Cosa Nostra as a coherent organization. This is

²⁸⁴ Roberto Suro, *338 Guilty in Sicily in a Mafia Trial, 19 Get Life Terms*, N.Y. TIMES, Dec. 17, 1987, at A1. Of the original 475 defendants, 14 were removed from the case and 10 died.

²⁸⁵ ALEXANDER STILLE, *EXCELLENT CADAVERS* 349 (2011) (1995).

²⁸⁶ For a list of those killed between September 1982 and February 1986, see Chapter V, n. 49 and Appendix C. Between Dalla Chiesa's murder September 1982 and the end of the Corleonesi clan's campaign of violence in 1993, over 30 people were killed in attacks specifically designed to target public figures as well as two terrorist attacks in Florence and Milan. This number is, if anything an underrepresentation of Mafia violence, as it does not include those killed in attacks not aimed at public officials, such as the murder of witnesses. For a full list of Mafia victims and their dates of death, see Appendix C.

²⁸⁷ For example, the 41-bis hard prison (*carcere duro*) regime that had been applied in cases of terrorism was extended to apply to many mafiosi, allowing the state to apply particularly harsh prison security measures. Other measures included enhanced protection for government collaborators and scrutiny of commercial and public works transactions that are likely to be indicative of Mafia activity. ALISON JAMIESON, *THE ANTIMAFIA* 45-46, 72-73 (1999).

²⁸⁸ See generally Pietro Pomanti, *Principio di Tassatività e Metamorfosi della Fattispecie: l'Art. 416 bis c.p.*, ARCHIVIO PENALE 1, 16 (2017).

²⁸⁹ This will be discussed at length in Ch V.

not to say the government had been completely unresponsive to previous instances of violence on the part of the Mafia. High-profile murders, whether of mafiosi or state officials, had led to the tweaking of existing institutions. The events of the First Mafia War, which brought the the Mafia to the public's attention, led to the establishment of the Parliamentary Antimafia Commission and the strengthening of preventive measures. The murders of state officials such as Terranova and Mattarella led to increased policing in Sicily and ultimately to the decision to send Dalla Chiesa as to Palermo as Prefect.

These changes laid the foundation for more significant reform. They ensured that lawmakers and the Italian public were better informed about the nature of the Mafia problem, and they enhanced law enforcement resources. However, they did not fundamentally change the ability of police and prosecutors to target the Mafia as a group. The strength of Mafia power in Sicily, the lack of a definition of the group in the Italian legal framework, and the difficulty of proving individual involvement in discrete crimes made Italy's pre-existing legal framework fundamentally inadequate for targeting Cosa Nostra systematically. Antimafia legislators had recognized this for years and advocated the passage of legislation that defined the Mafia and criminalized membership in the group. Because the Rognoni-La Torre Law allowed prosecutors to target Cosa Nostra as a group without having to prove each member's participation in individual crimes, it significantly increased law enforcement's ability to target Cosa Nostra's human capital. Preventive asset forfeiture further enhanced the state's power by allowing prosecutors to target the Mafia's financial resources without having to prove its illicit origins.

Antimafia leaders pushed for such legislation for years, and as the assassinations mounted, a greater number of politicians took on a public stance in support of reform. Nevertheless, even the Mafia's increasingly visible campaign of violence against the state was

not enough to push Parliament to establish such measures through the summer of 1982. The murder of General Dalla Chiesa proved to be the decisive event in ensuring the Rognoni-La Torre law could be passed. The killing of a national hero accomplished what none of the Mafia's other murders had—it allowed reformers to shift public perception of the Mafia from a local Sicilian (or Southern) crime problem to a national issue, and even a threat to Italian democracy. Moreover, this murder was presented as one for which the national government was uniquely culpable. In this context, it was incredibly difficult for legislators to remain neutral on the question of antimafia reform. Consequently, in the wake of Dalla Chiesa's murder and the resulting shift in public perception, legislators felt increasing pressure to implement meaningful antimafia reform, which they did by adopting the permissive law for which La Torre had advocated. The passage of the Rognoni-La Torre Law significantly increased the power of the state relative to the Mafia and changed the landscape of anti-organized crime law enforcement. However, as important as this law was, it was only the beginning of Italy's project of building legal institutions to combat organized crime.

Table 4.2: Italy Timeline

Dates	Events
December 1962	Parliamentary Antimafia Commission approved (Institutional Tweak)
May 1963	Attack on Angelo La Barbera
June 1963	Ciaculli Bombing
July 1963	Parliamentary Antimafia Commission begins work (Institutional Tweak)
May 1965	Law 575/1965 passed (Institutional Tweak)
1975	Cosa Nostra begins to become involved in the heroin trade
September 1970	Disappearance of Mauro de Mauro
May 1971	Murder of Pietro Scaglione
October 1972	Murder of Giovanni Spampinato
August 1977	Murder of Giuseppe Russo
May 1978	Murder of Giuseppe Impastato
January 1979	Murder of Mario Francese
March 1979	Murder of Michele Reina
July 1979	Murder of Boris Giuliano
September 1979	Murder of Cesare Terranova
January 1980	Murder of Piersanti Mattarella
May 1980	Murder of Emanuele Basile
August 1980	Murder of Gaetano Costa
March 31, 1980	Pio La Torre presents draft law
November 1981	Virginio Rognoni presents draft law
February 1982	La Torre's bill deferred for a vote
April 1982	Murder of Pio La Torre
August 1982	La Torre's bill deferred for a vote
September 3, 1982	Murder of Carlo Alberto Dalla Chiesa
September 6, 1982	Alto Commissario established
September 7, 1982	Rognoni-La Torre Law presented for Committee debate
September 13, 1982	Rognoni-La Torre Law passed (Onset of Institutional Reform: Permissive Law)

Chapter V: Fighting the Octopus—Building Competent Enforcement in Italy

The Mafia is a human phenomenon, and like all human phenomena, it had a beginning, an evolution, and sooner or later, it will come to an end.
--Giovanni Falcone, Antimafia Magistrate

I. Introduction

The passage of the Rognoni-La Torre Law in 1982 marked a significant legal victory for those looking to combat mafia criminality. For the first time, Parliament had defined the mafia in law. In doing so, it gave prosecutors and investigating judges the legal tools to hold large swathes of mafia organizations, and particularly high-level bosses, criminally accountable. The success of the 1986 Palermo Maxiprocesso, with its 338 convictions, gave the Italian public a glimpse of how this law could be used in the hands of competent judges. However, even in the immediate aftermath of the trial, there was no way to be certain that such success would continue. Indeed, for many years, it was unclear whether convictions obtained on the basis of the Rognoni-La Torre Law would stand at all. As the convictions of the Maxiprocesso worked their way through the courts of appeals, many antimafia leaders feared that the advances made in combatting organized crime would be undone.

Indeed, in the years immediately following the Maxiprocesso, Italy seemed at risk of returning to a state of complacency with regards to organized crime. Politicians campaigned openly against judges in cities like Palermo. Infighting within the judiciary led to the dismantling of the most successful prosecutorial unit, the Palermo antimafia pool. Yet in the early 1990s, this concerning trend was reversed. As the Maxiprocesso convictions were repeatedly upheld, new leadership in the Italian government actively promoted a law-and-order agenda focused on

combating mafia-type criminality. Several ministers sought to institutionalize at the national level the sort of specialized law enforcement that had been developed in Palermo by creating antimafia police and prosecutorial units.

In the previous chapter, I showed that the onset of anti-organized crime legal reform in Italy followed shifts in the Italian public's perception of mafia crime from being a local problem to a national threat. In the wake of a series of mafia murders in Palermo in the 1970s and early 1980s, antimafia reformers advocated for new legislation in large part by emphasizing the threat posed by organized crime, but found their efforts stymied within Parliament. With the assassination of national hero General Carlo Alberto Dalla Chiesa, the Italian public increasingly mobilized against the mafia, pressuring previously hesitant leaders to accept the need for reform. The result was the 1982 passage of the Rognoni-La Torre Law, which defined and criminalized membership in a mafia-type organization.

This chapter will focus exclusively on the second part of my theory, the extensiveness of anti-organized crime reform. I explain how Italy was able to extend its anti-organized crime reform movement from the passage of the Rognoni-La Torre Law to the establishment of these policing and prosecutorial bodies. I argue that the renewal of public perception of the mafia as a threat in the early 1990s made anti-organized crime reform a relatively popular stance in Italian politics. This led new political leaders, particularly within the Christian Democracy and the Italian Socialist parties, to incorporate a reformist agenda into their political platforms. In advocating for the necessity of these reforms, leaders relied heavily on the portrayal of mafia groups as a unified and cohesive threat, one which was nearly equal in power to the state itself.

My theory anticipates that the most extensive institutional development is likely to occur where public threat perception is sustained long enough to maintain political interest in reform. I

expect that this is most likely to occur when the public's concern is driven by a criminal group or groups that are perceived as relatively cohesive, since such groups are most likely to allow reformers to continue to portray organized crime as the sort of national-level threat that requires reform beyond that which the public already accepted at the first stage. Accordingly, where extensive reform occurs, I would expect to see press and leadership rhetoric emphasizing the unity, strength, and singular organization of the criminal group.

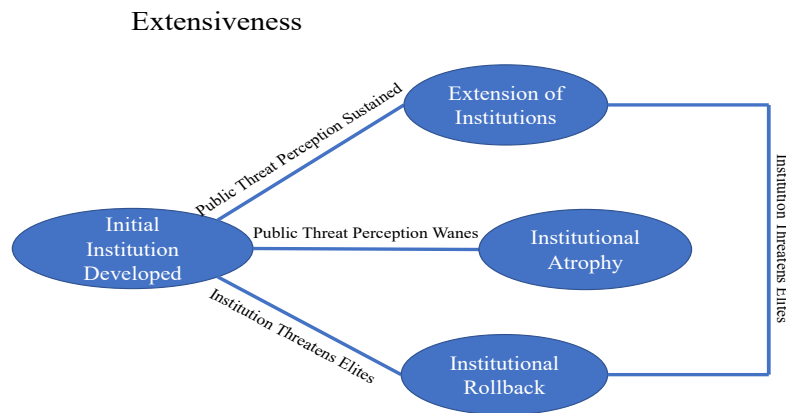
Because the public in this situation has already established a fear of organized crime as a national threat, reformists have the opportunity to portray themselves as champions of public security. As the reformists promote themselves politically on the basis of their commitment to fight organized crime, any actors who remain neutral or opposed to further institutional change are likely to face considerable pressure to support for reform in order to prevent their competitors from monopolizing a political claim to law and order. As this national threat perception is sustained, I expect it to become increasingly difficult for leaders to maintain an anti-reform position, leading at least some hitherto anti-reformers to accept anti-organized crime institutions only at this stage.

Although the political landscape may be primed for reform as a result of the public's initial perspective shift and a declared government fight against organized crime, that does not mean that implementing later reforms will be easy. Reforms that are implemented later in the process of a state's fight against organized crime are likely to be more controversial than earlier ones, since they could not be agreed to at the time of the public's initial perception shift. Therefore, I would expect at least some factions of the government to resist these changes, and perhaps to do so quite strenuously. These anti-reformers may be political parties, bureaucratic agencies, or even individual legislators. Only if the public perception of organized crime as a national threat

is sufficiently well-established will the reformers be able to gather enough support to overcome the resistance of the anti-reformers at this stage.

The chapter is structured as follows: Section II describes Italy’s institutions of competent enforcement. Section III presents the methodological approach of the chapter; Section IV traces the historical development of Italian law enforcement bodies from 1986-1992. Section V discusses the implications of the entire Italian case for my theory. Section VI concludes.

Figure 5.1: Reform Extensiveness



II. Competent Enforcement in Italy

a. The Italian Law Enforcement Landscape

Italy has a multifaceted law enforcement structure, and its institutions dedicated to combatting organized crime reflect this. The country has four main policing bodies:¹ the *Polizia Di Stato*, or national police, is a civil body responsible for providing most ordinary policing

¹ For an additional description of the Italian policing institutions, see *Italie*, INTERPOL, <https://www.interpol.int/fr/Qui-nous-sommes/Les-pays-membres/Europe/Italie> (accessed 23 Jan. 2022).

functions as well as the security of the highways, water routes, and railways.² The *Guardia di Finanza*, or financial police, which a militarized police force operating under the Ministry of Economics and Finance, is responsible for investigating financial crimes, including crimes of smuggling, money laundering and corruption.³ The *carabiniere*, or gendarmerie, are military police, operating under the Ministry of Defense. Though they do police the military, they also serve a nationwide policing function, and are considered the elite of Italian law enforcement.⁴ The *Polizia Penitenziaria*, or penitentiary police, are responsible for prison security as well as the safety and maintenance of prisoners.⁵

Within the Italian legal system, the prosecution is part of the judiciary.⁶ For most of Italian history, the legal system was primarily inquisitorial,⁷ giving judges a significant role in the investigation and trial of cases.⁸ The Italian judiciary is autonomous of the other branches of government and is self-governing—the *Consiglio Superiore della Magistratura* (High Council for the Judiciary) is responsible for regulating judicial activity.⁹ Criminal cases are heard by the

² *Il Nostro Lavoro*, POLIZIA DI STATO, <https://www.poliziadistato.it/archivio/category/2083> (accessed 23 Jan. 2022).

³ *Introduzione*, GUARDIA DI FINANZA: INSIEME PER LA LEGALITÀ, <https://www.gdf.gov.it/chi-siamo/organizzazione/compiti-istituzionali> (accessed 23 Jan. 2022).

⁴ *L'arma dei Carabinieri: Compiti, Funzioni e Dipendenze*, CARABINIERI: POSSIAMO AIUTARVI, <https://www.carabinieri.it/chi-siamo/oggi/organizzazione/in-generale/compiti-funzioni-e-dipendenze> (accessed 23 Feb. 2022).

⁵ *Compiti e Attribuzioni*, CORPO DI POLIZIA PENITENZIARIA, https://poliziapenitenziaria.gov.it/polizia-penitenziaria-site/it/compiti_attribuzioni.page (accessed 2 Mar. 2022).

⁶ Title IV, Section 1, Arts. 107 & 108 Costituzione [Cost.] (It.). See also *National Justice Systems: Italy*, EUROPEAN E-JUSTICE PORTAL (Jan. 18, 2022), https://e-justice.europa.eu/content_judicial_systems_in_member_states-16-it-en.do?member=1 (accessed 23 Jan. 2022).

⁷ As a result of reforms to the Italian Penal Code in 1988, the Italian system has become far more adversarial. These changes were only beginning to be instituted during the time of my study. For a discussion of the 1988 reforms, see Giulio Illuminati, *The Frustrated Turn to Adversarial Procedure in Italy (Italian Criminal Procedure Code of 1988)*, 4 WASH. U. GLOBAL STUD. L. REV. 567 (2005).

⁸ It should be noted that the judges who investigated a given case were not the same individuals as those who heard evidence. see Giulio Illuminati, *The Frustrated Turn to Adversarial Procedure in Italy (Italian Criminal Procedure Code of 1988)*, 4 WASH. U. GLOBAL STUD. L. REV. 567 (2005). The initial Maxiprocesso Trial, which took place from 1985 to 1986, was carried out under the inquisitorial system.

⁹ Title IV, Section 1, Art. 104-107 Costituzione [Cost.] (It.). For an English-language description of the *Consiglio Superiore della Magistratura*, see *International Corner*, CONSIGLIO SUPERIORE DELLA MAGISTRATURA, <https://www.csm.it/en/web/csm-international-corner/high-council-for-the-judiciary/about-the-council> (accessed 23 Jan. 2022).

court of first instance, with two appeals of right—to the Court of Appeals followed by the Court of Cassation.¹⁰

Within the context of prosecution, competent enforcement is comprised of locally-based prosecution agencies, known as *Direzioni Distrettuali Antimafia* (District Antimafia Directorates, hereinafter DDA) dedicated to building cases against mafia groups, whose work is coordinated by a national directorate, the *Direzione Nazionale Antimafia* (National Antimafia Directorate, hereinafter DNA). Within policing, this includes the *Direzione Investigativa Antimafia* (Investigative Antimafia Directorate, hereinafter DIA). The DIA a separate investigative body dedicated to investigating organized crime, in coordination with the other policing bodies. In addition to the DIA, there exist specialized units within each of the three branches of the Italian police forces. These are as follows: the *Raggruppamento Operativo Speciale* (Special Operative Grouping, hereinafter ROS), which is located within the *carabinieri*; the *Servizio Centrale Operativo* (Central Operative Service, hereinafter SCO), which is located within the *Polizia di Stato*; and the *Servizio Centrale di Investigazione sulla Criminalità Organizzata* (Central Service for Investigation of Organized Crime, hereinafter SCICO), which is located within the *Guardia di Finanza*.

b. The DIA and the DNA/DDA

In this dissertation, I will concentrate primarily on the establishment of the DIA And DNA/DDA,¹¹ as they represent the largest institutional changes adopted at the time. I will briefly discuss the formation of ROS, SCO, and SCICO, which were all founded very close in time to

¹⁰ Title IV, Section 2, Art. 111 Costituzione [Cost.] (It.).

¹¹ I group the DNA and DDA together because these organizations are functionally intertwined in a manner that makes them difficult to analyze separately. Moreover, because the DDA offices do the investigative work that the DNA coordinates at a national level, they must be analyzed together to understand how they work as a competent enforcement body. This is less true of the policing bodies, which continue to function as subgroups of different policing agencies.

the DIA and the DNA/DDA. However, while ROS, SCO, and SCICO were established within existing policing bodies, the DIA and the DNA/DDA were created as entirely new and highly controversial entities, and so their establishment should have been expected to be particularly difficult.¹² As such, they will occupy the bulk of my analysis.

The DIA grew out of, and ultimately subsumed, the Alto Commissario position developed in the wake of the murder of General Dalla Chiesa (*see* Chapter IV). Concerns about the effectiveness of the Alto Commissario in antimafia investigations led to a demand for a more professionalized antimafia police force. The DIA is composed of specialized personnel from the three Italian police forces,¹³ and its mission is to conduct investigations into organized crime.¹⁴ In particular, the DIA seeks to understand the structure, connections, and activities carried out by organized criminal groups.¹⁵ Headquartered in Rome, the DIA works in coordination with Italian police forces and the judiciary to carry out its investigations and operates on a national level.¹⁶

Italy has also developed specialized units dedicated to the prosecution of organized crime. This include the Direzione Distrettuale Antimafia (DDA), which is comprised of teams of

¹² It should be noted that members of ROS, SCO, and SCICO work very closely with the DIA and DNA/DDA. According to a prosecutor within the Palermo DDA, one of the significant advantages of prosecutors in his office is the ability to work with the most competent police officers, including those within these divisions. Author Interview, Jan. 28, 2022.

¹³ These are the National Police, the Guardia di Finanza (financial police), and the Carabinieri (military police). The DIA director is chosen from one of these forces and the directorship is rotated among the three forces every three years. *DIA Department*, DIREZIONE INVESTIGATIVA ANTIMAFIA, <https://direzioneinvestigativaantimafia.interno.gov.it/la-direzione/?lang=en> (accessed 4 Dec. 2021).

¹⁴ *Direzione Investigativa Antimafia*, MINISTERO DELL'INTERNO, <https://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-pubblica-sicurezza/direzione-investigativa-antimafia> (accessed 4 Dec. 2021).

¹⁵ *Direzione Investigativa Antimafia*, MINISTERO DELL'INTERNO, <https://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-pubblica-sicurezza/direzione-investigativa-antimafia> (accessed 4 Dec. 2021).

¹⁶ The DIA has three main departments: "Preventive Investigations," "Judicial Investigations," and "International Relations for Investigative Purposes." *Direzione Investigativa Antimafia*, MINISTERO DELL'INTERNO, <https://www.interno.gov.it/it/ministero/dipartimenti/dipartimento-pubblica-sicurezza/direzione-investigativa-antimafia> (accessed 4 Dec. 2021); for a discussion of each department's objective, *see DIA Department*, DIREZIONE INVESTIGATIVA ANTIMAFIA, <https://direzioneinvestigativaantimafia.interno.gov.it/la-direzione/?lang=en> (accessed 4 Dec. 2021).

prosecutors and magistrates¹⁷ that operate at the district level and are generally attached to a court of appeals. The DDA is the principal antimafia investigative body of the Italian judiciary, and DDA investigators focus exclusively on building cases against organized crime and terrorism.¹⁸ Prosecutors who are interested in joining the DDA must have several years of practical experience before they can apply to this office.¹⁹ This ensures that antimafia prosecutors have a relatively high level of professionalization. The local DDA is the agency that carries out the work of investigating particular organized criminal groups. The twenty-six DDA offices are supervised and coordinated by a single national organization, the Direzione Nazionale Antimafia (DNA).²⁰ The DNA is located within the Supreme Court, in the Office of the Prosecutor General.²¹ It ensures that information is shared adequately among the individual DDA offices, allowing investigations to be conducted in an efficient and complementary manner.²² The DNA is led by the *Procuratore Nazionale Antimafia* (National Antimafia Prosecutor), who is nominated by the *Consiglio Superiore della Magistratura*, the governing body of the Italian judiciary.

¹⁷ Unlike the United States, in which prosecutors are responsible for bringing cases against those accused of criminal activity, and are strictly part of the executive branch, in Italy prosecutors are part of the judicial branch. Their competence to bring cases against defendants overlaps with that of investigative judges. As such, I will often use the term prosecutor in tandem with magistrates or judges.

¹⁸ Since 2015, the antimafia prosecutorial agencies have been granted competency in terrorism cases as well as organized crime. Decreto-Legge 18 febbraio 2015, n.7, convertito con modificazioni dalla L. 17 aprile 2015, n. 43, G.U. 20/04/2015, n. 91, art. 10 (It.). See also CONSIGLIO SUPERIORE DELLA MAGISTRATURA, ORGANIZZAZIONE DELLE DIREZIONI DISTRETTUALI ANTIMAFIA, Circolare n. 2596 del 13 febbraio 1993 e Successive Modifiche (Feb. 13, 1993), https://www.csm.it/web/csm-internet/norme-e-documenti/dettaglio/-/asset_publisher/YoFfLzL3vKc1/content/organizzazione-delle-direzioni-distrettuali-antimafia (accessed 4 Dec. 2021).

¹⁹ Author interview, DDA prosecutor in Palermo, Jan. 28, 2022.

²⁰ The organization is now known as the Direzione Nazionale Antimafia e Antiterrorismo (National Antimafia and Antiterrorism Directorate). Since the extension of competency of the DNA to include antiterrorism is outside the scope of my period of study, in this dissertation I will refer to the DNA by its original name.

²¹ ALISON JAMIESON, *THE ANTIMAFIA* (1999).

²² *Direzione Nazionale Antimafia e Antiterrorismo*, MINISTERO DELLA GIUSTIZIA (Feb. 3, 2021), https://www.giustizia.it/giustizia/it/mg_2_10_1.page# (accessed 4 Dec. 2021).

In order to be understood as an agency of competent enforcement, the DNA and DDA must be understood in the context of their coordinated function. On their own, neither is a competent enforcement agency by the terms of my theory—the DNA does not conduct investigations and the DDA operates only at a local level. However, these bodies were established by the same legislation²³ and are intended to operate in a coordinated fashion. In essence, the DDA offices carry out intensive operations based on their knowledge of the local criminal context, while the DNA maintains a national perspective, ensuring that investigations can be carried out effectively across the country.

III. Methodology

In this chapter, I assess Italy's 1991-1992 establishment of the competent enforcement bodies described in the previous section. According to my theory, this reform should be highly controversial, as it goes beyond the changes that were feasible at the time of the initial shift in public threat perception. I expect this change to take place in the context of sustained public fear of organized crime as a national threat. This is most likely to occur where reformers are able to portray the relevant criminal organizations as relatively unified and cohesive. I therefore expect reformers to emphasize the structure of the criminal organizations as a key reason for the need for institutional development. I argue that success of the reformist push to establish competent enforcement bodies was a result of continued public fear of Mafia violence carried out in the wake of the Maxiprocesso. As that trial had established Cosa Nostra as a unified and hierarchical organization (the Buscetta Theorem, discussed below), it enabled reformers to make the case that

²³ Decreto-Legge 20 novembre 1991, n. 367, convertito con modificazioni dalla L. 20 gennaio 1992, n. 8, G.U. 20/01/1992, n.15 (It.).

mafia organizations were sufficiently strong and cohesive to act as a shadow government capable of posing a challenge to the Italian state itself.

I consult the online archives of major Italian newspapers in order to assess the manner in which elites (including reformists, neutrals, and anti-reformists), discussed the problem of organized crime and the ways in which this discussion was filtered through the national press. I consider three of the main national newspapers: *Corriere della Sera*, *La Repubblica*,²⁴ and *La Stampa*.²⁵ These are prominent papers with national circulation and relatively centrist political affiliation.²⁶ Since I have access to complete archives of these papers, I am able to trace their coverage of key events throughout my period of study.

I analyze these newspapers for two main purposes: to present the discussion surrounding organized crime in the years leading up to reform the Italian public would have seen it and to assess how the elites spoke to the public about the nature of the Mafia threat following the events of 1982 (*see* Chapter IV). In doing so, I attempt to understand how the Italian public would have perceived the Mafia at this time. Of course, as discussed in the previous chapter, media narratives are largely driven by elite actors, and often had partisan affiliations. Therefore, no media source can be considered fully representative of the general public opinion. Where possible, I refer to public opinion data, which became somewhat more available in the years discussed in this chapter. Nonetheless, there is not consistently available public opinion data on attitudes around organized crime for the time that I am studying. A cross-section of media

²⁴ *La Repubblica* was not considered in Chapter IV because its online archive only extends back to 1984. However, because it is one of the major news media sources in Italy, I include it here. JOSÉ L. ALVAREZ ET AL., THE MANAGEMENT PUBLISHING INDUSTRY IN EUROPE, 31-32, 70 (Oct. 1999).

²⁵ Other media sources are considered, particularly when they appear in archival records. However, the five newspapers discussed in this paragraph are the only ones that are considered systematically.

²⁶ While still a relatively centrist periodical, *La Repubblica* is somewhat more progressive than *Corriere della Sera* or *La Stampa*. JOSÉ L. ALVAREZ ET AL., THE MANAGEMENT PUBLISHING INDUSTRY IN EUROPE, 72-73 (Oct. 1999).

presentations therefore continues to allow me to present a partial representation of the narratives present in Italian society at the time.

One difference from the analytical approach taken towards newspapers in the previous chapter is worth noting. In Chapter IV, my analysis was largely focused on public responses to major events, particularly violent attacks, in order to assess the public and media responses to specific periods of criminal visibility. In that context, it was important to constrict the time period of media coverage considered in order to avoid conflating the response to an earlier attack with that to a later attack. In this chapter, I assume that public perception of the Mafia has already shifted based on the events discussed in Chapter IV. Since in this part of the theory I am concerned with the general rhetorical developments around organized crime, I am less focused on comparing the impact of specific events. As such, I do not impose rigid time limits around events being discussed.

In assessing the government response, I rely on a combination of archival documents, legislative records, and secondary source material. I draw on government and party records gathered from national archives over the course of approximately three months in Rome.²⁷ In addition, I consult publicly available records of legislative materials, including parliamentary committee reports and debates, as well as the media reports discussed above. Finally, I include statements from current and former legal practitioners who I interviewed during field research in Palermo.²⁸ Using this material, I process trace the development of the government response to

²⁷ These are the same archives mentioned in Chapter IV: the Ministry of Interior records, available at the Archivio Centrale dello Stato; the records of the PCI, available at the Fondazione Gramsci; and records of the DC, available at the Istituto Luigi Sturzo.

²⁸ For purposes of confidentiality, the names of these individuals have been removed.

the Mafia in the wake of the Maxiprocesso, observing the relationship between rhetoric about the Mafia's structure and the development of competent enforcement bodies.²⁹

IV. The Italian Case

a. *Background to Reform: The Aftermath of the Maxiprocesso*

i. The Buscetta Theorem

On December 17, 1987, the Maxiprocesso came to a close. Of the 452 defendants charged, 338 were found guilty, in what was the largest legal victory against the mafia in Italian legal history.³⁰ The new criminal provisions of the Rognoni-La Torre Law, and especially 416-bis, were particularly important to the success of the prosecution. In order to make the case that Cosa Nostra satisfied the requirements of 416-bis, the prosecution relied on the “Buscetta Theorem.”³¹ This theorem was named for Tommaso Buscetta, the so-called “Boss of Two Worlds.” Buscetta was a high-ranking mafioso who had turned state's witness when the head of the Corleonesi clan, Totò Riina, killed several members of Buscetta's family in the course of Riina's takeover of Cosa Nostra.³²

Over the course of the investigation into Cosa Nostra, Buscetta had provided judges with a detailed description of the structure, history, and rules of Cosa Nostra, which he described as rigidly hierarchical and governed by a single entity known as “the Commission.”³³ According to Buscetta, the approval of the Commission was required for particularly important murders, such

²⁹ David Collier, *Understanding Process Tracing*, 44 PS: POL. SCI. & POL 823 (2011).

³⁰ Roberto Suro, *338 Guilty in Sicily in a Mafia Trial, 19 Get Life Terms*, N.Y. TIMES, Dec. 17, 1987, at A1; Umberto Rosso, *Soddisfatta la 'Palermo Degli Onesti,' ma la Città Sa Che la Lotta Non*, LA REPUBBLICA, Dec. 17, 1987.

³¹ Franco Coppola, *I Giudici Hanno Creduto a Buscetta*, LA REPUBBLICA, Dec. 17, 1987.

³² For a discussion of Buscetta's decision to turn state's witness, see ALEXANDER STILLE, EXCELLENT CADAVERS 94-98 (2011) (1995).

³³ For a discussion of Buscetta's revelations, see ALEXANDER STILLE, EXCELLENT CADAVERS Chapter 7 (2011) (1995). See also GIOVANNI FALCONE & MARCELLO PADOVANI, COSE DI COSA NOSTRA (2017) (1991)

as those of the “excellent cadavers” of Palermo.³⁴ This information allowed prosecutors to argue that Cosa Nostra was a unified entity, and that the leadership of the organization could be held liable for murders carried out by lower-ranked mafiosi. The court’s acceptance of Buscetta’s argument in the Maxiprocesso reflected this interpretation of Cosa Nostra and confirmed an official understanding of the Sicilian mafia as a unitary, hierarchical organization which met the requirements of a mafia-type association, as defined in the Rognoni-La Torre Law.³⁵

Giovanni Falcone, one of the leading investigators of the Maxiprocesso, noted the importance of the court’s recognition of the Buscetta Theorem for establishing Cosa Nostra as an organization that could reach beyond Palermo: “the existence of a Cosa Nostra assembly is recognized. The uniqueness of the mafia comes out. There is not only the “dome,” [the Mafia governing body] referred to as the Palermo assembly. This approach goes further, admitting the existence of a regional organization.”³⁶ *Corriere della Sera* emphasized the importance of the Buscetta Theorem in securing the outcome of the Maxiprocesso:

“Don Masino’s [Buscetta’s] ‘theorem’ is confirmed as the overwhelming force capable of revealing the hidden truths of a deeply rooted and powerful, connected and branched crime; truths considered inaccessible for years, unprovable until the moment of the great ‘confessions.’ The story proved to be a steel pick capable of unhinging, crushing an organization that binds accomplices with a pact for life and sends death to the enemies, traitors and their relatives.”³⁷

³⁴ ALEXANDER STILLE, *EXCELLENT CADAVERS* 101 (2011) (1995).

³⁵ Observers noted that there were limitations with regards to the practical implications of the Court’s acceptance of the Buscetta Theorem. In the words of Pietro Grasso, “We have recognized the Buscetta theorem in part. The ‘commission’ exists. But for criminal responsibility, proof is needed, even the indication of a specific determination aimed at carrying out a murder. And for example, the missed life sentence for Pippo Calò [a prominent Cosa Nostra boss] is the result of this choice. There are some things that leave room for doubt.” (“*Il teorema Buscetta lo abbiamo riconosciuto in parte. La ‘commissione’ esiste. Ma per la responsabilità penale occorre la prova, anche l’indizio di una determinazione specifica rivolta alla realizzazione di un omicidio. E per esempio il mancato ergastolo per Pippo Calò è il frutto di questa scelta. Ci sono delle cose che lasciano il dubbio.*”). Felice Cavallaro, “*Così Abbiamo Condannato la Cupola*,” *CORRIERE DELLA SERA*, Dec. 17, 1987.

³⁶ Felice Cavallaro, “*Così Abbiamo Condannato la Cupola*,” *CORRIERE DELLA SERA*, Dec. 17, 1987 (“*risulta riconosciuta l’esistenza di un vertice di Cosa nostra. Viene fuori l’unicità della mafia. Non esiste solo la “cupola,” indicato come vertice palermitano. Questa sentenza va oltre, ammettendo l’esistenza di un livello di organizzazione regionale*”).

³⁷ Paolo Graldi, *Buscetta, la Sua Verità Ha Smentellato un Potere di Morte*, *CORRIERE DELLA SERA*, Dec. 17, 1987 (“*Il ‘teorema’ di Don Masino si conferma come la forza travolgente capace di svelare le verità occulte di una*

The trial was in many ways the signature triumph of the early reformist movement in the Italian government. In the aftermath of the verdict, Palermo judge Pietro Grasso emphasized the importance of the government's contributions and described the outcome of the trial in terms of the State's willingness to take concrete steps against organized crime. "As Minister of Justice, [Virginio Rognoni]³⁸ was very close to us. It was he who transformed the will of the government into concrete facts. I am also thinking of Parliament with its laws."³⁹

ii. The Case for Continued Reform

In addition to highlighting the success of the new laws, the trial also demonstrated the ability of small teams of dedicated investigators to build highly successful cases against mafia groups and turned antimafia judges into figures of national importance. In particular, the Palermo antimafia pool, a small team of investigative judges who focused exclusively on building cases against Cosa Nostra, was largely responsible for the outcome of the Maxiprocesso. The pool was originally conceptualized by judge Rocco Chinnici.⁴⁰ After Chinnici was murdered by Cosa Nostra in 1983, the pool was formalized by judge Antonino Caponnetto.⁴¹ The pool system was inspired by the experience of Northern Italian judges who had developed specialized units to prosecute terrorism in the 1970s. By combining the resources of a number of highly specialized

criminalità radicata e potente, collegata e ramificata; verità considerate per anni inaccessabili, indimostrabili fino al momento delle grandi 'confessioni.' Il racconto si è rivelato un grimaldello d'acciaio in grado di scardinare, schiacciare un'organizzazione che lega i complici con un patto per la vita e manda la morte ai nemici, ai traditori e ai loro parenti.")

³⁸ Although he was Minister of the Interior when the Rognoni-La Torre Law was passed, by the time of the Maxiprocesso verdict, Virginio Rognoni was Minister of Justice.

³⁹ Felice Cavallaro, "Così Abbiamo Condannato la Cupola," *CORRIERE DELLA SERA*, Dec. 17, 1987. (*Da ministro della Giustizia [Rognoni] ci fu veramente vicino. Fu lui che trasformò in fatti concreti la volontà del governo. Penso anche al Parlamento con le sue leggi . . . alla magistrature e al popolo, cioè ai giudici popolari, sempre attenti, capaci di prendere miliardi di appunti utilissimi in camera di consiglio, attivi, all'altezza dei compiti.*)

⁴⁰ Rocco Chinnici, *L'inventore del Pool Antimafia*, FONDAZIONE FALCONE (July 29, 2018), <https://www.fondazionefalcone.org/fatti/rocco-chinnici-linventore-del-pool-antimafia/> (accessed 23 Dec. 2021).

⁴¹ ALEXANDER STILLE, *EXCELLENT CADAVERS* 89 (2011) (1995).

judges, the pool was able to most effectively manage the significant quantity of evidence necessary to try these complex cases.⁴² In addition, by spreading out knowledge among a small group, it prevented any single investigator from holding all of the information about a case and therefore becoming an easy target for corruption or assassination.⁴³ The success of the pool, which had developed organically in the context of the violence of Palermo, provided a model for other antimafia prosecutors seeking the most effective institutional forms of prosecution.

Nonetheless, the results of the trial were far from secure. The defendants were guaranteed a right of appeal. The glacial pace of the Italian court system, combined with the risk of corruption or intimidation within the judiciary, made it very possible that the hard-won convictions of the trial would be overturned in a few years. Accordingly, Giovanni Falcone had a somewhat muted take on the significance of his victory in the Maxiprocesso. In an interview with *La Repubblica*, Falcone acknowledged the verdict as a starting point for combatting the mafia but argued that it was foolish to believe that even the conviction of several hundred mafiosi would be sufficient to destroy Cosa Nostra.⁴⁴ If Italy wished to have long-term success against mafia groups, it would need to develop new institutions designed to target this form of criminality.

According to Falcone, the Italian government needed to go beyond the Maxiprocesso by carrying out sustained campaigns against mafia groups.⁴⁵ Falcone advocated for the establishment of new high-quality policing institutions that would be adequately staffed and prepared to work closely with investigative judges in building cases.⁴⁶ It was not a new argument. Many of those who had been involved with the government's fight over the course of

⁴² ALEXANDER STILLE, *EXCELLENT CADAVERS* 89 (2011) (1995).

⁴³ ALEXANDER STILLE, *EXCELLENT CADAVERS* 89 (2011) (1995).

⁴⁴ Franco Coppola, *Quel Delitto Perché: Parla Falcone*, LA REPUBBLICA, Dec. 18 1987.

⁴⁵ Franco Coppola, *Quel Delitto Perché: Parla Falcone*, LA REPUBBLICA, Dec. 18 1987.

⁴⁶ Franco Coppola, *Quel Delitto Perché: Parla Falcone*, LA REPUBBLICA, Dec. 18 1987.

the 1980s had pointed to the importance of specialized law enforcement, including legislators and members of the law enforcement bureaucracy.⁴⁷ Yet the institutions that had been created, such as the antimafia pool itself, remained primarily locally based.⁴⁸

Although Cosa Nostra had continued its campaign of violence against state officials and journalists from 1983-1985, its use of visible violence decreased notably during the Maxiprocesso itself.⁴⁹ Stille attributes this decrease in violence to Cosa Nostra's interest in

⁴⁷ See e.g., Statement of Senator Sergio Flamigni in the Chamber of Deputies, Sept. 22, 1983 (found in Archivio Centrale dello Stato, Ministry of Interior, Folder 32, 862) (speaking on the subject of antimafia policing). "I would like to know what we intend to do regarding the specialization of personnel in the fight against the mafia" ("*vorrei sapere cosa si intenda fare in merito alla specializzazione del personale nella lotta contro la mafia.*"); Memo from the Procura Generale Della Repubblica Presso la Corte di Appello di Roma, 4-7, Mar. 1983 (found in Archivio Centrale dello Stato, Ministry of Interior, Folder 36, 214-17) (proposing enhancing the police in part by improving specialization in combating organized crime); Memo from the Comando Generale della Guardia di Finanza to the Presidenza del Consiglio dei Ministri, Dipart.to Affari Giuridici-Legisl.vi e Rapp.ti Organi Costituzionali, Emendamenti Governativi alle Iniziative Legislative Concernenti le Misure di Prevenzione e la Lotta alla Criminalità Organizzata, May 10, 1982 (found in Archivio Centrale dello Stato, Ministry of Interior, Folder 36, 248-50) (describing reforms needed in the Guardia di Finanza to combat organized crime); Senato della Repubblica, Disegno di Legge N. 578, Sept. 11, 1982 (found in Archivio Centrale dello Stato, Ministry of Interior), Folder 36, 45) (describing the need for specialized judges in a modern society) ("Finally, with articles 6 and 7 it was intended, on the one hand, to relieve the citizen, who is not obliged by free choice to provide services to the community, such as sacrificing his life, from the duty of being a judge in highly dangerous proceedings, on the other hand, it corresponds to that felt need - typical of modern society - of specialization in judges for the purpose of fighting subversive and mafia crime") ("*Con gli articoli 6 e 7 si è inteso, infine, da un lato sollevare il cittadino, non obbligato per libera scelta a prestazioni nei confronti della comunità, tali da richiedere anche il sacrificio della vita, dal dovere di essere giudice in procedimenti altamente pericolosi, dall'altro corrispondere a quella avvertita esigenza—propria della società moderna—di una specializzazione anche nei giudici ai fini della lotta contro la criminalità eversiva e mafiosa.*"); Memo from the Ministry of the Interior to the Alto Commissario, Attività di Contrasto alla Criminalità Mafiosa—Linee di Indirizzo—(Oppure Directive) 2 (date unknown, most likely between 1985 and 1986) (found in Archivio Centrale dello Stato, Ministero dell'Interno, Folder 34, 306).

⁴⁸ The most significant exception to this was the Alto Commissario (discussed in Ch. IV), coordinating body for antimafia policing, which operated at both the national and local levels. As discussed at greater length below, the Alto Commissario was widely considered to be too weak and ineffectual to function.

⁴⁹ Stille notes the general reduction of homicide in Palermo during this time. ALEXANDER STILLE, EXCELLENT CADAVERS 199 (2011) (1995). The murdered public figures were as follows: Domenico Russo (police officer, killed 1982); Calogero Zucchetto (police officer, killed 1982); Carmelo Cerruto (police officer, killed 1982); Giangiacomo "Ciaccio" Montalto (magistrate, killed 1983); Mario D'Aleo (carabiniere, killed 1983); Giuseppe Bommarito (carabiniere, killed 1983); Pietro Morici (carabiniere, killed 1983); Rocco Chinnici (magistrate, killed 1983); Mario Trapassi (carabiniere, killed 1983); Salvatore Bartolotta (carabiniere, killed 1983); Giuseppe Fava (journalist, killed 1984). Giuseppe "Beppe" Montana (police officer, killed 1985); Antonino "Ninni" Cassarà (police officer, killed 1985); Roberto Antiochia (police officer). In addition, a judge was targeted in an attack that ultimately killed a mother and her young twins. There were no excellent cadavers in 1986 or 1987. ALISON JAMESON, THE ANTIMAFIA (1999); *Cronologia su Mafia e Antimafia*, PARLAMENTO ITALIANO: SPORTELLO SCUOLA E UNIVERSITÀ COMMISSIONE PARLAMENTARE ANTIMAFIA, <https://web.camera.it/bicamerale/leg15/commbicantimafia/cronologiamafieantimafia/schedabase.asp> (accessed 28 Feb. 2022). This list admittedly undercounts mafia violence, since it includes neither victims in other parts of Italy nor those who were not public figures. However, given the historical novelty and importance of "excellent cadavers"

avoiding negative attention while the trial was ongoing, and notes that their ability to do so successfully reflected the group's "extraordinary control of the city."⁵⁰

Once the Maxiprocesso ended in mass conviction, Cosa Nostra had little incentive to remain quiescent. 1988 would mark another year of excellent cadavers. On January 12, Cosa Nostra killed Giuseppe Insalaco, a former mayor of Palermo who had tried to clean up the city's contracts.⁵¹ Two days later police officer Natale Mondo was murdered.⁵² In September, mafiosi killed retired judge Alberto Giacomelli, Mauro Rostagno, a journalist and antimafia activist, as well as judge Antonino Saetta, who had a reputation for incorruptibility in mafia cases, and had been scheduled to hear an appeal of the Maxiprocesso.⁵³ Saetta's death in particular was reported in the Italian press as a threat to the judiciary as the appeals approached.⁵⁴ In response to the violence, the government increased some of the powers of the Alto Commissario, the investigative unit formed in the wake of the Dalla Chiesa murder.⁵⁵

iii. Analysis

The Maxiprocesso marks a key starting point for thinking about the extensiveness of Italian antimafia institutions. Prior to this trial, there was little concrete evidence that institutional reforms could secure significant victories against organized crime. The successful conviction of over 300 mafiosi demonstrated that the Rognoni-La Torre Law could, in the hands of teams of

in Cosa Nostra's campaign of violence, I restrict my focus here. For a full list of mafia victims, see *Vittime Mafia – Per Non Dimenticare*, VITTIME MAFIA (Nov. 28, 2018), <https://vittimemafia.it/vittime/> (accessed 22 Feb. 2022). The full list of "excellent cadavers" and their dates of death can also be found in Appendix C.

⁵⁰ ALEXANDER STILLE, EXCELLENT CADAVERS 200 (2011) (1995). This argument is consistent with Lessing's findings about criminal groups' tendency to condition violence on state repression. BENJAMIN LESSING, MAKING PEACE IN DRUG WARS (2017).

⁵¹ ALEXANDER STILLE, EXCELLENT CADAVERS 213 (2011) (1995).

⁵² ALEXANDER STILLE, EXCELLENT CADAVERS 213 (2011) (1995).

⁵³ ALEXANDER STILLE, EXCELLENT CADAVERS 263 (2011) (1995). Saetta was murdered alongside his mentally handicapped son, Stefano.

⁵⁴ See e.g., Giulio Anselmi, *Le Parole e Le Pallottole*, CORRIERE DELLA SERA, Sept. 27, 1988; Giampaolo Pansa, *Due Delitti Annunciati*, LA REPUBBLICA, Sept. 27, 1988; Saverio Lodato, *Torna il Mitra Contro i Giudici*, L'UNITÀ, Sept. 27, 1988.

⁵⁵ ALISON JAMIESON, THE ANTIMAFIA (1999).

highly specialized prosecutors, result in the conviction of large swathes of criminal organizations. Moreover, in recognizing the Buscetta Theorem as a basis for the conviction of accused mafiosi, the Maxiprocesso court provided legal recognition for the claim that Cosa Nostra was a single, unified hierarchy with a reach beyond the confines of Palermo. Advocates for reform would therefore have a strong basis for arguing that the Mafia's structure was a critical element to understanding the threat that the group posed.

Despite the legal success of the Maxiprocesso, reformers also had a good case that more remained to be done to bolster the state's power vis-à-vis mafia groups. In particular, the return to violence by Cosa Nostra after the trial demonstrated that the threat posed by this group continued to exist, notwithstanding the government's ability to secure convictions against large swathes of its members. The Mafia's almost immediate re-engagement in its campaign of assassination against state officials and journalists demonstrated that the group retained the ability and willingness to target the state. Ultimately, the legal effectiveness of antimafia reform which had been demonstrated by the Maxiprocesso, combined with the continued violence of Cosa Nostra, provided reformers in Italy with strong incentives to seek to continue building the state's institutional capacity to combat organized crime.

b. Setbacks in the Late 1980s

Beginning in the late 1980s, antimafia activists sought to build on the legacy of the Maxiprocesso by developing specialized anti-organized crime law enforcement units. These would include both policing and judicial organs. As discussed, Giovanni Falcone was an early advocate for specialized police units to coordinate with investigating judges. In addition, the experience of the antimafia pool presented a model for reform within the judiciary itself. By 1989, the *Consiglio Superiore della Magistratura* had recognized such pools as a legitimate

means of investigating organized crime. In its annual report, the Parliamentary Antimafia Commission noted that

“The *Consiglio Superiore della Magistratura* carried out an investigation into the functioning of the pools of judges involved in antimafia activity; in a final document it confirmed the validity of investigations entrusted to various magistrates with professionalism in the sector and adequate technical-legal specializations necessary to acquire historical memory and improve their working method.”⁵⁶

i. Political Pushback

Despite such apparently encouraging statements, in the late 1980s reformers like Falcone encountered significant resistance to their continued antimafia efforts from two main sources: political competition and judicial infighting. Beginning in the mid-1980s, a series of investigations in Northern and Central Italy began to uncover corrupt transactions implicating high-level members of the Italian Socialist Party (*Partito Socialista Italiano*, PSI). Though the investigations were buried in red tape in the Rome prosecutors’ offices, they nonetheless spooked many in the PSI, who became increasingly concerned about the threat of a robust judiciary. In the 1987 electoral campaign, the Socialists, in alliance with the Radical Party (*Partito Radicale*, PR) launched a frontal attack against the judiciary.⁵⁷

Particularly aggressive was Claudio Martelli, the young protégé of Socialist leader Bettino Craxi. Martelli, who described Palermo as operating with a “shadow government of judges and

⁵⁶ COMMISSIONE PARLAMENTARE D’INCHIESTA SUL FENOMENO DELLA MAFIA E SULLE ALTRE ASSOCIAZIONE CRIMINALI SIMILARI, RELAZIONE ANNUALE, Doc. XXIII n. 12, X Legislatura 18-19 (approved Dec. 20, 1989). (“*Il Consiglio superiore della magistratura ha svolto un’indagine conoscitiva sul funzionamento dei pool di giudici impegnati nell’attività antimafia; in un documento conclusivo ha confermato la validità di indagini affidate a diversi magistrati dotati di professionalità nel settore e di adeguate specializzazioni tecnico-giuridiche - necessarie per acquisire una memoria storica e per il miglioramento del metodo di lavoro.*”). The *Consiglio Superiore della Magistratura* also argued that it was important that magistrates were rotated among the pools.

⁵⁷ ALEXANDER STILLE, EXCELLENT CADAVERS 206 (2011) (1995). The Socialists were somewhat surprising antagonists to the reform effort, as they had historically been quite hostile to the mafia. See JOHN DICKIE, COSA NOSTRA 136, 251 (2004).

Jesuits,”⁵⁸ ran for Parliament from the Sicilian capital.⁵⁹ In doing so, he actively campaigned against the judiciary. The PR, ostensibly campaigning on a platform of defendants’ rights, openly sought the criminal vote.⁶⁰ The Radicals ran membership drives in prisons, including the Ucciardone Prison of Palermo, which housed leaders of Cosa Nostra.⁶¹ In the context of such political maneuvering, Christian Democrat mayor of Palermo Leoluca Orlando excluded the PSI from his governing coalition, arguing that they were too dependent on mafia votes.⁶² Both the PSI and PR achieved significant electoral success in Sicily in the 1987 election, driving both Christian Democracy (*Democrazia Cristiana*, DC) and Italian Communist Party (*Partito Comunista Italiano*, PCI) votes on the island to surprisingly low levels.⁶³

The victories of politicians such as Martelli seemed to indicate a new threat to the Italian antimafia judiciary. While the PSI had not campaigned specifically in opposition to the antimafia pool, the Socialists were perceived as being opposed to efforts to build the state’s capacity to combat organized crime. And it was not only the PSI that appeared hostile towards the antimafia judges--the new national government that was formed in the wake of the 1987 election was similarly cold. Jamieson (2001) describes this period as an effort on the part of the government to remove the Mafia from public consciousness and return to a state of normalcy.⁶⁴ Head of the Palermo investigative office Antonino Caponnetto recalled how the elections resulted in a serious reduction of the resources of the antimafia pool. “Before, we got anything we wanted: Xerox machines, computers, airplanes, the helicopter to protect Falcone. Suddenly it all

⁵⁸ Felice Cavallaro, *Martelli: Palermo è in Imbroglia*, CORRIERE DELLA SERA, Oct. 14, 1987.

⁵⁹ At the time, politicians could run from multiple districts at the same time.

⁶⁰ ALEXANDER STILLE, EXCELLENT CADAVERS 206-07 (2011) (1995).

⁶¹ ALEXANDER STILLE, EXCELLENT CADAVERS 206-07 (2011) (1995).

⁶² Martin J. Bull and James L Newell, *Italian Politics and the 1992 Elections: From 'Stable Instability' to Instability and Change*, 46 PARLIAMENTARY AFF. 203, 213 (Apr. 1993).

⁶³ ALEXANDER STILLE, EXCELLENT CADAVERS 207 (2011) (1995).

⁶⁴ ALISON JAMIESON, THE ANTIMAFIA (1999).

stopped.”⁶⁵ In the context of this political hostility, it was virtually impossible for antimafia reformers such as Falcone to achieve changes at a political level, particularly changes that would increase the power of the judiciary.

ii. Judicial Pushback

At the same time, the judiciary itself was divided about the future of the antimafia effort. In January 1988, Caponnetto retired from his position as head of the Palermo investigative office. His replacement was to be chosen by the CSM. Many expected that Falcone, as the most renowned magistrate in Palermo (and arguably beyond) would be chosen to replace him. However, following an extremely contentious election process, the CSM nominated the more senior magistrate Antonino Meli.⁶⁶ Motivations for the choice varied, but included personal jealousy and bureaucratic rigidity, with some members arguing that appointing Falcone would set a negative precedent of ignoring seniority.⁶⁷ Meli, who had a contentious relationship with Falcone, disbanded the antimafia pool and reallocated casework within the Tribunal of Palermo so that judges would work on all types of cases.⁶⁸ In short, highly experienced antimafia judges such as Giovanni Falcone would be expected to spend their time on run-of-the-mill crimes such as domestic abuse and burglaries. The result would be a severe weakening of the institutional competence in organized criminal prosecution within the Palermitan magistracy. Paolo Borsellino, a former leading member of the antimafia pool and close friend of Falcone,

⁶⁵ Found in ALEXANDER STILLE, *EXCELLENT CADAVERS* 209 (2011) (1995).

⁶⁶ In general, Italian magistrates are promoted on the basis of seniority, so this was not an atypical decision on its face. However, given Falcone’s unique position in the Palermitan legal system, the CSM’s choice not to promote him was seen by many as a repudiation of Falcone himself.

⁶⁷ For a detailed discussion of the election of Meli and the implications for Falcone, *see* ALEXANDER STILLE, *EXCELLENT CADAVERS* Chapter 13 (2011) (1995).

⁶⁸ JOHN FOLLAIN, *VENDETTA: THE MAFIA, JUDGE FALCONE, AND THE QUEST FOR JUSTICE* 40 (2012).

denounced the decision, stating “I have the unpleasant feeling that somebody wants to take a step backwards.”⁶⁹

iii. Analysis

Borsellino’s statement reflects the role of this time period within my theory. The years following the Maxiprocesso were part of a period of stalling within the reform movement. The Rognoni-La Torre Law had achieved an initial victory, but the strength of this law remained to be determined by the appellate process. At the same time, reformers who were invested in the continued success of the antimafia movement, particularly judges such as Giovanni Falcone, were interested in future changes, such as the establishment of specialized law enforcement bodies. The antimafia pool, which was largely responsible for the Maxiprocesso, could not be called a full institution of competent enforcement, as it was not operative at the national level, but only in Palermo. Nevertheless, it was a significant institutional tweak that provided a model of what specialization could look like within the judiciary. At the same time, such a judicial body appeared to be a threat to two distinct groups. Politicians, particularly within the PSI, feared a strong judiciary’s ability to investigate their corrupt activities. At the same time, powerful actors within the judiciary objected to the growing power of the antimafia pool as inimical to the accepted bureaucratic structure.

Since the antimafia pool was not a full institution of competent enforcement, this event does not qualify theoretically as a full instance of rollback. Nevertheless, it demonstrates many of the same characteristics. In particular, political and bureaucratic leaders saw the rise of specialized antimafia judges as a greater threat than the mafia itself. In a political context in which the prevailing approach was an attempt to return to ‘normalcy,’ such actors were able to

⁶⁹ Quoted in JOHN FOLLAIN, VENDETTA: THE MAFIA, JUDGE FALCONE, AND THE QUEST FOR JUSTICE 40 (2012).

use these mechanisms to prevent further institutional development for a time and to dismantle one of the most important local institutions that had been established. However, the political environment, and the prospects for institutional development, would change significantly in the 1990s.

c. Return of Reformism in the 1990s

In the years immediately following the Maxiprocesso, it appeared that the prospects for additional institutional reform were slim. However, beginning in 1991, the reformist movement experienced a significant resurgence. A series of factors, both domestic and international, converged to shift the political calculations of key Italian leader such as Claudio Martelli.⁷⁰ In addition, a series of high-profile mafia attacks made the government's push for a 'return to normalcy' untenable. The result was a new coalition of anti-organized crime reformers willing to advocate for the creation of new and highly controversial institutions.

i. Structural Changes

The end of the Cold War began a period of immense change in Italian politics. Stille (2011) points to a series of major historical shifts which facilitated the political movement for reform.⁷¹ The first factor was the dissolution of the PCI. With the fall of the Berlin Wall and the breakdown of the Soviet Union, Communist parties faced an unprecedented challenge. In Italy, where the PCI had been the main opposition party since the end of World War II, this change was strongly felt. In an effort to maintain a role in the political system, PCI leader Achille Occhetto launched the so-called *svolta* (turning point) in 1989. Occhetto argued that the PCI would need to rebrand itself, and he undertook the formation of a new social-democratic party

⁷⁰ For a discussion of the factors that impacted Martelli's shift, see ALEXANDER STILLE, EXCELLENT CADAVERS Chapter 20 (2011) (1995).

⁷¹ ALEXANDER STILLE, EXCELLENT CADAVERS, 338-41 (2011) (1995).

known as the Democratic Party of the Left (*Partito Democratico della Sinistra*, hereinafter PDS).⁷² However, the party split, with a significant contingent of the former PCI forming the Communist Refoundation (*Rifondazione Comunista*, hereinafter RC).⁷³ The result was a severely weakened left wing of Italian politics.

The second factor was the weakening of the DC. While the fall of the PCI might have seemed like a win for the long-dominant Christian Democrats, it would undermine them in the long term. The DC, which had dominated Italian politics for virtually the entire postwar period, owed much of its success to pervasive anti-communist sentiment. With the PCI no longer a threat, other political actors could argue that there was no need to endure the corruption and inefficiency that had long accompanied Christian Democracy governance. Northern separatist parties, such as Umberto Bossi's Lombard League (*Lega Lombarda*, hereinafter LL)⁷⁴ emphasized the corruption and possible mafia ties⁷⁵ of the existing parties and the broader political system.⁷⁶ Parties such as the Lombard League, which emphasized regional politics, appeared anachronistic; however, beginning in the late 1980s, they began to win significant victories in the North of Italy, in large part on the basis of their opposition to the traditional Italian "party-ocracy."⁷⁷

⁷² For a discussion of the dissolution of the PCI, see Martin J. Bull, *The Unremarkable Death of the Italian Communist Party*, Martin J. Bull, *The Unremarkable Death of the Italian Communist Party*, 5 ITALIAN POL. 23 (1991); Frank Belloni, *The Italian Communist Party: Towards Dissolution and the Unknown*, 6 ITALIAN POL. 83 (1992).

⁷³ For a timeline of the formation of the RC, see *La Scissione di Rifondazione Comunista*, CORRIERE DELLA SERA, <https://www.corriere.it/speciali/Ds/rifondazione.shtml> (accessed 23 Feb. 2022).

⁷⁴ In 1991, Lega Lombarda formally merged with other Northern regionalist parties into a single party known as the Northern League (*Lega Nord*). Lega Nord's main objective was the autonomy of the North of Italy from the impoverished and ostensibly more corrupt South.

⁷⁵ Umberto Bossi, *Tutte Le Colpe di Agnelli & C.*, LA REPUBBLICA, Apr. 25, 1991; Guido Passalacqua, *La Lega Corre Per il Primo Posto*, LA REPUBBLICA, Dec. 11, 1990 (calling the Christian Democrats the "party of the mafia").

⁷⁶ Robert Leonardi and Monique Kovacs, *The Lega Nord: The Rise of a New Italian Catch-all Party*, 8 ITALIAN POL. 50 (1993); George Newth, *The Roots of the Lega Nord's Populist Regionalism*, 53 PATTERNS OF PREJUDICE 384, 393 (Aug. 2019).

⁷⁷ ALEXANDER STILLE, EXCELLENT CADAVERS 339 (2011) (1995).

Finally, international factors impacted the considerations of Italian political leaders. In 1992, Europe was set to integrate its economy, and Italy was poised to enter at a disadvantage. Heavy regulations and state involvement with industry had undermined the competitiveness of Italian industry.⁷⁸ In the face of increased competition from across Europe, the collusive relationship that had long existed between business and government became increasingly unappealing.⁷⁹ Moreover, European leaders were concerned that by opening their markets to Italy, they risked importing Italian organized crime problems as well. German chancellor Helmut Kohl openly expressed concern about Cosa Nostra forming relationships with German terrorist groups.⁸⁰ Kohl's statements received public backlash from Italian leaders such as Minister of Interior Vincenzo Scotti, who argued that the mafia was an international phenomenon that could hardly make Italy "unpresentable" to the rest of Europe.⁸¹ Yet Kohl also received some support in Italy. Fiat executive Cesare Romiti publicly acknowledged that Kohl's concerns about the mafia as a threat to Europe were well-founded.⁸² Arguably more significantly, Giovanni Falcone pointed out that mafia groups already had some of the ties in Germany that Kohl feared.⁸³

ii. [The End of 'Return to Normalcy'](#)

In 1989, Giulio Andreotti was named prime minister. Andreotti, as discussed in Chapter IV, was a complicated political figure. A dominant force in postwar Italian politics, he had significant political support in Sicily.⁸⁴ Andreotti had maintained ties with Mafia affiliates on the

⁷⁸ See Philip Daniels, *Italy in European Union*, 33 ECON. & POL. WKLY. PE107 (Aug. 29 - Sep. 4, 1998).

⁷⁹ ALEXANDER STILLE, EXCELLENT CADAVERS 340 (2011) (1995); see also Marco Cianca, *Chi Corre e Chi Sta Fermo*, CORRIERE DELLA SERA, June 1, 1991.

⁸⁰ *L'Italia in Odore di Mafia*, CORRIERE DELLA SERA, Apr. 9, 1991

⁸¹ *Mafia, Lo Schiaffo di Kohl*, CORRIERE DELLA SERA, Apr. 10, 1991

⁸² Stefania Tamburello, *Romiti ai Politici: Kohl Ha Ragione*, CORRIERE DELLA SERA Apr. 11, 1991.

⁸³ M. Antonietta Calabrò, *Falcone D'Accordo con Bonn*, CORRIERE DELLA SERA, Apr. 11, 1991.

⁸⁴ Antonio Varsori, *Bettino Craxi and Giulio Andreotti*, in THE OXFORD HANDBOOK OF ITALIAN POLITICS 378, 380 (Erik Jones and Gianfranco Pasquino eds., 2015).

island, such as the powerful Member of the European Parliament Salvatore “Salvo” Lima.⁸⁵ Although these ties seem to have been weakened by Cosa Nostra’s campaign of violence (See Ch. IV), Andreotti was held in deep suspicion by members of the antimafia movement. In the first years of his government, there were signs that the new government would continue to avoid reform. The DC leadership placed pressure on the vocally antimafia mayor of Palermo, Leoluca Orlando, to resign.⁸⁶ However, in the face of resurgent public concern about mafia crime, the Andreotti government promised to make the fight against organized crime a priority.

The structural changes that had developed in Italian domestic and international politics placed increasing pressure on leaders to take on an antimafia stance. As early as 1989, even Giulio Andreotti spoke of the mafia as a “national emergency” that required improved coordination among the nation’s police forces.⁸⁷ At the same time, mafia violence once again garnered public attention. On May 9, 1990, Giovanni Bonsignore, a government official who had denounced waste and corruption in Sicily, was shot outside his home.⁸⁸ On September 21, 1990, Rosario Livatino, a young antimafia magistrate in Agrigento, Sicily, was assassinated. In response to the murder of Livatino, judges from around the country threatened to go on strike.⁸⁹ There was particularly strong concern about the fact that Livatino lacked an escort, and that he had been forced to travel unarmed and exposed. *Corriere della Sera* described Livatino as having been made a “candidate for martyrdom,” and a “sacrificial offering.”⁹⁰

⁸⁵ For a discussion of Salvo Lima’s connection to the Mafia, see JOHN DICKIE, *COSA NOSTRA* 224-27; 320-23 (2004); ALEXANDER STILLE, *EXCELLENT CADAVERS* 135-39, 234-35, 310-12 (2011) (1995).

⁸⁶ ALEXANDER STILLE, *EXCELLENT CADAVERS* 313-14 (2011) (1995). Orlando was an irritant to many in the DC leadership, as he maintained ties with Communists and regularly condemned corrupt members of the DC.

⁸⁷ Paolo Menghini, *Andreotti: Mafia Emergenza Nazionale*, *CORRIERE DELLA SERA*, Aug 5, 1989.

⁸⁸ ALEXANDER STILLE, *EXCELLENT CADAVERS* 314 (2011) (1995).

⁸⁹ Piero Melati, *Napoli, La Sfida Dei Giudici: Siamo Pronti a Scioperare*, *LA REPUBBLICA*, Sept. 25, 1991; Franco Coppola, *Giudici Divisi, Niente Sciopero*, *LA REPUBBLICA*, Sept. 30, 1990; Felice Cavallaro, *La Rivolta dei Magistrati*, *CORRIERE DELLA SERA*, Oct. 2, 1990, at 13. See also ALEXANDER STILLE, *EXCELLENT CADAVERS* 327 (2011) (1995).

⁹⁰ Giuliano Ferrara, *Giudici Contro Mafia, Duello Solitario*, *CORRIERE DELLA SERA*, Sept. 24, 1990, at 8.

The Livatino murder appears to have marked the end of any efforts at a 'return to normalcy.' Leaders of Parliament met to discuss the reinforcement of both the judiciary and police in the immediate aftermath of the killing.⁹¹ The President of the Republic, Francesco Cossiga, proposed the use of extraordinary measures to combat the mafia, and the establishment of a centralized prosecutor's office to focus on mafia crimes.⁹² In its analysis of Cossiga's suggestion, *Corriere della Sera* claimed that "the existence of a danger that threatens the unity of the nation from within could not be more explicit: the offensive by organized crime that has perhaps already 'compromised' the institutions in three regions of the Republic risks having 'subversive effects' on the entire Italian democratic society by limiting the 'sovereignty' of the state."⁹³

Yet it was not just murders in Sicily that caused antimafia leaders to be concerned. A wave of intimidation and political assassinations was reported in administrative elections throughout the South in the spring of 1990. In many cases this resulted in mafiosi being elected directly to government.⁹⁴ In Calabria, an infusion of government contract money had led to significant violence among the 'Ndrangheta.⁹⁵ Moreover, in Milan, crime rates rose dramatically, and prosecutors found evidence of corruption in the local government.⁹⁶ In 1990, Falcone and Milan prosecutor Ilda Boccassini concluded the so-called "Duomo Connection" investigation, which established the existence of mafia infiltration in Milan.⁹⁷

⁹¹ *Subito Le Leggi Su Polizia e Magistratura*, LA REPUBBLICA, Oct. 3, 1990.

⁹² *Cossiga: Così Si Combatte la Mafia*, CORRIERE DELLA SERA, Sept. 25, 1991.

⁹³ Antonio Padellaro, *Allarme Per Una Emergenza di Tipo Sudamericano*, CORRIERE DELLA SERA, Sept 25, 1991. ("l'esistenza di un pericolo che minaccia dall'interno la stessa unità della nazione non poteva essere più esplicito: l'offensiva della criminalità organizzata che forse ha già 'compromesso' le istituzioni in tre regioni della Repubblica rischia di avere 'effetti eversivi' sull'intera società democratica italiana limitando la 'sovranità' dello Stato").

⁹⁴ ALEXANDER STILLE, *EXCELLENT CADAVERS* 315 (2011) (1995).

⁹⁵ ALEXANDER STILLE, *EXCELLENT CADAVERS* 315-16 (2011) (1995).

⁹⁶ ALEXANDER STILLE, *EXCELLENT CADAVERS* 326-27 (2011) (1995).

⁹⁷ *Per La Duomo Connection 20 Accusati, 20 Condannati*, LA REPUBBLICA, May 26, 1992.

Indeed, over the course of 1990-1991, the Italian press increasingly referred to the “Mafia emergency” that was once again terrorizing the country,⁹⁸ noting the increase in crime in even the ostensibly safe North of Italy.⁹⁹ According to *Corriere della Sera*, the Mafia was “the gravest emergency” that the government had to resolve, one which threatened the “credibility” of the country.¹⁰⁰ Milanese member of the Parliamentary Antimafia Commission Ombretta Fumagalli Carulli expressed concern about the mafia’s expansion into Milan. According to her, the existence of the Duomo Connection “appears clear.”¹⁰¹ Carulli argued such revelations showed that “the mafia has a very clear and precise national strategy,” which specifically targeted the wealthy areas outside their traditional territorial base.¹⁰² This perception seems to have been reflective of public opinion. By the end of 1991, drugs and the mafia were surveyed as the chief national concerns in Italy.¹⁰³

iii. [Move Towards Reformism Under the Andreotti Government](#)

In the face of this rising concern, Andreotti faced growing pressure to take action against crime. Andreotti’s initial recommendations, which included new norms of transparency regarding public funds; career incentives for judges who worked in dangerous parts of the country; an increase in policing in the South; and a ban on hunting rifles,¹⁰⁴ were treated as

⁹⁸ See e.g., Massimo Nava, *Nell’Cuore del Estate in Sicilia È Sempre Emergenza*, CORRIERE DELLA SERA, Aug. 8, 1989; Giovanni Maria Bellu, *Mafia Emergenza*, LA REPUBBLICA, Apr. 12 1990; Fabrizio Rondolino, *Accuso il Governo, Tutto il Governo*, L’UNITÀ, Sept. 22, 1990; *La Piovra Dovrà Risarcire Palermo*, LA REPUBBLICA, Nov. 21, 1990; Daniele Mastrogiacomo, *Uniti Contro La Mafia, Governo e Opposizione*, LA REPUBBLICA, Sept. 20, 1990; Giorgio Frasca Polara, *Il Ministro Gava Deve Dimettersi*, L’UNITÀ, Sept. 19, 1990; Adriano Solazzio, *Emergenza Criminalità: Summit Dei Magistrati*, CORRIERE DELLA SERA, Sept. 24, 1991.

⁹⁹ See e.g., Luigi Manconi, *Denaro Sporco a Milano*, LA STAMPA, Sept. 28, 1990, at 1; *Emergenza di Mafia Sotto il Duomo*, CORRIERE DELLA SERA, Jan. 12, 1991; *Oggi Milano Non È Palermo, Eppure Rischia di Diventarla*, CORRIERE DELLA SERA, Oct. 9, 1991; Andrea Biglia, *Sul Pavese, L’Ombra della Mafia*, CORRIERE DELLA SERA, June 6, 1991; Ugo Savoia, *Milano, la Mafia C’è, Ma Non Si Vede*, CORRIERE DELLA SERA, Apr. 25, 1991.

¹⁰⁰ *Ultima Trincea Contro La Mafia*, CORRIERE DELLA SERA, Aug. 3, 1989.

¹⁰¹ *La Mafia Colpisce al Sud per Poter Agire al Nord*, LA STAMPA, Sept. 25, 1990, at 1.

¹⁰² *La Mafia Colpisce al Sud per Poter Agire al Nord*, LA STAMPA, Sept. 25, 1990, at 1.

¹⁰³ *Metropoli di Paura Tra Droga e Traffico*, CORRIERE DELLA SERA, Dec. 30, 1991.

¹⁰⁴ *Mafia, Andreotti Si Difende*, CORRIERE DELLA SERA, Sept. 26, 1990.

unserious.¹⁰⁵ In the face of mounting criticism, Andreotti reshuffled his cabinet. He replaced his ailing Minister of the Interior, Antonio Gava, with the younger and more energetic Vincenzo Scotti.¹⁰⁶ Arguably even more significant was his choice of Minister of Justice. In February 1990, Andreotti named Claudio Martelli, the young Socialist politician who had campaigned against the judges in Palermo to the position of Minister of Justice.

Despite (or perhaps because of) his history, Martelli was determined to rebrand himself as an antimafia activist. One of his early acts as Minister of Justice was to reach out to Giovanni Falcone and invite the legendary judge to join his staff as director of penal affairs. Falcone, who found himself increasingly marginalized within the judiciary of Palermo, decided to accept Martelli's offer. Falcone believed that he could leverage a position in Rome to advocate for the sort of structural reform that he thought the antimafia movement required. Though his colleagues in the antimafia pool were skeptical that Falcone would be able to use his alliance with Martelli to achieve his aims, Falcone accepted the position and joined Martelli's staff in March 1991, where he became a staunch advocate for stronger antimafia institutions. Despite the skepticism of the pool, Martelli would prove to be an extremely strong antimafia reformer, accepting and fighting for many of the changes that Falcone wished to pursue.¹⁰⁷

iv. [Establishing Specialized Policing by Decree-Law](#)

The government was able to secure some institutional development during this time, though only on a provisional basis. This was a result of the Italian system of decree-law (*decreto-legge*). The decree-law is a provisional measure within Italian law which allows the

¹⁰⁵ Sebastiano Messina, *La Cura di Andreotti Contro La Mafia*, LA REPUBBLICA, Sept. 26, 1990.

¹⁰⁶ ALEXANDER STILLE, EXCELLENT CADAVERS 331 (2011) (1995). Gava was also suspected of having ties to the Neapolitan Camorra. ALEXANDER STILLE, EXCELLENT CADAVERS 331 (2011) (1995).

¹⁰⁷ For an extensive discussion of Falcone's relationship with Martelli, see ALEXANDER STILLE, EXCELLENT CADAVERS 332-53 (2011) (1995).

executive branch, comprised of the Prime Minister and Council of Ministers, to enact a law in the absence of Parliamentary approval in cases of emergency. Although the decree-law has the full force of law, in order to remain in effect, it must be approved by Parliament within 60 days.¹⁰⁸ As such, the passage of decree-law can be seen as reflective of the executive branch's preferred policy, but in the case of legal institutions, should not be understood as a fully implemented until approved by parliament.

On November 13, 1990, the government passed a decree-law establishing specialized units dedicated to the investigation of organized crime.¹⁰⁹ According to the terms of the law, "the administrations concerned [would] establish central and interprovincial services of the State Police, the Carabinieri and the Guardia di Finanza."¹¹⁰ This decree-law would lay the foundation for the *Raggruppamento Operativo Speciale* (ROS), the *Servizio Centrale Operativo* (SCO), and the *Servizio Centrale di Investigazione sulla Criminalità Organizzata* (SCICO).¹¹¹ However, while the decree law went into effect, Parliament initially failed to convert it into law. The executive subsequently issued another decree-law in May 1991, which included the same provision for specialized policing units.¹¹² This second decree-law was ultimately converted into law by Parliament on July 12, 1990.¹¹³

¹⁰⁸ Art. 77 Costituzione [Cost.] (It.).

¹⁰⁹ Decreto-legge 13 novembre 1990, n. 324, decaduto per mancata conversion, G.U. Serie Generale n.265 del 13-11-1990 (It.).

¹¹⁰ Decreto-legge 13 novembre 1990, n. 324, decaduto per mancata conversion, G.U. Serie Generale n.265 del 13-11-1990, art. 15 (It.).

¹¹¹ ROS was located within the Carabinieri, SCO within the Polizia di Stato, and SCICO within the Guardia di Finanza.

¹¹² Decreto-legge 13 maggio 1991, n. 152, convertito con modificazioni dalla L. 12 luglio 1991, n. 203, convertito con modificazioni dalla L. 12 luglio 1991, n. 203, G.U. 12/07/1991, n.162, art. 12 (It.).

¹¹³ Legge 12 luglio 1991, n. 203, conversione in legge, con modificazioni, del decreto-legge 13 maggio 1991, n. 152, G.U. 12/07/1991, n.162 (It.).

v. [Analysis](#)

The years from 1989-1991 represent a resurgence of public perception of the mafia as a national threat and a renewed demand for reformism in the Italian political context. Although several officials were killed in 1988, following the Maxiprocesso verdict, the government was able to downplay the threat of organized crime for a time. However, rising violence and media attention, and particularly the rise of criminal activity outside of Sicily, renewed perception that mafia criminality was a growing national issue. This led to increased pressure on the Andreotti government to institute tangible reforms.¹¹⁴ The promotion of new leaders such as Vincenzo Scotti provided opportunities for reform within the government. Most noteworthy among these leaders was Claudio Martelli, who went from being openly hostile to the Palermo judiciary to building an alliance with Giovanni Falcone predicated on an interest in promoting anti-organized crime reform. The passage of the decree-laws by the executive at this point provides an indication that key leaders within the executive branch of the government were prepared to back reform. However, the failure of the Parliament to convert the November 1990 decree-law into law suggests that reformist attitudes were still somewhat limited among Italian decisionmakers.

At the same time, it is important to note that Andreotti's initial reform package offered little in the way of meaningful reform. Rejected by contemporaries for inadequacy, this proposal draws the sincerity of his commitment into question, to say the least. This, combined with Andreotti's notorious history of mafia ties, suggests that political factors other than an interest in

¹¹⁴ The violence of the 1980s and the findings of the Maxiprocesso had long since established that organized crime could be perceived as a national threat. Arguably this meant that it took much less in terms of violent activity for the Mafia to re-emerge as a topic of national conversation. Thus, the murder of Rosario Livatino, a relatively unknown judge, was arguably more significant in confirming public perceptions of the threat posed by the Mafia than the murders of law enforcement officials killed before September 1982.

reform for its own sake played a role in the Andreotti government's move to support institutional development.

It must be acknowledged that a political shift towards reform was somewhat overdetermined at this time. The structural changes in Italian politics resulting from the end of the Cold War, as well as pressure from Europe arguably made it increasingly difficult for the established parties to ignore the issue of organized crime. This was true regardless of the threat perception of the Italian people. It is therefore open to question whether politicians were responding to the Italian public or other forces. It is very likely that the structural factors played a role in shaping the incentives of leaders such as Andreotti and Martelli to take on more public-facing antimafia positions. However, these factors had existed since at least 1989. Indeed, the PCI's power had been declining since the 1970s. It was not until 1990 that government leaders put out their initial suggestions for institutional reform. This timing suggests that a resurgence in domestic concern about organized crime played a decisive role in determining the government's willingness to consider antimafia reform.

d. Establishing the Institutions

i. [The Need for Greater Law Enforcement Competence](#)

Reformists pointed to several weaknesses in the existing system. The Parliamentary Antimafia Commission provided the following list of institutional problems in 1991:

“The impracticability of investigations on the territory due to various kinds of tasks; the impossibility of carrying out the necessary coordination between the police forces; the small number of magistrates who make up the office in many of the at-risk areas; the difficulty of acquiring adequate professional preparation in specific and particular subjects; the lack of a network of connection and coordination between the offices of various parts of the country: all these shortcomings have been denounced by the judges concerned.”¹¹⁵

¹¹⁵ COMMISSIONE PARLAMENTARE D'INCHIESTA SUL FENOMENO DELLA MAFIA E SULLE ALTRE ASSOCIAZIONI CRIMINALI SIMILARI, RELAZIONE SULLO STATO DI ATTUAZIONE E SULL'EFFICACIA DELLA NORMATIVA IN MATERIA DI PREVENZIONE NEI CONFRONTI DELLA DELINQUENZA DI TIPO MAFIOSO, Doc. XXIII, n. 31, X Legislatura 14-15 (Mar. 13, 1991) (“*La impraticabilità delle investigazioni sul territorio per incombenze di varia natura; la*

In this context, there was increasing recognition of the value of specialization in antimafia law enforcement. As early as 1983, the Court of Appeals in Rome had suggested that greater specialization within the police forces would facilitate the repression of organized crime.¹¹⁶ In addition, the success of the Palermo pool pointed to the value of developing such institutional competence within the judiciary, and the *Consiglio Superiore della Magistratura* had recognized the validity of such groups in the fight against mafia crimes.¹¹⁷

In addition, reformists were highly concerned about the lack of coordination among the various law enforcement bodies responsible for managing mafia-related crimes. Giovanni Falcone had long advocated for improvements in the coordination of judicial investigations. Speaking before the Parliamentary Antimafia Commission in 1988, Falcone testified that the balkanization of various prosecutors' offices had left the judiciary unable to effectively combat mafia groups. According to Falcone, "if the various public prosecutors' offices are left the discretion to work in a connected way, it could create big problems. We should realize that organized crime has long since extended its activity beyond the narrow district limits and, if we do not coordinate ourselves in the preliminary investigation phase, very often the results may be disappointing."¹¹⁸

impossibilità di operare un necessario coordinamento fra le forze di polizia; il numero esiguo di magistrati che compongono l'ufficio in molte delle zone a rischio; la difficoltà di acquisire un'adeguata preparazione professionale in materie specifiche e particolari; la mancanza di una rete di collegamento e coordinamento fra gli uffici di varie parti del paese: tutte queste carenze sono state denunciate dai giudici interessati"). The Commission here was particularly focused on patrimonial investigations.

¹¹⁶ Memo from the Procura Generale della Repubblica Presso La Corte di Appello di Roma 4-5 (Mar. 7, 1983) (found in Archivio Centrale Dello Stato, Ministry of Interior, Folder 33, 115).

¹¹⁷ COMMISSIONE PARLAMENTARE D'INCHIESTA SUL FENOMENO DELLA MAFIA E SULLE ALTRE ASSOCIAZIONI CRIMINALI SIMILARI, RELAZIONE ANNUALE, Doc. XXIII n. 12, X Legislatura 18-19 (approved Dec. 20, 1989).

¹¹⁸ COMMISSIONE PARLAMENTARE D'INCHIESTA SUL FENOMENO DELLA MAFIA E SULLE ALTRE ASSOCIAZIONI CRIMINALI SIMILARI, RESCONTO STENOGRAFICO, Servizio delle Commissioni Parlamentari del Senato 25 (Nov. 3, 1988) ("Se si lascia discrezionalità alle varie Procure della Repubblica di lavorare in maniera collegata, si potrebbero creare grossi problemi. Dobbiamo renderci conto che la criminalità organizzata ha ormai da tempo

Falcone also supported improved coordination between the police and the judiciary. As the Palermo judge noted in an interview with author Alexander Stille, “there is no system that allows a prosecutor in one part of the country to learn about other cases that may have a bearing on his own . . . I frequently learn about other cases from the newspapers.”¹¹⁹ The Alto Commissario had provided a potential vehicle for such coordination. In 1988, Falcone expressed hope that “the Alto Commissario can take action to create a link between the various investigative activities of the police forces and will be able to ensure this function.”¹²⁰ Yet the Alto Commissario was ultimately found inadequate for the task.¹²¹ Indeed, by 1985, Minister of Interior Oscar Luigi Scalfaro was already calling for measures to strengthen the Alto Commissario.¹²² The Sicilian Regional Assembly recommended that the Alto Commissario’s powers be increased.¹²³ Senators

esteso la sua attività · al di là dei ristretti limiti circondariali e, se non ci si coordina nella fase delle indagini preliminari, molto spesso i risultati potrebbero essere deludenti.”).

¹¹⁹ ALEXANDER STILLE, EXCELLENT CADAVERS 318 (2011) (1995).

¹²⁰ COMMISSIONE PARLAMENTARE D’INCHIESTA SUL FENOMENO DELLA MAFIA E SULLE ALTRE ASSOCIAZIONI CRIMINALI SIMILARI, RESCONTO STENOGRAFICO, Servizio delle Commissioni Parlamentari del Senato 72 (Nov. 3, 1988) (“*l’Alto Commissario può attivarsi per creare un collegamento tra le diverse attività investigative dei corpi di polizia e riuscirà ad assicurare questa funzione*”)

¹²¹ Falcone himself criticized much of the blame placed on the Alto Commissario as a form of political scapegoating, stating “The politicians have been concerned with voting on emergency laws and creating special institutions which, on paper, should have given impetus to the anti-mafia fight, but which, in practice, have been resolved in a delegation of the responsibilities of the government to a structure equipped with inadequate means and lack of powers to coordinate anti-crime action. The Famous High Commissioner for the Fight Against the Mafia, created on the wave of the emotion aroused by the murder of the general Dalla Chiesa, is a striking example: since then, the Minister of the Interior and the government as a whole have been able to vent that the institution is to blame for inefficiencies, attributing the responsibility for every failure.” GIOVANNI FALCONE & MARCELLO PADOVANI, COSE DI COSA NOSTRA, 114 (2017) (1991) (“*I politici si sono preoccupati di votare leggi di emergenza e di creare istituzioni speciali che, sulla carta, avrebbero dovuto imprimere slancio alla lotta antimafia, ma che, in pratica, si sono risolte in una delega delle responsabilità proprie del governo a una struttura dotata di mezzi inadeguati e priva dei poteri di coordinare l’azione anticrimine. Il Famoso Alto Commissariato per la lotta contro la mafia, creato sull’onda dell’emozione suscita dall’assassinio del generally Dalla Chiesa, ne è l’esempio lampante: da allora il ministro dell’Interno e il governo nel suo insieme hanno potuto scaricare sull’istituto la colpa delle inefficienze attribuendogli la responsabilità di ogni insuccesso.*”). For Falcone’s early analysis and criticism of the Alto Commissario’s relationship with the judiciary, *see generally* Giovanni Falcone, Rapporti Dell’Autorità Giudiziaria Con L’Alto Commissario e gli Organi di Polizia in Relazione ai Poteri di Indagine e di Accertamento Previsti dalla Legge e con Riguardo, Altresì al Funzionamento della Banca dei Dati, in La Legge 13 Settembre 1982, N. 646: Problemi Interpretativi e Applicativi, Consiglio Superiore della Magistratura, Seminario di Studio Per Magistrati “Simonetta Lamberti” (Dec. 17-19 1982).

¹²² Ruggero Conteduca, *Ricomincia la Guerra alla Mafia*, LA STAMPA, Aug. 29, 1985, at 1 (found in Archivio Centrale dello Stato, Ministry of Interior, Folder 34, 332).

¹²³ Assemblea Regionale di Sicilia, Considerazioni Relative All’applicazione delle leggi: Rognoni-La Torre 13 Settembre 1982 n. 646, 23 Dicembre 1982 n. 936, 31 Maggio 1965 n. 575 e Dicembre 1956 n. 1421. Ipotesi di

noted that “[t]he weakness of the personnel of the Public Security is therefore lamentable, observing that even the appointment of the Alto Commissario in Sicily risks turning out to be completely insufficient if the structures do not receive adequate reinforcement.”¹²⁴ The Parliamentary Commission noted that the frustration was shared by the leaders of the Alto Commissario:

“[e]ach of the High Commissioners, referring to the [Parliamentary Antimafia] Commission on its activity, had underlined the unsatisfied need to set up structures, organize offices, search for spaces for intervention and initiatives, precisely in order to engage in a very difficult and complicated institutional dialogue with the administrative heads of the police forces, with the prefectures themselves and with the peripheral bodies of the State.”¹²⁵

Reconsidering the question in 1989, the Commission suggested that

“it is perhaps necessary that the [Alto Commissario] be more organically inserted in the legal system, overcoming the logic of emergency. In this sense, it would be advisable to make a clear choice between assigning it exclusive coordination functions or, vice versa, a specialized investigative role in the fight against the mafia. However, a gap must be noted between the incisive powers attributed to the High Commissioner and the unsatisfactory results achieved.”¹²⁶

Proposte di Aggiornamento e Modifica di Norme Legislative e di Disposizioni Amministrative di Attuazione 15 (1985) (found in Archivio Centrale dello Stato, Ministry of Interior, Folder 34, 1,280).

¹²⁴ SENATO DELLA REPUBBLICA, GIUNTE E COMMISSIONI PARLAMENTARI, AFFARI COSTITUZIONALI, 603 RESOCONTO, VIII Legislatura 9 (April 7, 1983) (“*Lamentata quindi la debolezza degli organici della Pubblica sicurezza, osserva che rischia di rivelarsi del tutto insufficiente anche la nomina dell’Alto commissario in Sicilia se le strutture non ricevono un potenziamento adeguato.*”).

¹²⁵ COMMISSIONE PARLAMENTARE D’INCHIESTA SUL FENOMENO DELLA MAFIA E SULLE ALTRE ASSOCIAZIONI CRIMINALI SIMILARI, RELAZIONE SUL RUOLO E SUI POTERIO DELL’ALTO COMMISSARIO PER IL COORDINAMENTO DELLA LOTTA CONTRO LA DELINQUENZA DI TIPO MAFIOSO, Doc. XXIII n.1, X Legislatura 8 (communicated Oct. 4, 1988) (“*Ognuno degli Alti Commissari, riferendo alla Commissione sulla sua attività, aveva sottolineato la necessità, non soddisfatta, di costituire strutture, di organizzare gli uffici, di ricercare gli spazi di intervento e di iniziativa, proprio per impegnarsi in un difficilissimo e complicato dialogo istituzionale con i vertici amministrativi delle forze di polizia, con le stesse prefetture e gli organi periferici dello Stato.*”).

¹²⁶ COMMISSIONE PARLAMENTARE D’INCHIESTA SUL FENOMENO DELLA MAFIA E SULLE ALTRE ASSOCIAZIONE CRIMINALI SIMILARI, RELAZIONE ANNUALE, Doc. XXIII n. 12, X Legislatura 22 (approved Dec. 20, 1989) (“*è forse necessario che l’istituto sia più organicamente inserito nell’ordinamento, superando la logica dell’emergenza. Sarebbe opportuno, in tal senso, compiere una chiara scelta fra la attribuzione ad esso di esclusive funzioni di coordinamento o, viceversa, di un ruolo investigativo specializzato nella lotta contro la mafia. Si deve rilevare comunque un divario fra i pur incisivi poteri attribuiti all’Alto Commissariato ed i non soddisfacenti risultati conseguiti.*”).

In short, by time the reformist resurgence occurred in 1991, the lack of effective coordination and institutional competence in the police and the judiciary was well established as a prevailing problem in the antimafia fight.

i. Proposals and Pushback

As early as 1989, Alto Commissario Domenico Sica had presented the concept of a centralized prosecutorial structure which would coordinate mafia investigations, an organization which the press quickly dubbed a “*super-procura*” (super-prosecutor).¹²⁷ Though the idea was dismissed by most of the judiciary, Falcone believed it had merit.¹²⁸ Falcone also wished to emulate the American investigative system by developing a sort of Italian FBI which would coordinate police investigations into organized crime.

Building on these concepts, Scotti and Martelli began to promote the establishment of a coordinated law enforcement system to combat organized crime. This would include a “unified interforce police command”¹²⁹ dedicated specifically to combatting organized crime, as well as a body dedicated to coordinating antimafia investigations.¹³⁰ This suggestion was adopted in part by the summer of 1991. On July 12, Parliament converted the decree-law of May 1990 into law, establishing specialized anti-organized crime units within the three main policing bodies.¹³¹

While the development of specialized units within the police forces does not appear to have generated much controversy, there was backlash to the government’s support of a new police organization, Falcone’s proposed ‘Italian FBI.’ Police, particularly the *carabinieri*, were

¹²⁷ *I Giudici a Sica: ‘Le Task Force Non Servono,’* LA REPUBBLICA, Mar. 5, 1989.

¹²⁸ *I Giudici a Sica: ‘Le Task Force Non Servono,’* LA REPUBBLICA, Mar. 5, 1989.

¹²⁹ *Martelli Contro Galloni,* CORRIERE DELLA SERA, May 14, 1991.

¹³⁰ *Martelli Contro Galloni,* CORRIERE DELLA SERA, May 14, 1991; *Martelli: Giustizia il Vero Deficit,* CORRIERE DELLA SERA, May 10, 1991; for a description of the Direzione Investigativa Antimafia as instituted, see “*DIA*”, *Specialisti Contro le Cosche,* CORRIERE DELLA SERA, Oct. 26, 1991.

¹³¹ Legge 12 luglio 1991, n. 203, conversione in legge, con modificazioni, del decreto-legge 13 maggio 1991, n. 152, G.U. 12/07/1991, n.162 (It.).

wary of the idea of a new investigative force.¹³² Commanding general of the carabinieri Antonio Viesti expressed skepticism that an ‘Italian FBI’ could function as an effective coordinating body. Rather than develop an additional police force, Viesti argued that it would be better to simply reinforce the existing institutions.¹³³ Socialist spokesman Giacomo Mancini claimed that the entire idea was more useful as a campaign tool for Scotti and the Christian Democrats than as an organism to combat the mafia.¹³⁴

Yet while the idea of a reformed police force received some criticism, it paled in comparison to the backlash faced by the ‘*super-procura*.’ Members of the judiciary throughout Italy were fiercely opposed to the creation of a new, centralized prosecutorial body.¹³⁵ Many judges, along with other opponents of the new reform, were concerned that the new prosecutor’s office would allow the political branches greater influence over the judiciary.¹³⁶ Some opponents of the law expressed concerns that a national-level antimafia prosecutor would be too closely bound to the executive, and that this would result in a reduction of judicial independence.¹³⁷ Unlike the United States, which gives the political branches a significant role in the selection of judges, Italy maintains an entirely autonomous, self-governing judiciary.¹³⁸ Judicial independence is an almost sacrosanct principle in Italy, so changes that might threaten that independence were likely to be subjects of serious concern.¹³⁹ In addition, some judges

¹³² *Arma e Polizia Si Dividono L’FBI*, LA REPUBBLICA, Oct. 30, 1991.

¹³³ ‘*FBI? È Solo Un’Idea . . .*’ *Il Generale Viesti Frena*, LA REPUBBLICA, Sept. 08, 1991.

¹³⁴ *Giuseppe D’Avanzo, Scotti a Rapporto Da Cossiga*, LA REPUBBLICA, Aug. 4, 1991.

¹³⁵ Guido Neppi Modona, *Terremoto in Procura*, LA REPUBBLICA, Jan. 26, 1992.

¹³⁶ Guido Neppi Modona, *Terremoto in Procura*, LA REPUBBLICA, Jan. 26, 1992; Carla Chelo and Antonio Cipriani, *Varata la Superprocura*, L’UNITÀ, Oct. 26, 1991.

¹³⁷ Antonio Cipriani, *Si Delinea la Superprocura, Un Giudice Vicino ai Ministri*, L’UNITÀ, Oct. 24, 1991. Of course, politicians who supported the measure, including Andreotti and Virginio Rognoni, denied that the institutions would negatively impact judicial independence or give politicians greater control over the judiciary. Silvana Mazzocchi, *Addio, Giustizia di Cartapesta*, LA REPUBBLICA, Oct. 27, 1991.

¹³⁸ For a discussion of the principle of judicial independence in the Italian system, see Carlo Guarnieri, *Justice and Politics: The Italian Case in a Comparative Perspective*, 4 IND. INT’L & COMP. L. REV. 241 (Jan. 1994).

¹³⁹ For a discussion of the principle of independence in the Italian judiciary, see Mary L. Volcansek, *The Judicial Role in Italy: Independence, Impartiality and Legitimacy*, 73 JUDICATURE 322 (1990).

raised concerns that the establishment of the ‘*super-procura*’ would split the judiciary, leading to duplication of efforts and conflict among offices.¹⁴⁰ Others were concerned that a single national-level prosecutor would in fact undermine the effectiveness of antimafia investigations, as a central legal authority based in Rome would lack the deep local knowledge that had made institutions like the antimafia pool so effective.¹⁴¹ It should be noted that this last concern was in part a function of the fact that initial discussion of the new prosecution office did not contemplate the establishment of district-level prosecutors’ offices, as would eventually emerge in the form of the DDA.¹⁴² Ultimately, many judges’ opposition to the ‘*super-procura*’ was so strong that they would eventually launch a nation-wide strike against the plan.¹⁴³

ii. [Building Public Support](#)

In the context of this opposition, reformers faced a significant challenge in building support for the law enforcement bodies. However, over the course of 1991, mafia violence continued to be a topic of considerable public concern. In July of 1991, *Corriere della Sera* reported survey data which revealed that voters in the Northern region of Lombardia were becoming increasingly concerned with crime and mafia violence. 32.9% of Lombardians considered defeating the mafia to be one of the most pressing issues for the government to resolve, second only to healthcare.¹⁴⁴ The violent events of that summer would only increase concern.

On August 9, 1991, antimafia magistrate Antonino Scopelliti was killed in an ambush in Calabria. On August 29, mafia assassins murdered Libero Grassi, a Palermo clothing

¹⁴⁰ Franco Coppola, *I Magistrati Tentano di Silurare la Superprocura*, LA REPUBBLICA, Oct. 29, 1991

¹⁴¹ Author Interview, Jan. 15, 2022. This interview was conducted with a prominent Palermo lawyer who opposed the creation of the DNA at the time it was established.

¹⁴² Author Interview, Jan. 15, 2022. The interviewee has since said that the establishment of the DDA effectively negated his concerns about an overly distant national prosecutor. A former member of the antimafia pool likewise notes that the role of the DDA was not clear during the initial debates. Author Interview, Jan. 29, 2022.

¹⁴³ Mario Pirani, *Ne Lobby Ne Eroi Per Battere La Piovra*, LA REPUBBLICA, Nov. 1, 1991; *Magistrati in Sciopero Contro Cossiga e il Ministro*, LA REPUBBLICA, Nov. 29, 1991.

¹⁴⁴ Gianluigi Da Rold, *Lombardia: I Partiti Spalle al Muro*, CORRIERE DELLA SERA, July 21, 1991.

manufacturer who had achieved significant national attention when he publicly refused to pay *pizzo*, the mafia “fee” commonly extorted in Sicily. In his famous “Dear Extortionist” letter, Grassi had gone so far as to publicly name his tormentor in the Sicilian regional newspaper *Giornale di Sicilia*.¹⁴⁵ In the wake of these murders, and particularly that of Libero Grassi, the press and political campaigns continued. After Grassi’s murder, 13,000 Palermitans marched in the streets in opposition to the mafia.¹⁴⁶ *Corriere della Sera* published the damning headline “There is Only One Truth, the Mafia Won.”¹⁴⁷ Competing media giants Rai and Fininvest agreed to jointly air nearly five hours of programming on Grassi.¹⁴⁸

As tension built, reformist politicians and the press pointed to the structure and power of the mafia as evidence of the threat the group posed. Even the nickname given to the mafia, “The Octopus” (*La Piovra*), implied that the group was a single, controlling organism whose tentacles reached everywhere.¹⁴⁹ Vincenzo Scotti argued that the difficulty of combatting organized crime was directly tied to its sophisticated structure. The Mafia, according to Scotti was “a pyramidal organization” and was pursuing its objectives in a unified manner.¹⁵⁰ Given of the structure of mafia crime, “[t]he instruments [of the state] must be consequent to this nature.”¹⁵¹ Indeed, Scotti portrayed the government as being at a disadvantage in this fight. “A war is underway. . . it is as if Cosa Nostra used guns, aviation and navy at the same time and in a coordinated way and I, on

¹⁴⁵ Libero Grassi, *Caro Estortore*, *GIORNALE DI SICILIA*, Jan. 10, 1991.

¹⁴⁶ Enzo Mignosi, *A Palermo, La Marcia dei Tredicimila*, *CORRIERE DELLA SERA*, Sept. 13, 1991.

¹⁴⁷ *C’è Una Sola Verità, Ha Vinto La Mafia*, *CORRIERE DELLA SERA*, Aug. 31, 1991.

¹⁴⁸ Laura Delli Colli, *Rai e Fininvest Contro La Mafia*, *LA REPUBBLICA*, Sept. 26, 1991.

¹⁴⁹ See e.g., Mario Pirani, *Gli Amici Della Piovra a Palermo e a Roma*, *LA REPUBBLICA*, Sept. 6, 1991; *Ecco Il Supermagistrato Antipiovra*, *L’UNITÀ*, Oct 26, 1991; *Antimafia, Milano Terza Capitale del Crimine* “*Ma la Piovra Non Ha un Consenso di Massa*,” *CORRIERE DELLA SERA*, May 23, 1991; Giuseppe D’Avanzo, *Due Colpi Dello Stato per Battere La Piovra*, *LA REPUBBLICA*, Oct. 27, 1991.

¹⁵⁰ M. Antonietta Calabrò, *La Guerra alla Mafia Non Si Fa in TV*, *CORRIERE DELLA SERA*, Sept. 2, 1991 (“*un’organizzazione piramidale*”).

¹⁵¹ M. Antonietta Calabrò, *La Guerra alla Mafia Non Si Fa in TV*, *CORRIERE DELLA SERA*, Sept. 2, 1991 (“*Gli strumenti devono essere conseguenti a questa natura*”).

the other hand, cannot do this. This is the difference between them and us. Either they give us the tools to fight this war or, otherwise, I can leave tomorrow morning too.”¹⁵² In advocating that Parliament pass the law instituting the DNA, Claudio Martelli would make a similar argument, observing

“the diffusion of criminal power over the territory . . . and the concentrations and attempts to organize a somewhat unitary command of the various families, gangs, clans and criminal groups. This in some way highlights the reasonableness of a response which, wanting to change the system that has not yet given good evidence of itself, tends to concentrate on specialized and coordinated investigative structures, either on the judicial police front or on the front of the judiciary, the mafia investigations.”¹⁵³

La Repubblica described the proposed law enforcement bodies as parallels of the criminal organizations themselves, a pair of coordinated hierarchies designed to facilitate a state response as organized as mafia criminality.¹⁵⁴

By the fall of 1991, survey data showed that the Italian public approved of significant government action to counter organized crime. An October 1991 survey conducted by the weekly magazine *Panorama* found that 58.3% of respondents favored a concentration of judicial activity against crime, a result which *La Repubblica* interpreted as an indication that the public objected to the inertia and inefficiency of the government in the face of the Mafia.¹⁵⁵ Moreover, with a general election due to take place in 1992, politicians were particularly interested in appearing capable of addressing mafia activity.

¹⁵² M. Antonietta Calabrò, *Scotti: Contro La Mafia Parole*, CORRIERE DELLA SERA, Sept. 2, 1991 (“È in atto una guerra . . . è come se Cosa Nostra utilizzasse contemporaneamente e in modo coordinato cannoni, aviazione e marina e io invece questo non lo posso fare. Sta qui la differenza tra loro e noi. O ci danno gli strumenti per combattere questa guerra o, altrimenti, me ne posso andare anche domani mattina.”).

¹⁵³ CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 747, X Legislatura, Discussioni 93886 (Jan. 16, 1992) (“a diffusione del potere criminale sul territorio . . . e le concentrazioni ed i tentativi di organizzare un comando, in qualche modo unitario, delle varie famiglie,, cosche, clan e gruppi criminali. Ciò in qualche modo evidenzia la ragionevolezza di una risposta che, volendo cambiare sistema che non ha sinora dato buona prova di sé, tende a concentrare in capo a strutture investigative specializzate e coordinate tra di loro, vuoi sul fronte della polizia giudiziaria vuoi sul fronte della magistratura, le indagini di mafia.”).

¹⁵⁴ Giuseppe D’Avanzo, *Braccio di Ferro Sulla FBI*, LA REPUBBLICA, Oct. 13, 1991.

¹⁵⁵ Giuseppe D’Avanzo, *Due Colpi Dello Stato per Battere La Piovra*, LA REPUBBLICA, Oct. 27, 1991.

iii. Founding the DIA and DNA

On October 29, 1991, the Direzione Investigativa Antimafia was established by decree-law.¹⁵⁶ On November 20, 1991, the Direzione Nazionale Antimafia was likewise established by decree-law.¹⁵⁷ The issuance of the decree-laws was met with some resistance, particularly by the judiciary, which remained opposed to the establishment of a “*super-procura*.” Indeed, it the passage of the decree-laws ultimately led the judges to go on strike.¹⁵⁸ The reformists could consider the decree-laws to be progress, as they began to institutionalize competent law enforcement. Nevertheless, the reformists would not be able to claim full victory until Parliament passed laws approving the new law enforcement bodies.

In Parliament, the government’s actions faced some resistance, particularly from politicians who opposed the new institutions as a threat to civil liberties and the constitutional order. Mauro Mellini, of the Radical Party, argued that the measures taken to combat the mafia were an abandonment of the principles of legality on the part of the state, arguing that “[t]he mafia, a terrible phenomenon, has become the excuse to undermine the Constitution.”¹⁵⁹ European Federalist Representative Alessandro Tessari said the entire endeavor was little more than an electoral stunt.¹⁶⁰ The Communist Refoundation Party likewise opposed the measure. Giovanni Russo Spina claimed that the *super-procura* was merely the product of a culture of emergency, and that it would do nothing to effectively combat the mafia. Moreover, it would be a dangerous new power within the state itself likely to threaten existing institutions, particularly within the

¹⁵⁶ Decreto-Legge 29 ottobre 1991, n. 345, convertito con modificazioni dalla L. 30 dicembre 1991, n. 410, G.U. 30/12/1991, n.304 (It.).

¹⁵⁷ Decreto-Legge 20 novembre 1991, n. 367, convertito con modificazioni dalla L. 20 gennaio 1992, n. 8, G.U. 20/01/1992, n.15 (It.).

¹⁵⁸ *Magistrati in Sciopero Contro Cossiga e il Ministro*, LA REPUBBLICA, Nov. 29, 1991.

¹⁵⁹ CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 748, X Legislatura, Discussioni, 94041, (Jan. 17, 1992) (“*La mafia, terribile fenomeno, è diventata l'alibi per intaccare la Costituzione*”).

¹⁶⁰ CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 747, X Legislatura, Discussioni, 93877, 93929 (Jan. 16, 1992).

judiciary. According to Spena, “[t]he super-procura is a structure directed by a management invested in the trust of the minister, strongly hierarchical, with relevant and not very controllable powers and with suitable tools to reduce to obedience all public prosecutors who work on matters of mafia and of organized crime.”¹⁶¹ Mixed Group (*Misto*) Representative Luigi D’Amato argued that the DNA, by increasing the power of the government, risked increasing the power of organized crime, with its strong political ties. D’Amato claimed that

“the 'octopus' lives here, not in this room, I mean, but in the building, of which this room often seems to be an appendage. And the reason why I will vote against the decree-law establishing the super-procura, not only because, as the minister himself acknowledges, it needed some corrections (which have not been made), but also because I believe that the method followed is profoundly wrong. I hope, in the national interest, that I am wrong.”¹⁶²

Likewise, members of the Italian Republican Party (*Partito Repubblicano Italiano*, PRI) opposed the measure. Representative Gaetano Gorgoni expressed alarm at the enormous centralization of power that the DNA would bring.¹⁶³ Green (*Verde*) Party Member Gianni Lanzinger worried about the vast increase in power that the reforms would give to prosecutors and argued that the centralization of repressive power was a threat to democracy itself.¹⁶⁴ Communist Refoundation Representative Franco Russo argued that the entire effort was “a demagogic measure, which

¹⁶¹ CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 748, X Legislatura, Discussioni, 94043, (Jan. 17, 1992) (“*La superprocura è una struttura diretta da un vertice investito della fiducia del ministro, fortemente gerarchizzata, con rilevanti e poco controllabili poteri e con strumenti idonei a ridurre all'obbedienza tutti i pubblici ministeri che operano in materia di mafia e di criminalità organizzata.*”).

¹⁶² CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 748, X Legislatura, Discussioni, 94047, (Jan. 17, 1992) (“*Come vede, onorevole Presidente, la «piovra» abita qui, non dico in quest'aula, ma nel palazzo, di cui spesso quest'aula sembra essere un'appendice. E la ragione per la quale voterò contro il decreto-legge istitutivo della superprocura, non solo perché, come riconosce lo stesso ministro, necessitava di alcune correzioni (che non sono state apportate), ma anche perché ritengo che il metodo seguito sia profondamente sbagliato. Mi auguro, nell'interesse nazionale, di aver torto.*”).

¹⁶³ CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 748, X Legislatura, Discussioni, 94052, (Jan. 17, 1992)

¹⁶⁴ CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 747, X Legislatura, Discussioni, 93877, 93881 (Jan. 16, 1992).

aims to manipulate public opinion. It seems to say: the government is doing something against the mafia.”¹⁶⁵

Proponents of the legislation argued that it was necessary, not only to reduce crime, but to preserve the existence of the Italian state itself. The Italian Social Movement (*Movimento Sociale Italiano*, MSI) supported the creation of the institutions as a necessary response to the “dramatic emergency” of organized crime.¹⁶⁶ Representative Franco Franchi argued that the extensiveness of the mafia had rendered the existing legal institutions insufficient and demanded the creation of a more unitary approach:

“today the mafia operates everywhere, from one end of the peninsula to the other, and has strong international links, so it is not possible to seriously combat the phenomenon without that unitary and global vision that the pulverization of the 161 prosecutors on the territory cannot allow, even if we are grateful to those few valiant substitutes who bravely challenged the ‘octopus’.”¹⁶⁷

Socialist Representative Filippo Caria argued that the measure was necessary in part because “in four regions of southern Italy the state has ceased to exist, has lost control of the territory and is no longer in a position to exercise its functions.”¹⁶⁸ Socialist Egidio Alagna echoed this point in even stronger terms, claiming that mafia-type crime “threatens and seriously attempts to attack the free institutions and state sovereignty, hindering the implementation of one of the main and fundamental tasks of the same: to administer and render justice, possibly in real time . . .

¹⁶⁵ CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 747, X Legislatura, Discussioni, 93877, 93922 (Jan. 16, 1992) (“*un provvedimento demagogico, che vuole manipolare l'opinione pubblica. Esso sembra dire: il Governo fa qualcosa contro la mafia.*”).

¹⁶⁶ CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 748, X Legislatura, Discussioni, 94054, (Jan. 17, 1992) (statement of Giulio Maceratini) (“*drammatica emergenza*”).

¹⁶⁷ CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 748, X Legislatura, Discussioni, 94071 (Jan. 17, 1992) (“*Ma oggi la mafia opera ovunque, da un capo all'altro della penisola, ed ha forti addentellati internazionali, per cui non si può seriamente contrastare il fenomeno senza quella visione unitaria e globale che la polverizzazione delle 161 procure sul territorio non può consentire, pur se siamo grati a quei pochi, valorosi sostituti che coraggiosamente hanno sfidato la «piovra».*”).

¹⁶⁸ CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 748, X Legislatura, Discussioni, 94045 (Jan. 17, 1992) (“*in quattro regioni dell'Italia meridionale lo Stato ha cessato di esistere, ha perso il controllo del territorio e non è più in condizioni di esercitare le sue funzioni.*”).

organized crime has become a veritable exponential subversive force with respect to the democratic state.”¹⁶⁹ Moreover, the threat of the mafia was a reflection of the nature of the group’s organization: “The minister declared that such an effectively organized crime cannot be defeated with the 100 or more prosecutors who claim to coordinate investigative and judicial activities throughout the State.”¹⁷⁰

Christian Democrats likewise supported the measure. Gaetano Vairo noted that the reform was a necessary response to the power of organized crime, designed to mirror the structure of the group itself:

[Organized crime] has a decentralized and at the same time centralized structure. It is in fact organized territorially . . . Faced with this criminal phenomenon, which has now taken possession of the territory in a decentralized form, but which at the same time obeys organizational driving forces from a structured center, the draft law under discussion identifies a decentralized level of initiative and one of top management through the coordination of investigations, referring to a district prosecutor and a national prosecutor.”¹⁷¹

Benedetto Vincenzo Nicotra advocated for the law as a practical correction of existing defects in coordination in judicial investigations.¹⁷² In addition, he made clear his party’s interest in

¹⁶⁹ CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 748, X Legislatura, Discussioni, 94055 (Jan 17, 1992) (“*minaccia e attenta seriamente le libere istituzioni e la sovranità dello Stato, intralciando l’attuazione di uno dei principali e fondamentali compiti del medesimo: amministrare e rendere giustizia possibilmente in tempi reali . . . la criminalità organizzata è diventata una vera e propria forza esponenziale eversiva rispetto allo Stato democratico.*”).

¹⁷⁰ CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 748, X Legislatura, Discussioni, 94055 (Jan 17, 1992) (“*Il ministro ha dichiarato che una delinquenza così efficacemente organizzata non può essere sconfitta con le 100 e più procure che avrebbero la pretesa di coordinare l’attività investigativa e giudiziaria in tutto il territorio dello Stato.*”).

¹⁷¹ CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 747, X Legislatura, Discussioni, 93849 (Jan. 16, 1992) (“*[La criminalità organizzata] ha una struttura decentrata e insieme accentrata. Essa è infatti organizzata territorialmente . . . A fronte di tale fenomeno criminoso, che ha ormai preso possesso del territorio in forma decentrata, ma che obbedisce nel contempo a spinte propulsive organizzative provenienti da un centro strutturato, il disegno di legge in discussione individua un livello di iniziativa decentrato ed uno di vertice attraverso il coordinamento delle indagini, facendo riferimento ad una procura distrettuale e ad un procuratore nazionale.*”).

¹⁷² CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 747, X Legislatura, Discussioni, 93873 (Jan. 16, 1992).

appealing to the public, stating that “[w]e hope that the decree-law n. 367 is converted into law, also for the expectations and hopes it has raised in public opinion.”¹⁷³

iv. Analysis

Ultimately, despite the contentious nature of the debates, particularly those in regard to the establishment of the DNA, both decree-laws were passed by the Italian Parliament.¹⁷⁴ With the formation of these bodies of competent enforcement as well as the specialized units within the existing police forces, Italy had instituted *strong institutional reform*. Although several factors militated in favor of the establishment of these law enforcement bodies, they were nonetheless difficult to achieve. Both the judiciary and significant factions of the legislature opposed the creation of new law enforcement agencies, which the former saw as a threat to their institution’s function, and the latter as a dangerous increase of government power.

Nonetheless, rising public concern about crime and the impending 1992 elections presented an especially fortuitous opportunity for reformers to advance these measures. Parliament’s willingness to convert the government’s decree-law into law in July of 1991, when they had declined to do so earlier in the year, was one indication that legislative neutrals had shifted in favor of reform. By continually referring to the structure of the mafia and the scope of threat it posed, reformers were able to put pressure on legislators to demonstrate their antimafia bona fides. The fact that the most significant advances of the reformist agenda occurred after such high-profile attacks as the Scoppelliti and Grassi murders provides additional support for the idea that political leaders moved in response to public reactions to crime, rather than broader

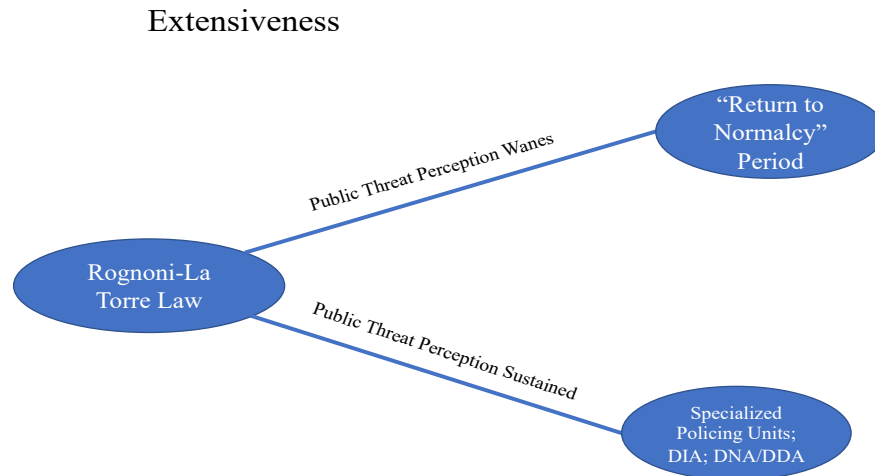
¹⁷³ CAMERA DEI DEPUTATI, RESCONTO STENOGRAFICO 747, X Legislatura, Discussioni, 93874 (Jan. 16, 1992) (“[c]i auguriamo che il decreto-legge n. 367 sia convertito in legge, anche per le aspettative e le speranze che ha fatto sorgere nell’opinione pubblica.”).

¹⁷⁴ Legge 30 dicembre 1991, n. 410, G.U. 30/12/1991, n.304 (It.); Legge 20 gennaio 1992, n. 8, G.U. 20/01/1992, n.15 (It.).

structural incentives. As my theory predicts, the ability of reformers to frame the mafia as an issue that justified a public sense of threat played a significant role in pushing political leaders to embrace law-and-order reforms.

Moreover, in attempting to secure reform, the rhetoric of Italian reformist politicians as well as much of the Italian press emphasized the unity and cohesion of Italian organized crime. By consistently representing the Mafia as a monolithic, “octopus-like” entity that was capable of posing a direct threat to the Italian state, reformers argued that the establishment of significant law enforcement bodies was not only reasonable, but a change necessary to put the Italian government on equal footing with its criminal adversaries. The pervasiveness and consistency of this rhetoric is consistent with my theoretical expectation that the public is most likely to maintain the threat perception necessary to motivate a drive for reform when the criminal group(s) being confronted are perceived as relatively cohesive. In their demand for a fight against the ‘Octopus,’ the Italian public was willing to support the creation of robust new bodies of crime-fighters at the national level, and Parliament was pushed to oblige them.

Figure 5.2: Extensiveness in Italy



V. Analysis

a. The Extensiveness of Italian Reform in the Theory

i. Challenges to Extensive Reform

The establishment of Italy's institutions of competent enforcement is broadly consistent with my theoretical expectations. In the immediate aftermath of the Maxiprocesso, Italian politicians sought to restore a sense of normalcy and generally eschewed new reformist initiatives. As the government sought to downplay organized crime, some political and bureaucratic leaders saw judges, including antimafia magistrates, as a greater threat than organized crime. Politicians in the Socialist and Radical Parties began to campaign openly against the judiciary, even drawing on the support of imprisoned mafiosi to do so.

At the same time, concern about the influence and unique position of the antimafia pool within the judiciary led to the dismantling of the most effective group of mafia specialists in the

Italian courts as well as the marginalization of the most significant antimafia crimefighter, Giovanni Falcone. Although the antimafia pool does not qualify as a competent enforcement body in my theory, due to its localized nature, it was a proto-institution of specialized prosecution. The dismantling of the pool cannot be explained merely by the completion of the Maxiprocesso—despite the size of the trial, there was little doubt that the mafia still existed throughout Sicily even after the trial was done. Moreover, since the appellate process remained open to the defendants, there was no certainty that the very individuals found guilty in the Maxiprocesso would not be absolved by a higher court. As such, it made little sense from a procedural point of view to preemptively dissolve an effective institution that might very well still be needed. However, significant factions within the judiciary were concerned that specialists such as the pool members might undermine bureaucratic norms and hierarchies. The destruction of the pool in the aftermath of the Maxiprocesso mirrors many of the features that my theory would expect in a period of rollback.

ii. [Renewal of Public Threat Perception](#)

Despite efforts to “return to normal,” a series of high-profile attacks in the early 1990s ensured that organized crime remained a subject of national attention. Moreover, media reports and political statements continued to portray the mafia as a growing national problem. In addition to the depiction of the South of Italy as essentially ungoverned territory, reformers increasingly described the North as subject to criminal infiltration of the economy and key institutions. Unsurprisingly, survey data suggests that Italians as a whole considered crime to be a top priority in these years.

It was at this point that the most unlikely of reformists formed a government dedicated to taking steps against organized crime. Giulio Andreotti, who had long been suspected of having

mafia ties and who had generally taken stances to undermine reformism, promised strong anti-mafia action. I do not suggest that Giulio Andreotti experienced a Road to Damascus moment. Andreotti was an experienced political leader with interests that were at least to some degree at odds with the development of robust antimafia institutions. He initially tried to avoid strong reform by proposing a bill that would have only made modest changes—an institutional tweak. Only when this proved politically untenable did Andreotti's government accede to reform. This included the nomination of Vincenzo Scotti to replace the corrupt former Minister of Interior. It also included empowering Claudio Martelli. Martelli switched his stance from opponent of the judiciary to an antimafia reformer dedicated to building new juridical institutions, thereby capitalizing on the prevailing anti-crime sentiment. In this way, political calculations pushed historically anti-reformist figures into the reformist camp. Yet the ability of these leaders to create institutional reform depended on legislative buy-in.

The failure of the government to win legislative approval of the decree-law establishing specialized police units initially suggested that neutrals and antireformers remained a majority. However, the political calculation had changed by the end of 1991. Several political parties, including the DC and PSI had strong incentives to support the establishment of the DIA and DNA when they came before a Parliamentary vote in 1992. The Italian public, including in Northern regions such as Lombardia, ranked crime as a top issue. Since 1992 was an election year, legislators were particularly concerned about electoral ramifications, and openly spoke of reform as a means of satisfying public opinions. In other words, as the Italian public's sense that mafia criminality was a threat proved durable, the major parties had an incentive to rebrand themselves as crime fighters by incorporating anti-crime reform into their political agendas.

iii. Cohesiveness of Criminal Groups

The Italian public's understanding of the nature of the threat posed by mafia crime did not develop in a vacuum. In the lead-up to the establishment of the DIA and DNA, the Italian press as well as political leaders went to great lengths to define mafia crime as particularly dangerous because of the sophisticated unified structure of the mafia. This rhetorical framing was used consciously to emphasize the scale of the threat posed by mafia groups and a justification for state-strengthening reform. Organized crime was characterized as octopus-like, with tentacles everywhere, and the criminal groups were portrayed as being so sophisticated that they rivaled the power of the state itself. Indeed, Scotti and Martelli argued that centralized law enforcement bodies were needed simply to put the Italian state on equal footing with the mafia. Consistent with the expectations of my theory, advocates of reform relied on the unified, hierarchical nature of the group itself as a key element of their argument regarding the threat that it posed and why that threat demanded reform.

b. *Alternative Explanations*

i. Structural Explanations

Three possible counterarguments may be raised in the context of this case. The first is the possibility that Italian politicians were responding, not to public threat perception, but rather to changes in the structure of Italian domestic politics such as the fall of communism and the rise of regional parties, or to pressure from Europe to address the problem of crime prior to economic integration. These factors doubtless played a role in shaping the incentives of Italian politicians, and most likely contributed to the push to adopt institutional reform. However, they cannot explain the reformist shift of leaders such as Andreotti and Martelli as well as public concerns about mafia violence can. The structural factors were unchanging and had existed since at least

1989. However, public pressure appears to have responded to changing perceptions of the threat the Mafia posed. Indeed, even in the “return to normalcy” period of the late 1980s, the government increased the power of the Alto Commissario following the murders of Antonino Sietta and Mauro Rostagno. The timing of Andreotti’s and Martelli’s shifts towards reform coincided with the murder of Rosario Livatino and increased popular demand for repression of the mafia. Likewise, the passage of the decree-laws came shortly after the murders of Antonio Scopelliti and Libero Grassi. Thus, while concerns about the growing power of new political parties and pressure from Europe may have impacted politicians’ incentives to take an antimafia stance, their willingness to take reformist actions is more clearly predicted by the events shaping domestic public concern about organized crime.

ii. [Decisionmaker Learning](#)

The second possible counterargument is that these reforms were simply a response to government recognition of the threat the mafia posed. Given Cosa Nostra’s repeated attacks, politicians may well have felt a genuine need to take action to counter a rising threat, and their response may have had very little to do with public perception. Some actors within the government who had been consistently antimafia, such as Giovanni Falcone and the members of the antimafia pool, certainly were prepared to advocate for reform regardless of public sentiment. However, this does not appear to have been the case for a sufficient number of government leaders to explain the timing of reform.

The Maxiprocesso had proved decisively that Cosa Nostra was a large, powerful, well-organized, and violent criminal system. Yet in the wake of that trial, the government attempted to downplay reformist tendencies in favor of a sense of normalcy. The interest of many leaders in avoiding seriously engaging with the Mafia is perhaps best represented in the figure of Giulio

Andreotti. As his court documents show, Andreotti had maintained connections to organized crime figures in Palermo, and he was certainly aware of the power and influence of such groups. Yet he initially attempted to prevent reform. Even in 1990, as public concern about the mafia grew, Giulio Andreotti's first set of proposed legislative changes was so mild as to provoke derision. It was only in the face of mounting public pressure that Andreotti promised to make reform a priority and that Martelli and Scotti emerged as serious advocates for anti-organized crime institutions. As such, my argument that public concern is the key driver of reforms outperforms an explanation based solely on the elites' response to an internal security threat.

iii. Party Direction

A final alternative explanation that should be considered is the possibility that the extensiveness of reform was purely a product of internal party politics. This explanation has some merit, as party dynamics doubtless played a significant role in the push for reform. For instance, the ability of the DC to survive elections in the absence of mafia electioneering likely impacted the calculations of politicians who considered whether to support legal measures that would effectively repress organized crime. Similarly, the PSI's relative electoral strength vis-à-vis the other parties may have impacted its interest in taking an antimafia position, a calculation that was no doubt even more significant in the context of the *pentapartito* system.¹⁷⁵

I do not dispute that party interests are significant to the development of legal institutions. They may shape the incentives of decisionmakers and help to drive the form that reform ultimately takes. However, while party calculations may play a significant role in institutional development, they must be filtered through public perceptions of organized crime and may at times be subjugated to it. This is again highlighted by Andreotti's experience. Though

¹⁷⁵ See Chapter IV.

Andreotti's faction preferred to minimize the state's overt engagement with the mafia, mounting public concern led even this historically anti-reform faction to shift their position as a matter of political necessity. Martelli is another example. Though he had targeted the judiciary (and particularly the Palermo judiciary) in order to forestall investigations in his own party's corruption, the growing concern about organized crime incentivized him to take a far more law-and-order position. Of course, party leaders may try to shift public opinion to align with their own preferences, whether reformist or anti-reformist. In this way, public opinion certainly may be influenced by political elites and parties. However, it is the party that manages to impact public threat perception that ultimately secures its policy preferences. As such, a theoretical account such as mine, which takes into account that perception can ultimately explain more than one that focuses only on party direction.

c. Implications of the Italian Case

In this section, I will consider some of the broader implications of the Italian case as a whole (considering the reforms of Chapters IV and V). In particular, I note the state-strengthening effects of anti-organized crime reform and the impact of elites in driving public perceptions.

i. State Strengthening Effects

Both the Rognoni-La Torre law and the antimafia law enforcement bodies demonstrate that the establishment of anticrime institutions can act as a form of state strengthening, and indeed that this is an effect of which reformers may be conscious. Though Italy has a relatively centralized legal system with minimal regional or local autonomy, the state nonetheless found itself limited in its ability to effectively repress the criminal organizations that exercised considerable social, political, and economic influence in the South. The institutional reforms of

the 1980s and 1990s not only enhanced the ability of prosecutors and police to target these groups, but they enabled the central government to more effectively engage in repressive activities at a national level.

The Rognoni-La Torre Law provided a critical first step in strengthening the Italian state relative to criminal groups. In defining and criminalizing mafia activity in a manner that was not limited to such defined groups as Cosa Nostra, Camorra, and ‘Ndrangheta, the Rognoni-La Torre Law allowed prosecutors from throughout the nation to threaten criminal organizations with severe penalties. This not only enabled the prosecution of particularly violent established actors such as the Corleonesi, but it gave the Italian state a powerful weapon with which it could threaten a variety of sub-state violent actors. Subsequent jurisprudence has further allowed the state to use this legislation to target non-mafiosi who engage in corrupt relationships with mafia organizations.¹⁷⁶

The establishment of competent enforcement bodies arguably went even further in strengthening the power of the national government. As Scotti and Martelli’s arguments note, this was an explicit purpose of the DIA and DNA. These institutions enhanced the power of law enforcement to operate at a national level. By developing an elite interforce policing body, Italy would be able to more effectively penetrate its most difficult territories, particularly within the

¹⁷⁶ This is the crime of *concorso esterno* (external association). does not exist as a crime in the Italian criminal code, but is a theory derived from the combination of Article 416-bis and Article 110 c.p., which establishes that when more than one person is complicit in a crime, each is subject to the same punishment for that crime. Italian courts have expanded on the combination of these two provisions of the criminal code to establish the legal foundations for prosecutors to treat those who support mafia actors almost as if they were mafiosi themselves. For a brief overview of the crime of *concorso esterno*, see Maura Cremin, *Italy’s Anticorruption Laws Are Causing More Confusion Than Clarity*, GLOBAL ANTICORRUPTION BLOG (Dec. 9, 2019), <https://globalanticorruptionblog.com/2019/12/09/italys-mafia-corruption-laws-are-causing-more-confusion-than-clarity/> (accessed 23 Feb. 2022). For critiques of *concorso esterno* in the context of the Italian legal system, see e.g., Giovanni Fiandaca and Costantino Visconti, *Il Concorso Esterno Come Persistente Istituto “Polemogeno”*, ARCHIVIO PENALE 487 (May-Aug. 2012); Paola Maggio, *Nella “Revisione Infinita” del Processo Contrada I Nodi Irrisolti Dell’esecuzione delle Sentenze Cedu e del Concorso Esterno nel Reato Associativo*, CASSAZIONE PENALE 3432 (Sept. 2016).

South. Moreover, by coordinating investigations conducted by specialized teams of prosecutors, the DNA allowed the government to develop a more unified picture of organized crime and to more effectively deploy its resources against criminal groups.¹⁷⁷ In allowing the state to coordinate investigations and prosecutions, these agencies rendered the territory in which criminals operated more legible to the national government and provided the state with a more credible threat of repression through the legal system.¹⁷⁸

ii. Elite Influence

The Italian case also points to the fact that elites do play a significant role in determining the timing and extensiveness of reform. Although, as discussed above, shifts in public perception are necessary to catalyze reform, the sources of public perception are not fully explored in this dissertation. However, there is suggestive evidence that elite framing of critical events can play a vital role in shaping public perception of the threat of organized crime. Admittedly, this is somewhat clearer in the US case, where reformist politicians actively shaped the public's understanding of organized crime through a series of well-promoted hearings.

In Italy, Mafia activity certainly had a significant role in shaping the public's perception—rising violence against increasingly prominent state officials undoubtedly bore

¹⁷⁷ A full discussion of the development of Italian antimafia law after 1992 is beyond the scope of this dissertation. It is sufficient to note that the power of law enforcement has further increased over time Italy has continued to pass legislation favorable to the investigation of organized crime. For instance, antimafia investigators and prosecutors have certain advantages relative to their counterparts investigating other types of crime in the use of incriminating evidence. They also enjoy greater access to the use of certain investigative tools, such as the interception of electronic transmissions. This has led some to refer to a “double track” (*doppio binario*) in Italian law, with certain rules applying in mafia cases, and different rules in non-mafia cases. For a discussion of the doppio binario system, see e.g., IL “DOPPIO BINARIO” NELL’ACCERTAMENTO DEI FATTI DI MAFIA (Alfredo Bargi ed., 2013); Pierpaolo Dell’Anno & Angelo Zampaglione, *Criminalità Organizzata. Le Peculiarità del Procedimento di Cognizione alla Prova dei Principi Costituzionali*, DIRITTIFONDAMENTALI.IT (Nov. 2018).

¹⁷⁸ For a discussion of state presence and repressive capability, see e.g., JAMES C. SCOTT, *SEEING LIKE A STATE: HOW CERTAIN SCHEMES TO IMPROVE THE HUMAN CONDITION HAVE FAILED* (1998); GUILLERMO O’DONNELL, *COUNTERPOINTS: SELECTED ESSAYS ON AUTHORITARIANISM AND DEMOCRATIZATION* (1999); Dan Slater & Diana Kim, *Standoffish States: Nonliterate Leviathans in Southeast Asia*. 3 TRANS: TRANS-REGIONAL & -NAT’L STUD. OF SOUTHEAST ASIA 25 (2015).

directly on the public's perception of organized crime as a threat. However, it is important to note the shifting rhetoric of media and political elites around the increasing violence. As tension built and reformists gained momentum, the discourse around mafia victims increasingly emphasized their national status, from comparisons of Mattarella's murder to that of Aldo Moro and ultimately culminating in descriptions of the murder of Carlo Alberto Dalla Chiesa as an attack on the state itself.

Similarly, in advocating for the development of competent enforcers, reformist elites consistently emphasized the scale and structure of the Mafia threat as a justification for the need for the proposed reforms. Reformists regularly argued that the cohesive nature of Cosa Nostra made more extensive reform necessary just to put the state on even footing with the criminals. The fact that these statements were made to the public, whether in media sources or in legislative debates suggests at least some effort on the part of these leaders to shape the public perception of the nature of the threat in the pursuit of their policy objectives.

Admittedly, the relationship between elite rhetoric and public opinion is speculative. Although the Italian public in the early 1990s did show heightened concern about organized crime, it is not possible for me to link that shift to the statements of media and reformist leaders. In addition, the lack of survey data in the early period of my study requires me to be circumspect in my analysis of how that opinion may have been shaped. Nevertheless, I point to the signs of elite influence on public perception in order to indicate the complex interrelationships between politicians, criminals and the public in creating the conditions necessary to advance anti-organized crime reform.

VI. Conclusion

Although the Christian Democrats and Socialists invested significant political capital in the establishment of anti-organized crime institutions, they would not realize electoral benefits. 1992 proved to be a watershed year in Italian politics.¹⁷⁹ On January 31st, the Italian Supreme Court upheld the convictions of the Maxiprocesso and recognized the “Buscetta Theorem” which held that Cosa Nostra was a unified, hierarchical organization.¹⁸⁰ However, the news of the court’s decision was overshadowed by other political events. On February 17, 1992, police arrested Mario Chiesa, a Socialist politician in Milan, on corruption charges. This marked the beginning of the massive anti-corruption investigation that would be known as *Mani Pulite* (Clean Hands). The *Mani Pulite* investigation uncovered a vast and well-organized network of corrupt relations existing at all levels of government which particularly implicated the PSI and DC.¹⁸¹ In the wake of this scandal, Prime Minister Andreotti resigned from his position, leading to the dissolution of parliament and calls for new elections.

On March 12, Salvatore Lima, a DC Member of the European Parliament from Palermo, and a strong supporter of Andreotti, was murdered by Cosa Nostra. Lima’s death sent a different message than the murders of the earlier “excellent cadavers.” Lima was known to have close ties to the Mafia, and his murder was interpreted as punishment for the DC’s inability to secure the

¹⁷⁹ For a detailed discussion of the significance of the 1992 election, see THE END OF POST-WAR POLITICS IN ITALY: THE LANDMARK 1992 ELECTIONS (Gianfranco Pasquino & Patrick McCarthy eds., 2019) (1993); Martin J. Bull and James L Newell, *Italian Politics and the 1992 Elections: From 'Stable Instability' to Instability and Change*, 46 PARLIAMENTARY AFF. 203, 213 (Apr. 1993).

¹⁸⁰ ALEXANDER STILLE, EXCELLENT CADAVERS 348-49 (2011) (1995). This outcome was far from certain at the outset of the appeals process. The case was initially scheduled to be heard by Judge Corrado Carnevale. Carnevale, who was suspected of having ties to the mafia, was known as the “Sentence-Killer” (*Ammazzasentenze*) because he so frequently overturned the convictions of organized criminals, sometimes on legally questionable grounds. Following a change in procedural rules and the opening of a Ministry of Justice inquiry into possible breaches of legal ethics, Carnevale bowed to pressure and recused himself from the case.

¹⁸¹ ALEXANDER STILLE, EXCELLENT CADAVERS 350 (2011) (1995). Indeed, Claudio Martelli would eventually be implicated in the scandal, along with his political mentor, Bettino Craxi.

release of the Maxiprocesso defendants.¹⁸² In the words of Gaspare Mutolo, a mafioso who eventually collaborated with the state, Lima's murder was intended as a message to the DC more broadly. According to Mutolo, Lima was murdered "because he was considered the maximum symbol of that political faction which, having upheld a relationship of peaceful cohabitation and exchange of favours with Cosa Nostra for many years and having received in return the votes of the organization, no longer protected its interests at the precise moment of its most important trial, and on the contrary showed an inclination to pursue policies of an opposite tendency."¹⁸³

In the wake of these scandals, and without the threat of a potential Communist government, the PSI and DC were extremely vulnerable. Both parties' electoral shares fell to historic lows, while regionally based parties such as the Northern League, and the antimafia party *La Rete* (founded by former DC mayor of Palermo Leoluca Orlando) made significant gains.¹⁸⁴ The government was thrown into an extended period of crisis, and by 1994, both the DC and PSI, two of the mainstays of Italian government, would dissolve. This led to the emergence of the so-called "Second Republic" of Italy.

In addition to the political tumult, Italy's war against the mafia would intensify in 1992. On May 23, 1992, Giovanni Falcone and his wife, Francesca Morvillo, as well as members of Falcone's police escort, were murdered when a bomb placed under the highway near the Sicilian town of Capaci detonated while they were traveling from the Punta Raisi Airport into Palermo. Less than two months later, on July 19, 1992, Paolo Borsellino, Falcone's closest friend and colleague on the antimafia pool, was killed along with the members of his escort by a car bomb placed outside of his mother's home on Via d'Amelio, in Palermo. The murders of Falcone and

¹⁸² ALEXANDER STILLE, *EXCELLENT CADAVERS* 350 (2011) (1995).

¹⁸³ Quoted in ALISON JAMIESON, *THE ANTIMAFIA* (1999).

¹⁸⁴ ALISON JAMIESON, *THE ANTIMAFIA* (1999); ALEXANDER STILLE, *EXCELLENT CADAVERS* 351 (2011) (1995).

Borsellino were an earthquake in a country that had experienced many assassinations of high-profile antimafia figures.¹⁸⁵ In the aftermath of the judges' deaths, seven thousand soldiers were sent to Sicily to free police forces to hunt down the leaders of the mafia.¹⁸⁶ This effort led to several high-profile arrests, including that of Salvatore "Totò" Riina, the vicious leader of the Corleonesi clan, who had been responsible for the murders of Falcone and Borsellino, along with many others. For a time, the Mafia fought back, even launching a series of terroristic car bomb attacks against innocent civilians in Rome, Florence, and Milan.¹⁸⁷ Nonetheless, the state maintained its repressive stance in Sicily. Indeed, the DIA and DNA, the institutions that Falcone had worked so hard to establish, would become part of the crackdown on the Mafia.¹⁸⁸ Ultimately Cosa Nostra, particularly under the leadership of the fugitive boss Bernardo Provenzano, made a concerted effort to eschew violence, and the organization has not since engaged in the highly visible bloodshed seen under Totò Riina.¹⁸⁹

Italy's experience combating mafia groups has led it to develop an extensive and robust system of legal institutions to combat organized crime.¹⁹⁰ Of course, these reforms have not been a panacea, as mafias continues to exist, to threaten, and to corrupt. Observers have expressed

¹⁸⁵ One additional police officer, Giovanni Lizzio, would be killed in the summer of 1992. *Cronologia su Mafia e Antimafia*, PARLAMENTO ITALIANO: SPORTELLO SCUOLA E UNIVERSITÀ COMMISSIONE PARLAMENTARE ANTIMAFIA, <https://web.camera.it/bicamerale/leg15/commbicantimafia/cronologiamafieantimafia/schedabase.asp> (accessed 28 Feb. 2022)

¹⁸⁶ JOHN DICKIE, COSA NOSTRA 315 (2004). This manhunt targeted many of those who had already been convicted in the Maxiprocesso but had remained fugitives, including Totò Riina.

¹⁸⁷ ALISON JAMIESON, THE ANTIMAFIA (1999).

¹⁸⁸ DIREZIONE INVESTIGATIVA ANTIMAFIA, RELAZIONE SEMESTRALE SULL'ATTIVITÀ SVOLTA E SUI RISULTATI CONSEGUITI 11 (First Semester, 1993); Claudio Gerino, *Mafia, L'Allarme Della DIA 'Il Terrorismo Non È Finito,'* LA REPUBBLICA, July 3, 1993.

¹⁸⁹ JOHN DICKIE, COSA NOSTRA 329 (2004). Provenzano, who had been a fugitive since 1963, was not discovered in the 1993 crackdown. He remained a fugitive until April 2006. Profile: Bernardo Provenzano, BBC, Apr. 11, 2006.

¹⁹⁰ Practicing antimafia magistrates note the importance of a series of later legal developments, including preventive detention provisions, access to wiretapping, and enhanced sentencing, in the conduct of their investigations. Author interviews.

concern about the expansion of mafia groups to the wealthy north of Italy¹⁹¹ and even internationally.¹⁹² Moreover, political attitudes towards the problem of organized crime have shifted over time, and with them the commitment of the state to robust institutional development.¹⁹³ A full examination of the fluctuations of Italian attitudes on organized crime and their legal consequences is beyond the scope of this dissertation. Nevertheless, it is worth noting that the institutionalization of antimafia laws and law enforcement bodies, as well as law enforcement's engagement in anticrime investigations and prosecutions and their public reports on the state of the mafia in Italy have made it more difficult for mafiosi to exist with the impunity they once enjoyed.¹⁹⁴ Thanks to the sacrifices of antimafia activists from Pietro Scaglione to Giovanni Falcone, Italy has both the legal instruments and law enforcement bodies necessary to seriously challenge organized crime.

¹⁹¹ See e.g., ROCCO SCIARRONE, *MAFIE DEL NORD* (2019); Federico Varese, *How Mafias Migrate: The Case of the 'Ndrangheta in Northern Italy*, 40 L. & SOC'Y REV. 411 (2006); *Italian Mafia Diversifying, Spreading North: Experts*, THE LOCAL, Nov. 24, 2017.

¹⁹² *A Deadly Mafia Export from Italy*, DER SPIEGEL INT'L, Aug. 15 2007; *A Mafia Feud that Began With a Row Over a Firework Leaves Six Dead*, THE GUARDIAN, Aug. 16, 2007; Petra Wischgoll, *Six Italians Shot in Germany in Mafia Feud*, REUTERS, Aug. 15, 2007; Cecilia Anesi & Giulio Rubino, *'Ndrangheta, dall'Africa al Belgio il Business Europeo della Cocaina È Controllato da un Paesino della Calabria*, IL FATTO QUOTIDIANO, Nov. 14, 2017.

¹⁹³ This process began with the rise of Silvio Berlusconi's Forza Italia party. ALISON JAMIESON, THE ANTIMAFIA (1999). Berlusconi has long been suspected of having ties to the mafia. See JOHN DICKIE, *COSA NOSTRA* 331-32 (2004).

¹⁹⁴ *30 Anni di Antimafia*, DIREZIONE INVESTIGATIVA ANTIMAFIA, <https://direzioneeinvestigativaantimafia.interno.gov.it/pannello14/> (accessed 23 Feb. 2022); see also the annual reports of the Direzione Investigativa Antimafia for information on the agency's activities, *Relazioni Semestrali*, Direzione Investigativa Antimafia, <https://direzioneeinvestigativaantimafia.interno.gov.it/relazioni-semestrali/> (accessed 24 Feb. 2022). Most recently, the DDA of Catanzaro, under prosecutor Nicola Gratteri, launched a massive investigation known as *Operazione Rinascita-Scott*, targeting members of the Calabrian 'Ndrangheta. This has led to the largest antimafia trial since the MaxiProcesso. For a discussion of *Rinascita-Scott*, see Elisabetta Povoledo, *Italian Police Arrest Over 300 in Raids on Organized Crime*, N.Y. TIMES, Dec. 20, 2019; Lorenzo Tondo, *Italy's Largest Mafia Trial in Three Decades Begins Against 'Ndrangheta*, THE GUARDIAN, Jan. 13, 2021.

Table 5.1: Italy Timeline

Dates	Events
1983	Palermo antimafia pool formed
February 1986	Maxiprocesso begins
1987	Martelli's anti-judiciary campaign
December 1987	Maxiprocesso convictions
January 1988	Murders of Giuseppe Insalaco and Natale Mondo
January 1988	Antonino Meli nominated as chief prosecutor of Palermo
September 1988	Murders of Alberto Giacomelli, Mauro Rostagno, and Antonino Sietta
1989	Achille Occhetto launches the svolta, which would lead to the dissolution of the PCI
July 1989	Giulio Andreotti becomes Prime Minister
May 1990	Murder of Giovanni Bonsignore
September 1989	Murder of Rosario Livatino
1989-1990	Duomo Connection investigation establishes Mafia presence in Milan
September 1990	Andreotti proposes modest reforms
October 1990	Vincenzo Scotti named Minister of the Interior
November 1990	Decreto-legge 13 novembre 1990, n. 324 passed (Specialized policing) (not converted into law)
February 1991	Claudio Martelli named Minister of Justice
March 1991	Giovanni Falcone transfers to Rome
May 1991	Decreto-legge 13 maggio 1990, n. 152 passed

Table 5.1: Italy Timeline (continued)

July 12, 1991	Legge 12 luglio 1991, n. 203 converts decreto-legge 13 maggio 1990, n. 152 into law, (establishes specialized policing units) (Competent Enforcement)
August 1991	Murders of Antonino Scopelliti and Libero Grassi
October 1991	Decreto-Legge 29 ottobre 1991, n. 345 passed (DIA)
November 1991	Decreto-Legge 20 novembre 1991, n. 367 passed (DNA)
December 1991	1Legge 30 dicembre 1991, n. 410 (establishes DIA) (Competent Enforcement)
January 1992	Legge 20 gennaio 1992, n. 8 (establishes DNA/DDA) (Competent Enforcement)
January 1992	Maxiprocesso convictions upheld by Court of Cassation
February 1992	Arrest of Mario Chiesa begins the Mani Pulite investigations
March 1992	Murder of Salvo Lima
May 1992	Murders of Giovanni Falcone, Francesca Morvillo, Rocco Dicillo, Antonio Montinaro, and Vito Schifani (The Capaci Bombing)
July 1992	Murders of Paolo Borsellino, Agostino Catalano, Walter Cosina, Emanuela Loi, Vincenzo Li Muli, Claudio Traina (The Via D'Amelio Bombing)
July 1992	Military sent to Sicily
January 1993	Arrest of Salvatore Totò Riina
May 1993	Bombings in Rome and Florence
June 1993	Attempted bombing in Rome
July 1993	Bombings in Milan and Rome

Chapter VI: Causing Fear to Make Change—How the United States

Developed Anti-Organized Crime Institutions

To meet the challenge of our times, so that we can later look back upon this era not as one of which we need be ashamed but as a turning point on the way to a better America, we must first defeat the enemy within.

--Robert F. Kennedy, Attorney General of the United States

I. Introduction: A Recap of the Theory

Organized criminality has been in some sense a perennial feature of American society. From the privateers of the 18th century to the urban gangs of the 19th century to the bootleggers who dominated the post-Prohibition criminal landscape, criminal groups have played a significant role in the economic, social, and cultural development of the U.S. However, it was not until 1950 that the phenomenon of syndicated organized crime, and particularly the American Mafia,¹ generated a nationwide reformist movement. From 1950-1970, the U.S. experienced a flurry of legislative and bureaucratic activity directed at improving the federal government's ability to combat organized crime.

I argue that the development of America's anti-organized crime legal institutions was neither inevitable nor easily obtained. Initially a minority of decisionmakers in federal government pursued an agenda of anti-crime reform, while the majority were either opposed to this agenda or neutral. The ability of the reformers to achieve their goal relied upon sustained shifts in public perception of the threat of organized crime from a local issue to a national threat. Where such a shift occurs, democratic pressures force decisionmakers out of the neutral camp and into the pro- or anti-reform camps, creating an opening for reformers to secure initial institutional

¹ Like its Italian counterpart, the American Mafia is known as Cosa Nostra by members of the organization. I use the terms Mafia and Cosa Nostra interchangeably.

development. However, for full development (permissive laws + competent enforcers),² reformers must sustain public attention and sense of national threat. This is most feasible where the criminal group being targeted is perceived as a relatively unified, cohesive entity.

If my theory is correct, I expect that the development of legal institutions in the United States should have been difficult to achieve. I would expect a sustained campaign to establish such institutions, met by significant pushback. The pushback might come from many sources, but given the nation's federalist structure and Americans' historical suspicion of an expansive federal government, I would expect significant concerns about civil liberties, states' rights and the growth of Washington's power.

My theory predicts that institutional reform will occur only when the public goes from seeing organized crime as a local problem to a national threat. Accordingly, at the outset of my period of study, I expect to see evidence that the public sees crime as an issue relegated to certain locations or demographic groups. Though committed anti-crime activists should be identifiable early on, the majority of national level decisionmakers are expected to be neutral or hostile to the idea of organized crime as an issue demanding significant national institutional development.

I further expect to see shifts in public attitudes as a result of high-profile events that bring the issue of organized crime to the center of the national conversation. These events will meet five criteria. 1) They will affect or implicate national interests, including important national figures or parties and will receive considerable attention from the national press. 2) The national government will be seen as responsible for addressing the event in question. 3) These events will

² The concepts of permissive laws and competent enforcers are spelled out in greater detail in the Introduction Chapter. In brief, I define *permissive laws* as laws that allow prosecutors to target a criminal group's key assets in a systematic, large-scale way. This includes targeting the group's human assets by facilitating the imprisonment of large swathes of the group, and particularly high-level leaders. It also includes laws designed to target the group's financial assets. *Competent enforcers* are the second critical institution I consider. These are units of investigators or prosecutors who specialize in the pursuit of organized crime.

be surprising or unexpected. 4) Public outrage will be nonpartisan and distributed across social strata. 5) The criminal group's involvement in the event will be perceived as relatively unambiguous.

One single event may not lead to dramatic reform. However, significant high-profile events that do not by themselves shift public threat perception may nonetheless lead to institutional tweaks, or small-scale changes to existing legal structures. If public focus on organized crime is sustained, these tweaks may lay a foundation for larger reforms over time. Therefore, I expect to see the most significant institutional development following a sustained period of media focus on organized crime. Conversely, where public attention on organized crime wanes, I expect institutional development to halt, and possibly even be rolled back. Furthermore, this shift in public perception does not occur in a political vacuum. Political leaders, particularly reformers, have an interest in convincing the public to recognize the threat of organized crime in order to drive their preferred policy change. As such, I expect to see reformers actively promoting a narrative of organized crime as a national threat as public attention focuses on this issue.

Public perception of organized crime as a national threat should lead to pressure on leaders to combat the criminal group(s). With continued attention paid to organized crime, I expect neutral decisionmakers to face increased pressure to take a stand on this issue. I expect to see shifts in the discourse by decisionmakers as attention builds, with leaders who had previously paid little attention to organized crime or who objected to focusing on it beginning to acknowledge the need to combat it at a national level, creating an opening for institutional development.

My theory anticipates that the most extensive institutional development is likely to occur where public threat perception is sustained over time. I expect that this is particularly likely to occur where the criminal group(s) driving public threat perception is (are) perceived as relatively

cohesive. This is because cohesive organizations generally may be seen as capable of posing a credible competition with the state, and therefore demand the greatest national response. Consequently, I expect to see efforts to develop significant institutions accompanied by political campaigns on the issue of fighting organized crime as a national law and order priority. I also expect to see press and leadership rhetoric emphasizing the unity, strength, and organization of the criminal group. As this national threat perception is sustained, I expect it to become increasingly difficult for leaders to maintain an anti-reform position, leading hitherto anti-reform leaders to accept reform only at this stage.

Figure 6.1: Reform Onset

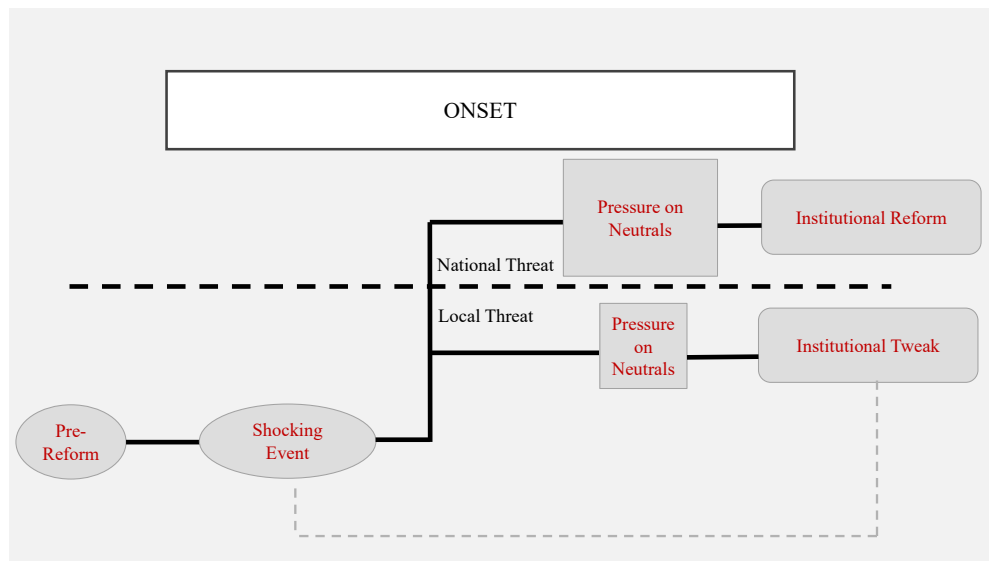
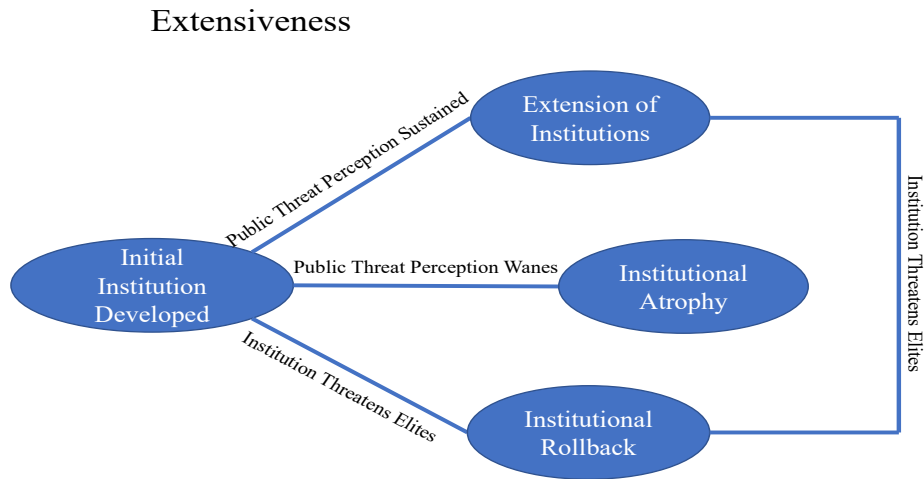


Figure 6.2: Reform Extensiveness



The chapter will proceed as follows: Section II discusses the institutions that were established in the U.S. Section III presents the methodological approach of the chapter. Section IV traces the historical development of American anti-organized crime institutions from 1950 to 1970. Section V discusses the implications of the case for my theory. Section VI concludes.

II. American Anti-Organized Crime Institutions

In this section I describe the institutions that constitute my main outcome of interest in the American case, namely the Organized Crime and Racketeering Section of the Department of Justice and the Organized Crime Control Act of 1970. Though by no means a comprehensive analysis of the form or function of these institutions, this section is intended to introduce and orient the reader to the nature and scope of America's anti-organized crime legal system.

a. *The Organized Crime and Racketeering Section*

The Organized Crime and Racketeering Section (OCRS) of the Department of Justice³ was developed as a team of federal prosecutors who specialized in organized crime cases. Founded in 1954 under the Eisenhower administration, OCRS exploded in size and influence under the leadership of Attorney General Robert Kennedy. OCRS operated within the Department of Justice's Criminal Division.⁴ It included litigators with private sector, government, and academic backgrounds who were based in Washington, D.C. but would regularly travel to other cities where organized criminal investigations were being conducted.⁵ Over time, the unit would set up permanent field offices in cities around the country, further enhancing federal prosecutors' ability to conduct investigations nationwide.⁶ OCRS prosecutors tried cases and conducted investigations into organized criminal activity directly, though they often coordinated with other federal agencies, as well as state and local police, in order to so.⁷

OCRS was the first permanent unit within the Department of Justice dedicated exclusively to the investigation of organized crime.⁸ It allowed the federal government to coordinate and

³ In 2010, OCRS merged with the Gang Unit, and the National Gang Targeting, Enforcement & Coordination Center (GangTECC). It is now known as the Organized Crime and Gang Section. Because this merger occurred after the period I am studying, I will refer to the specialized prosecutorial arm of the Department of Justice targeting organized crime as OCRS throughout.

⁴ The Criminal Division includes specialized sections on a number of units including money laundering, asset forfeiture, fraud, and drugs. JAMES B. JACOBS, *MOBSTERS, UNIONS, AND FEDS: THE MAFIA AND THE AMERICAN LABOR MOVEMENT* 16 (2006).

⁵ RONALD GOLDFARB, *PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY'S WAR AGAINST ORGANIZED CRIME* 27-28 (1995).

⁶ Robert F. Kennedy, *Program of the Department of Justice on Organized Crime*, 38 *NOTRE DAME L. REV.* 637 (1963).

⁷ RONALD GOLDFARB, *PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY'S WAR AGAINST ORGANIZED CRIME* 62-63, 82-123 (1995). The FBI, particularly under J. Edgar Hoover, was both skeptical of the existence of syndicated organized crime and notoriously reluctant to share information or cooperate on investigations. However, Kennedy put significant pressure on Hoover to improve the FBI's intelligence-gathering mechanisms, and the Bureau would ultimately contribute significantly to the law enforcement effort to combat the Mafia. *See* SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 129-132, 209-22, 248-55 (2005).

⁸ Investigation also occurs within the FBI. However, while the FBI is technically under the authority of the Department of Justice, it has considerable autonomy, and the two agencies must coordinate to achieve common

monitor the prosecution of organized crime cases nationwide.⁹ OCRS prosecutors specialized exclusively in building cases against organized criminal groups. This meant that they were experts, not only in the criminal organizations they were prosecuting, but also in the use of legal techniques that would be effective in combating American organized crime.¹⁰ However, because OCRS is a subsidiary of the executive branch, it was subject to the political priorities of the administration. This was particularly true in the section's early years, when the issue of organized crime was only beginning to gain national attention. As organized crime became a topic of increased national concern, the power and prestige of OCRS stabilized, and this section endured within the Department of Justice even after the decline of the Cosa Nostra families.

b. *The Organized Crime Control Act*

The second institution on which I focus is the Organized Crime Control Act of 1970 (OCCA). The goal of the OCCA was to target organized crime systematically. According to the statute's finding and statement of purpose, "[i]t is the purpose of this Act to seek the eradication of organized crime in the United States by strengthening the legal tools in the evidence-gathering process, by establishing new penal prohibitions, and by providing enhanced sanctions and new remedies to deal with the unlawful activities of those engaged in organized crime."¹¹

The OCCA is a complex piece of legislation including twelve separate titles.¹² The first five titles are directed at the evidence-gathering process. Titles I-IV establish special grand juries that can be convened by the Attorney General in large cities and provide them with special powers to

goals. JAMES B. JACOBS, *MOBSTERS, UNIONS, AND FEDS: THE MAFIA AND THE AMERICAN LABOR MOVEMENT* 16 (2006).

⁹ RONALD GOLFARB, *PERFECT VILLAINS, IMPERFECT HEROES* 32 (1995).

¹⁰ See RONALD GOLFARB, *PERFECT VILLAINS, IMPERFECT HEROES* 50, 57-62 (1995).

¹¹ The Organized Crime Control Act, Pub. L. No. 91-452, Statement of Findings and Purpose (1970).

¹² For a concise summary of the provisions of the OCCA, see J. Brian Williams, *Organized Crime Control Act of 1970: Introduction*, 4 U. MICH. J. L. REFORM 546 (1971).

facilitate witness testimony.¹³ Title V authorizes the Attorney General to provide protection to witnesses and their families.¹⁴ Titles VI and VII reduce the government's procedural burden in trying organized crime cases.¹⁵ Titles VIII and IX create new substantive offenses: Title VIII made large gambling operations run in violation of state law a federal offense;¹⁶ Title IX (discussed at greater length below), makes it a federal crime to acquire an interest in an enterprise through a pattern of racketeering.¹⁷ Title X allows for enhanced sentencing.¹⁸ Title XI creates federal controls over the transportation, importation, distribution, and storage of explosives.¹⁹ Title XII creates a National Commission on Individual Rights to review federal laws in several areas in which Congress had enhanced federal repressive capacity.²⁰

The OCCA provided American law enforcement with several important provisions that would be useful in the fight against organized crime. For purpose of my theory, I am most interested in the provisions of the law which created substantive offenses designed to open criminal organizations to prosecution and asset seizure.

¹³ Title I establishes the grand jury; Title II allows the grand jury to summon witnesses and grant them immunity from prosecution on the basis of their testimony; Title III provides for civil contempt procedures with regards to recalcitrant witnesses; Title IV allows for enhanced perjury prosecution and creates a new false declaration provision. *See* The Organized Crime Control Act, Pub. L. No. 91-452, Titles I-IV (1970).

¹⁴ The Organized Crime Control Act, Pub. L. No. 91-452, Title V (1970).

¹⁵ Title VI allows for the preservation of testimony through depositions; Title VII limits the government's requirement to disclose information. *See* The Organized Crime Control Act, Pub. L. No. 91-452, Titles VI-VII (1970).

¹⁶ The Organized Crime Control Act, Pub. L. No. 91-452, Title VIII (1970). Because gambling was believed to be the main source of organized criminal income at the time, this provision was conceived as an important means of targeting criminal groups. For a theoretical discussion of the connection between gambling and organized crime, *see* Thomas C. Schelling, *What is the Business of Organized Crime?* 40 THE AM. SCHOLAR 643 (1971).

¹⁷ The Organized Crime Control Act, Pub. L. No. 91-452 Title IX (1970).

¹⁸ The Organized Crime Control Act, Pub. L. No. 91-452, Title X (1970).

¹⁹ The Organized Crime Control Act, Pub. L. No. 91-452, Title XI (1970). This provision was inserted in response to a growing concern about criminal use of explosives, and not specifically tied to organized crime.

²⁰ The Organized Crime Control Act, Pub. L. No. 91-452, Title XII (1970).

i. [The RICO Statute](#)

It is worth providing some extra information on the Title IX, known as the Racketeer Influenced and Corrupt Organizations Act (RICO).²¹ Developed in response to concerns about Cosa Nostra's ability to infiltrate legitimate businesses for use as fronts, RICO emerged as the key legal tool by which prosecutors were able to charge and imprison entire mafia organizations. A complex statute derived from principles of antitrust law, RICO makes it unlawful for an individual to 1) use income derived from a pattern of racketeering to acquire an interest in an enterprise; 2) acquire or maintain an interest in an enterprise through a pattern of racketeering activity; 3) conduct the affairs of an enterprise through a pattern of racketeering activity; and 4) conspire to commit any of these offenses.²² In order to convict an individual under RICO, prosecutors must establish a pattern of racketeering activity, meaning that a defendant must have engaged in two or more predicate acts within a specified time frame.²³ Criminal penalties under RICO include imprisonment up to 20 years²⁴ as well as asset forfeiture.²⁵

Three factors have been particularly important in making RICO a particularly potent form of permissive law. First, it separates proving criminal acts from proving ties to crime. Rather than prove that a defendant engaged in a specific criminal act, the prosecutor may build his case based

²¹ The Organized Crime Control Act included several significant provisions beyond RICO, including laws on witness immunity and grand jury powers. These were important measures that enhanced federal prosecutors' powers to combat organized crime, and I will address them in brief. However, as RICO is the provision that allows federal prosecutors to prosecute criminal groups as a whole, it is the provision that most strongly fits my theoretical understanding of a permissive law and will therefore be the focus of my analysis.

²² Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1962(a)-(d) (1970); *see also* G. R. Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts - Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009, 1021-22 (1980).

²³ Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961(5) (1970). Predicate acts include any of a list of 35 crimes enumerated in 18 U.S.C. 1961(1).

²⁴ Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1963(a) (1970). A defendant may be imprisoned for life if convicted on the basis of a racketeering offense that permits a life sentence.

²⁵ Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1963(a)-(b) (1970). In addition, the law allows for private enforcement through civil action in which parties may sue a corrupt enterprise for as much as treble damages. Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1964(c) (1970).

on that defendant's participation in and profiting from a criminal enterprise. This approach makes it easier for prosecutors to make cases against organized criminals, and particularly high-level bosses, by effectively criminalizing the act of earning illicit profits, an activity in which criminal bosses almost invariably engage directly. Second, the law allows for the seizure of assets, permitting the government to target financial resources of organized criminals who engage in a pattern of racketeering. Third, the enterprise in which an individual is engaged need not be a legitimate one. Entirely illegal organizations, such as Cosa Nostra, can be treated as enterprises and targeted through RICO.

This last factor was not necessarily obvious at the time the RICO was passed.²⁶ The legislative history of the bill suggests that most legislators saw this provision as a means of preventing the criminal infiltration of legitimate businesses. However, the statute does not explicitly limit its application to legitimate enterprises, but instead says that the law applies to "any enterprise."²⁷ The law's broader applicability to criminal organizations was developed through subsequent case law and was definitively established in *United States v. Turkette*.²⁸ The Supreme Court's expansive interpretation of the law in that case allowed prosecutors to target criminal groups directly as organizations, rather than limiting RICO's applicability to criminal infiltration of legitimate businesses. Nevertheless, the ambiguity surrounding its adoption points to the importance of judicial actors in shaping the contours of anti-organized crime laws.

²⁶ For a discussion of the tension between RICO's legislative history and its statutory interpretation, see Therese M. Green, *Coverage and Application of the Organized Crime Control Act of 1970: The Anti-Racketeering Statute in Operation*, 53 CHI.-KENT L. REV. 498 (1976).

²⁷ Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. § 1962(b) (1970).

²⁸ *United States v. Turkette*, 452 U.S. 576 (1981).

ii. [The Path Not Taken: Criminalizing Mafia Membership](#)

It is worth asking why the United States took such a circuitous path to target organized crime, rather than merely banning membership in groups such as the Mafia outright. Reformers have made this suggestion periodically, but it has always been rejected. According to Ronald Goldfarb, when the idea was raised by Robert Kennedy, lawyers in OCRS saw it as a sign of “legislative naivete,” as it would be incredibly difficult to draft such a law in a way that would survive judicial review.²⁹ In 1965, Senator John McClellan proposed legislation criminalizing membership in the Mafia.³⁰ Though the bill was referred to the Senate Judiciary Committee, it did not receive hearings.³¹ McClellan reintroduced the bill in 1967,³² but once again it received little traction. During the House debates over the OCCA, Congressman Mario Biaggi proposed an amendment to outlaw the Mafia which was decisively rejected.³³

Given the success of this exact proposal in the Italian context, it is worth acknowledging its failure to be seriously considered as a solution in the United States. The proposal has generally been seen as violating the constitutional guarantee of free association, on the logic that even members of the Mafia have the right to belong to a group together in the absence of any other

²⁹ RONALD GOLDFARB, *PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY’S WAR AGAINST ORGANIZED CRIME* 64 (1995).

³⁰ A Bill to Outlaw the Mafia and Other Organized Crime Syndicates, S. 2187, 89th Cong. (1st Sess. 1965); *Anticrime Program Presented to Congress*, in CQ ALMANAC 1965 628 (21st ed. 1966), <http://library.cqpress.com/cqalmanac/cqal65-1259857> (accessed 14 Jan. 2022).

³¹ *Anticrime Program Presented to Congress*, in CQ ALMANAC 1965 628 (21st ed. 1966), <http://library.cqpress.com/cqalmanac/cqal65-1259857> (accessed 14 Jan. 2022).

³² A Bill to Outlaw the Mafia and Other Organized Crime Syndicates, S. 678, 90th Cong. (1st Sess. 1967). The bill was criticized even in McClellan’s home state. The Arkansas Gazette decried the “repressive new proposals,” arguing that “we do not know how you go about ‘outlawing’ an organization even of outlaws, under the laws and Constitution we have always lived under here in the New Country. *McClellan’s Bills and Magna Carta*, THE ARK. GAZETTE, June 26, 1965 (found in McClellan Archives, Ouachita Baptist University, 09) ii. Crime 1965-69, 417: 62).

³³ 116 Cong. Rec. H35343 (daily ed. Oct. 7, 1970).

crime.³⁴ Thus, while criminalizing membership in the Mafia and related groups may have seemed an obvious response to the problem of organized crime, American lawmakers have consistently shied away from this direct approach.

III. Methodology

To assess the salience and perceived threat of organized crime in the United States, I consult online archives of several American newspapers. Given my interest in national responses to organized crime, I focus on news sources with a national readership, including the *New York Times*, the *Washington Post*, the *Chicago Tribune*, and the *Los Angeles Times*.³⁵ In doing so, I attempt to account for the perspectives of media sources from across the country. Unlike Italy, where high-profile acts of violence drove much of the public awareness of organized crime, in the American context, the events which increased public attention were generally slow moving and, in some cases, lacked clear endpoints. As such, unlike in the Italian case, I do not draw strict time limits around the coverage of key events that I consider.

Where possible, I refer to public opinion data with surrounding issues of crime. As I discuss in the introductory chapter of my dissertation, attempting to gauge public perception of organized crime through media sources is less than ideal. Not only are media narratives largely driven by elite actors who are not fully representative of the general public, some media sources may have political or ideological allegiances and pre-existing policy preferences. Unfortunately, there is not consistently available public opinion data on attitudes around crime during the time that I am studying. Systematic gathering of public opinion on the topic of crime largely began in

³⁴ See David Cole, *Hanging With the Wrong Crowd: Of Gangs, Terrorists, and the Right of Association* SUP. CT. REV. 203 (1999). For an argument that membership in the Mafia would not be entitled to constitutional protection, see Ashutosh Bhagwat, *Associational Speech*, 120 YALE L. J. 978 (2011).

³⁵ I also consult articles from nationally distributed magazines, such as *Life*.

the late 1960s following the President's Commission on Law Enforcement and Administration of Justice (discussed below).³⁶ As such, while there is some survey data on how the American public perceived crime, it is limited to the last years of my period of study.

In assessing the government response, I seek to understand how political decisionmakers spoke about organized crime reform. I rely on a combination of archival documents, publicly available legislative records, and secondary source material. In particular, I draw on documents gathered from the political papers of Senator John McClellan at Ouachita Baptist University as well as online records from the archives of Senator Estes Kefauver at the University of Tennessee Knoxville.³⁷ In addition, I consult publicly available records of legislative materials, including parliamentary committee reports, speeches, debates, and newspaper reports on official statements. Using this material, I process trace the development of anti-organized crime institutions, observing the relationship between public attitudes towards organized crime and the advance of anticrime legislation.³⁸

IV. US Anti-Crime Reform from 1950-1970

a. *Organized Crime in the Early Twentieth Century*

i. Secret Societies and Italian Immigration

Organized crime has existed in the U.S. in some form since the piracy and organized smuggling of the colonial period. Banditry was common throughout the American frontier territory.³⁹ Large-scale gangs, often ethnically based, have also been a perennial feature of

³⁶ Jonathan Jackson, *Introducing Fear of Crime to Risk Research*, 26 RISK ANALYSIS 253, 254 (2006).

³⁷ The records of the Kefauver archives available online do not represent the complete repository of archival material available at the University of Tennessee Knoxville. Unfortunately, due to disruptions related to the Covid-19 pandemic, I was unable to visit all of the U.S.-based archives that I had hoped to consult. Future research will be needed to supplement the historical material I was able to collect.

³⁸ David Collier, *Understanding Process Tracing*, 44 PS: POL. SCI. & POL 823 (2011).

³⁹ See generally Richard White, *Outlaw Gangs of the Middle Border: American Social Bandits*, 12 THE W. HIST. Q. 387 (1981).

American urban life.⁴⁰ Though many ethnic groups formed such gangs, Italian immigrants and their descendants suffered a particularly strong association with crime. Stories of Italian secret societies such as the Mafia, and the use of menacing symbols such as the infamous Black Hand by some Italian extortionists led the American press to depict Italian criminality as part of an organized conspiracy as early as the nineteenth century.⁴¹ This had tragic consequences for the Italian-American population, which was stigmatized for decades. At times, such stereotypes even erupted into violence. The murder in 1890 of New Orleans Chief of Police David C. Hennessy was blamed on “Sicilian vengeance.”⁴² The press widely attributed the attack to the Mafia, and massive anti-Italian hysteria spread throughout the city. Twenty-one Italians were indicted for the crime. Following the mistrial of three men and acquittal of six others, a mob of thousands descended on the jail where the accused were held. Upon entering, they shot and hanged eleven of the Italian prisoners in the largest mass lynching in American history.⁴³

Some leading figures in the American political system saw this outcome as desirable. The *New York Times* described the murders as an “uprising of indignant citizens” who avenged their slain police chief.⁴⁴ Theodore Roosevelt justified the attacks by arguing:

“[t]hese sneaking and cowardly Sicilians, the descendants of bandits and assassins, who have transported to this country the lawless passions, the cut-throat practices, and the oath-bound societies of their native country, are to us a pest without mitigation. Our own rattlesnakes are as good citizens as they... Lynch law was the only course open to the people of New Orleans to stay the issue of a new license to the Mafia to continue its bloody practices.”⁴⁵

⁴⁰ See generally JAMES C. HOWELL AND ELIZABETH GRIFFITHS, *GANGS IN AMERICA'S COMMUNITIES* (3d ed. 2018).

⁴¹ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES 19-20* (2005); THOMAS MONROE PITKIN AND FRANCESCO CORDASCO, *THE BLACK HAND: A CHAPTER IN ETHNIC CRIME* (1977). The authors argue that the Black Hand was never a single criminal conspiracy, but rather individual extortionists relying on common symbols to intimidate their victims.

⁴² Hennessy was investigating crime in the Italian-American communities of New Orleans.

⁴³ For a detailed history of the case, see John V. Baiamonte, Jr., “*Who Killa de Chief*” Revisited: *The Hennessey Assassination and Its Aftermath, 1890- 1991*, 33 LA. HIST.: THE J. OF THE LA. HIST. ASS'N 117 (Spring 1992).

⁴⁴ *Chief Hennessy Avenged*, N. Y. TIMES, March 15, 1891, at 1.

⁴⁵ *The New-Orleans Affair*, N. Y. TIMES, March 16, 1891, at 4.

Incidents such as the New Orleans lynching demonstrate that Americans had some conception of organized criminality, particularly that associated with Southern Italian immigrants, relatively early in the country's history. Yet there is relatively little evidence that Italians (or any other ethnic group) operated as part of a national, let alone international, conspiracy at this time.

ii. Prohibition and the Mob

The development of nationally organized criminal syndicates can largely be traced to the 1920s and Prohibition. On January 16, 1919, the 18th Amendment was ratified, banning the “manufacture, sale, or transportation of intoxicating liquors.”⁴⁶ Despite the best legal efforts of anti-alcohol activists, Americans maintained their taste for liquor, and continued to demand it. The illegalization of the substance simply shifted the supply chain from the regular to the black market. Though ethnically based gangs in cities like New York and Chicago had long controlled markets such as illegal gambling and prostitution, the sale of liquor had the potential to bring in exponentially greater profits.⁴⁷ In order to manage this market, the gangs became both more sophisticated and more lethal. Profits and product had to be transported, hidden, and distributed on a large scale, which generally required paying off local law enforcement and politicians.⁴⁸

Conflicts over territory and market share also became particularly high stakes, given the profits at issue. Violence, which could be highly visible, sometimes occurred between different gangs. For instance, struggles between Irish and Italian bootleggers in Chicago led mobsters such as Al Capone to become national figures.⁴⁹ In the 1920s, the Italian gangs of New York, and to a

⁴⁶ U.S. CONST. amend. XVIII.

⁴⁷ Hoyt E. Ray, *Crime and Prohibition*, 38 J. OF CRIM. L. & CRIMINOLOGY 119, 124-26 (1947); For a history of the Mafia's involvement in prohibition, see SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* Ch. 4 (2005).

⁴⁸ THOMAS REPPETTO, *BRINGING DOWN THE MOB* 7 (2006).

⁴⁹ LAURENCE BERGREEN, *CAPONE: THE MAN AND THE ERA*, 318 (1996).

lesser extent Chicago, waged a power struggle amongst themselves that led to considerable bloodshed. In the wake of this conflict, known as the Castellammerese War, Italian gangs re-organized into a pyramidal structure.⁵⁰ Control would be divided among localized groups known as families, which would maintain a strong managerial hierarchy. The families would operate autonomously within their territory. In general, families controlled one city, though New York was divided among five families. The families would be loosely monitored by a governing body known as the Commission. The Commission could regulate disputes and minimize violence, though its degree of control risks being overstated.⁵¹ This organization, sometimes known as Cosa Nostra⁵² (in Italian, Our Thing), operated in cities across the United States.⁵³ Members of Cosa Nostra also developed relationships with other ethnically-based criminal organizations, including Irish and Jewish gangs, extending the reach of the group's broader criminal network.⁵⁴

iii. [Responses to the Prohibition Gangster](#)

The Prohibition-era gangster was a figure of public notoriety.⁵⁵ Press coverage of gang violence was often accompanied by criticism of the ineptitude of the police and calls for reform. The *Washington Post* noted that “[l]ocal government, good, honest and well intentioned, finds itself powerless before the daily onslaught of millionaire gang rule . . . States can chase a

⁵⁰ For a history of the Castellammerese War, see SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* Ch. 4 (2005).

⁵¹ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 33 (2005); THOMAS REPPETTO, *BRINGING DOWN THE MOB* 5 (2006). For an argument that the Commission did not truly govern, see generally James B. Jacobs, *The Rise and Fall of Organized Crime in the United States*, 49 *CRIME & JUST.* 17 (2020).

⁵² American law enforcement has historically labelled the group La Cosa Nostra (LCN), and continues to do so. This name is incorrect, as it is inconsistent with Italian grammar (it literally means “The Our Thing”). Members of the mafia, both in the United States and Italy, refer to the organization as Cosa Nostra, and I do so throughout this text unless quoting from law enforcement materials.

⁵³ THOMAS REPPETTO, *BRINGING DOWN THE MOB* 5-6 (2006).

⁵⁴ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 41 (2005); THOMAS REPPETTO, *BRINGING DOWN THE MOB* 5-6 (2006).

⁵⁵ MARIE GOTTSCHALK, *THE PRISON AND THE GALLOWS: THE POLITICS OF MASS INCARCERATION IN AMERICA* 60 (2006).

criminal to its borders, but beyond those limits it is hard to go.”⁵⁶ The U.S. Attorney in Chicago Dwight H. Green called for federal anti-racketeering laws to combat organized crime.⁵⁷ Secretary of Commerce Daniel C. Roper referred to racketeering as a matter of “positive, national self-preservation,”⁵⁸ a charge echoed by the president of Princeton.⁵⁹

Yet despite the violence and notoriety of the Prohibition gangsters, little federal legal action was taken to address them. Elbert Gary, the Chairman of the Board of U.S. Steel, organized the National Crime Commission, a citizen’s organization dedicated to conducting a campaign to arouse public opinion against crime and to advocate for federal solutions to the problem.⁶⁰ The Commission found relatively little interest in the issue from state legislators and governors.⁶¹ As the Commission’s executive director Louis McHenry Howe balefully noted, “[t]he desire on the part of our people to have crime reduced is not lacking; but apparently there is a feeling that it is not a matter which touches their lives or fortunes personally. Any politician will tell you that unless an issue involves a voter personally he will not become really active in the matter.”⁶² Likewise, while President Hoover’s administration successfully advocated for some improvements to the professionalization of law enforcement, the president found weak support for proposals to increase federal involvement in law enforcement, particularly in the South.⁶³

⁵⁶ John L. Coontz, *Rubbing Out the Gangster*, WASH. POST, Aug. 27, 1933, at SM1.

⁵⁷ *Federal Racket Laws Urged at Senate Hearing*, THE ASSOCIATED PRESS, in N. Y. HERALD TRIB., Oct. 24, 1933, at 3.

⁵⁸ *Roper Calls Racketeering Threat to Nation’s Life*, N. Y. HERALD TRIB., Sept. 5, 1933, at 6.

⁵⁹ *Crime Syndicates Rule Nation, Says Educator*, L. A. TIMES, April 24, 1932, at 8. Some elites, even within the legal world, disagreed with this approach. Attorney General William Mitchell argued that organized crime was fundamentally a local problem. *Attorney General Cites 48 Rackets in One Community*, WASH. POST, May 17, 1931, at M15. The president of the federal bar association of New York likewise objected to efforts to increase federal power to combat organized crime, claiming that “it would be intolerable to have our local affairs policed by a centralized bureaucracy in Washington,” though he did not object to cooperation between state and federal agencies. *Law’s Enforcement Held Local Function*, N.Y. TIMES, May 6, 1934, at 6.

⁶⁰ Louis McHenry Howe, *Our Big Job—Crime Control*, N.Y. HERALD TRIB., Feb. 2, 1933, at SM1.

⁶¹ Louis McHenry Howe, *Our Big Job—Crime Control*, N.Y. HERALD TRIB., Feb. 2, 1933, at SM1.

⁶² Louis McHenry Howe, *Our Big Job—Crime Control*, N.Y. HERALD TRIB., Feb. 2, 1933, at SM1.

⁶³ MARIE GOTTSCHALK, *THE PRISON AND THE GALLOWS: THE POLITICS OF MASS INCARCERATION IN AMERICA* 63 (2006).

Where cases were brought against criminals at this time, they were often brought at the state level, and the crimes charged were generally state offenses.⁶⁴ One option to bring federal charges, made most famous in the case of Al Capone, was prosecuting gangsters for tax violations.⁶⁵ Tax evasion cases were particularly attractive because the prosecution could meet its burden of proof entirely on the basis of circumstantial evidence.⁶⁶ In the context of organized criminal offenses, which so often lack sufficient physical evidence or witness testimony, this made tax charges easier to prove than many other criminal offenses.

With the passage of the 21st amendment in 1933, Prohibition came to an end.⁶⁷ For a time, it seemed that the era of the urban bootlegger had come and gone. Yet while Cosa Nostra was no longer in the alcohol business, it became involved in other lucrative businesses.⁶⁸ In addition to illegal markets, criminal groups increasingly profited from infiltration of key sectors of the licit economy such as labor unions.⁶⁹ They also invested significantly in legal enterprises.⁷⁰ Thus, organized crime continued to develop after Prohibition, albeit somewhat out of the public eye.⁷¹

⁶⁴ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* Ch. 6-7 (2005).

⁶⁵ *Capone v. United States*, 51 F.2d 609 (7th Cir. 1931). See also *Guzik v. United States*, 54 F.2d 618 (7th Cir. 1931).

⁶⁶ Hugh Spall, *International Tax Evasion and Tax Fraud: Typical Schemes and the Legal Issues Raised by Their Detection and Prosecution*, 13 U. MIAMI INTER-AM. L. REV. 325, 327 fn.13 (1981).

⁶⁷ U.S. CONST. amend. XXI.

⁶⁸ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 41 (2005); THOMAS REPPETTO, *BRINGING DOWN THE MOB* 37-38 (2006).

⁶⁹ James B. Jacobs and Ellen Peters, *Labor Racketeering: The Mafia and the Unions*, in 30 *CRIME AND JUST.* 229 (2003).

⁷⁰ Famously, many of the casinos in Las Vegas were the products of mob investments. Many of the early investments in Las Vegas were made by Jewish gangsters, such as Bugsy Siegel and Meyer Lansky. However, these mobsters were closely tied with the Mafia, which also invested in and profited from, Las Vegas casinos. SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 41 (2005); THOMAS REPPETTO, *BRINGING DOWN THE MOB* 83-87 (2006).

⁷¹ Media stories about the Mafia were relatively rare during this time. See e.g., *Black Hand Rampant, Says Bay City Charge*, L. A. TIMES, July 23, 1937, at 11; Denis Tilden Lynch, *Shall The Underworld Rule*, N. Y. HERALD TRIB., June 5, 1932, at SM1; Joseph Driscoll, *Costello Scoffs at Mafia Charge, Offers to Go Before Grand Jury*, N. Y. HERALD TRIB., Dec. 21, 1946, at 1A; *Costello Denies Underworld Links*, N. Y. TIMES, Dec. 21, 1946, at 20; *Love Tangle Suspected as Siegel Murder Cause*, L. A. TIMES, June 27, 1947, at 6.

iv. [Analysis](#)

The Prohibition years offer some important implications for my theoretical argument. The experience of the United States in this time suggests that the mere existence of organized crime, as well as elite preferences for reform are not sufficient to explain when reform will be adopted. This was the period in which American mobsters, particularly the Italian-American groups that would form the Mafia, were arguably at their most visible, and were engaged in considerable violence and corruption. At this time, many elites, particularly in urban areas, called for greater federal legislation specifically targeted at combating organized crime.

In terms of the five factors that my theory identifies as predicting shifts in public perception, at most two were met during this time. 1) *The events will be surprising or unexpected.* The large-scale violence and organization of the Prohibition-era gangsters appears to have been relatively novel and to have generated considerable public alarm. 2) *The criminal group's involvement in the event will be perceived as relatively unambiguous.* The involvement of criminal syndicates in the violence and corruption of the Prohibition era was well established in the 1920s and 1930s. Three of the factors that I identify appear not to have been met during this period. 3) *Public outrage will be nonpartisan and distributed across social strata.* Although there was clearly deep concern about the violence of organized crime in many urban areas, Americans outside of these areas, and particularly Southerners, appear to have been considerably less interested in taking action to combat the problem. 4) *The events will affect or implicate national interests, including important national figures or parties and will receive considerable attention from the national press.* Although high-profile attacks such as the St. Valentine's Day Massacre certainly received considerable attention, the events of Prohibition appear to have primarily been understood as implicating local interests. Violence generally occurred among mobsters within particular cities

and corruption was primarily local. While there was an argument that the importation and sale of liquor inherently implicated national interests by virtue of its impact on interstate commerce, this does not appear to have been sufficiently persuasive to make organized crime a national issue at the time. 5) *The national government will be seen as responsible for addressing the event in question.* Although there were calls from some leaders for the federal government to take responsibility for organized crime, many Americans remained reluctant to increase the national government's power.

The fact that national legislation increasing the federal government's ability to target organized crime was not passed in the 1920s and 1930s was attributed by contemporary observers to public apathy. Lack of enthusiasm for federal action, particularly in the South, seems to have prevented President Hoover from securing more than minimal police reform. This suggests that criminal visibility alone cannot predict reform. Furthermore, the frustration of reformers at this time suggests that reformers are unlikely to be able to unilaterally secure their preferences absent some public mobilization.

b. Bringing the Mafia to the Public: The Kefauver Commission

i. The Emergence of Reformers

Organized crime would be squarely in the limelight once again by the 1950s. Violence in Chicago, as well as discussions surrounding the legalization of gambling contributed to renewed interest in organized crime.⁷² A series of citizens' crime commissions around the country began to investigate organized crime in their areas.⁷³ In 1949, the American Municipal Association,

⁷² Jean-Paul Gabilliet, *Making a Homefront Without a Battlefield: The Manufacturing of Domestic Enemies in the Early Cold War Culture*, 7 EUR. J. OF AM. STUD. 1, 3-4 (2012). Attorney General Tom Clark even established a "racket squad" to convene grand juries in cities around the country.

⁷³ Jean-Paul Gabilliet, *Making a Homefront Without a Battlefield: The Manufacturing of Domestic Enemies in the Early Cold War Culture*, 7 EUR. J. OF AM. STUD. 1, 4 (2012).

which represented more than 10,000 cities, petitioned the federal government to take steps to combat criminal syndicates, which they saw as having a growing influence in American cities.⁷⁴

A freshmen Democrat Senator responded by launching a public national examination of organized crime—the somewhat clumsily entitled Special Committee to Investigate Crime in Interstate Commerce (hereinafter the Kefauver Committee).⁷⁵ It is important to note that Kefauver was from Tennessee, a state with no notable history of Mafia activity.⁷⁶ As such, his decision to undertake this reform likely was not a response to organized criminal activity impacting his constituents. Instead, the decision to launch the investigative committee appears to have been primarily a means for Kefauver to build his own national political profile.⁷⁷

According to Kefauver, the purpose of the committee was to “to find out if [a national crime syndicate] do[es] exist . . . and the extent and effect” of its activities.⁷⁸ The committee was comprised of five senators, three Democrats and two Republicans.⁷⁹ The Kefauver Committee operated for 15 months in 14 major cities, holding a series of televised hearings and subpoenaing

⁷⁴ *Special Committee on Organized Crime in Interstate Commerce*, UNITED STATES SENATE, <https://www.senate.gov/about/powers-procedures/investigations/kefauver.htm> (accessed 24 Feb. 2022).

⁷⁵ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 96 (2005).

⁷⁶ This is not to deny that there is no organized crime in Tennessee. Raab notes that Kefauver declined to evaluate underground gambling rings in his home state, and that indeed his committee avoided close scrutiny of any of the committee members' states. SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 101 (2005).

⁷⁷ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 96 (2005). Kefauver certainly had higher political ambitions. He ran for his party's presidential nomination twice, and in 1956 was the vice-presidential candidate on Adlai Stevenson's ticket.

⁷⁸ Senator Estes Kefauver, Excerpts from Weekly Radio Report to the People of Tennessee (Apr. 22, 1950) (found in Estes Kefauver Collection, University of Tennessee Knoxville).

⁷⁹ The members were as follows: Estes Kefauver (D-TN); Lester Hunt (D-WY); Herbert O'Connor (D-MD); Charles Tobey (R-NH); Alexander Wiley (R-WI). *Special Committee on Organized Crime in Interstate Commerce*, UNITED STATES SENATE, <https://www.senate.gov/about/powers-procedures/investigations/kefauver.htm> (accessed 24 Feb. 2022).

a number of high level mobsters.⁸⁰ It focused largely on interstate gambling, which was seen as the main economic activity of organized crime.⁸¹

The hearings initially faced resistance from the Democrat party and the federal law enforcement establishment. Northern Democrats, as well as the Truman administration, feared that investigations would undermine the strength of the party in urban strongholds.⁸² FBI Director J. Edgar Hoover and Attorney General J. Howard McGrath objected to the hearings as a waste of money, as there was little evidence of the existence of a national syndicate. Hoover believed that local solutions were adequate to address whatever criminal organizations did exist.⁸³ In his words, “[t]he federal government can never be a satisfactory substitute for local government in the enforcement field.”⁸⁴ Hoover was also resolutely focused on the fight against communism and did not want the FBI to become involved in projects that might distract from that priority.⁸⁵ In addition, he was concerned that the notoriously professional agents of the Bureau would be corrupted if they came in contact with organized crime.⁸⁶

⁸⁰ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 98 (2005).

⁸¹ *See generally* FINAL REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE ORGANIZED CRIME IN INTERSTATE COMMERCE, S. DOC. NO. 725 (1st Sess. 1951).

⁸² SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 97 (2005). By contrast, the more conservative Southern Democrats were more likely to favor a law and order position.

⁸³ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 87-88, 97 (2005).

⁸⁴ Quoted in SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 88 (2005).

⁸⁵ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 88 (2005).

⁸⁶ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 89 (2005); RONALD GOLDFARB, *PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY'S WAR AGAINST ORGANIZED CRIME* 47 (1995); BURTON HERSH, *BOBBY AND J. EDGAR: THE HISTORIC FACE-OFF BETWEEN THE KENNEDYS AND J. EDGAR HOOVER THAT TRANSFORMED AMERICA* (2008) (“To make sure those clean-cut professionals of his got nowhere near corrupting elements of society, where the money was huge, Hoover arranged with Congress to leave the more pernicious social evils—drugs, gambling, prohibition enforcement, labor racketeering, extortion, loan-sharking, tax evasion—to local law enforcement or elements outside the Justice Department, like Internal Revenue or the Narcotics Bureau. Since drugs, gambling, and the rest provided the lifeblood of organized crime, Hoover wanted nothing to do with any of them.”).

ii. The Goals and Findings of the Committee

Grabbing the public's attention was explicitly the goal of the Kefauver Committee. In a March 1951 draft committee report, investigator Agnes Wolf identified public apathy towards organized crime as a first order problem. Wolf noted that "there seems to be widespread indifference to the problem of infiltration on the theory that it has little effect on the public interest."⁸⁷ She argued that "the public must be made aware of the dangers which arise from such calculated penetration."⁸⁸ Kefauver went even further. In an address to the American Bar Association, he described organized crime as a shadow government subverting the will of the people and stated that "by directing [the public's] attention to organized crime, we hope to break into their apparently sympathetic apathy, and bring about the enactment of legislation that will make impossible the continued existence of this criminal empire in the United States."⁸⁹

The 'criminal empire' which the Kefauver Committee presented to the American public was the Mafia, which he presented as an "elusive, shadowy, and sinister organization" that tied together disparate organized crime networks.⁹⁰ The Committee argued that large criminal structures existed throughout the United States; that they operated much like sophisticated businesses; and that they had considerable influence in the economies of many major American cities.⁹¹ Indeed, the Committee claimed that the Mafia existed as a centrally directed nationwide

⁸⁷ Agnes S. Wolf, *Draft of Committee Report on Infiltration of Organized Crime into Legitimate Enterprises*, 1 (Mar. 22, 1951), (found in Estes Kefauver Collection, University of Tennessee Knoxville).

⁸⁸ Agnes S. Wolf, *Draft of Committee Report on Infiltration of Organized Crime into Legitimate Enterprises*, 2 (Mar. 22, 1951), (found in Estes Kefauver Collection, University of Tennessee Knoxville).

⁸⁹ Senator Estes Kefauver, *The Menace of Organized Crime*, Address Before the American Bar Association, Criminal Law Section, (Sept. 19, 1950), (found in Estes Kefauver Collection, University of Tennessee Knoxville).

⁹⁰ FINAL REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE ORGANIZED CRIME IN INTERSTATE COMMERCE, S. DOC. NO. 725, at 128 (1st Sess. 1951).

⁹¹ FINAL REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE ORGANIZED CRIME IN INTERSTATE COMMERCE, S. DOC. NO. 725, at 126-27 (1st Sess. 1951).

syndicate whose leaders controlled the most lucrative rackets in their cities.⁹² The investigators also established the existence of corruption in some major cities.⁹³ For instance, William O'Dwyer, the former mayor of New York, who President Truman had appointed ambassador to Mexico, was revealed to have extensive ties to organized crime.⁹⁴ Likewise, Florida governor Fuller Warren was tied to illicit gambling, a charge which led to his political demise.⁹⁵

In advocating reforms to fight the Mafia, the Kefauver Committee focused the majority of its recommendations on state and local change, such as grand jury investigations into illicit gambling and racketeering; the creation of rackets and special purpose squads to investigate organized crime; and harsher criminal and civil penalties for activities related to organized crime.⁹⁶ Kefauver himself repeatedly emphasized that crime was primarily a matter of local concern, and that it was dangerous to look to Washington for too many solutions.⁹⁷ However, he also argued that there was a role for some federal involvement in “put[ting] more hurdles in the way of the operation of these big-time fellows.”⁹⁸

⁹² FINAL REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE ORGANIZED CRIME IN INTERSTATE COMMERCE, S. DOC. NO. 725, at 131 (1st Sess. 1951).

⁹³ FINAL REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE ORGANIZED CRIME IN INTERSTATE COMMERCE, S. DOC. NO. 725, at 163-67 (1st Sess. 1951).

⁹⁴ SELWYN RAAB, FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES 98-99 (2005).

⁹⁵ *Special Committee on Organized Crime in Interstate Commerce*, UNITED STATES SENATE, <https://www.senate.gov/about/powers-procedures/investigations/kefauger.htm> (accessed 24 Feb. 2022).

⁹⁶ FINAL REPORT OF THE SPECIAL COMMITTEE TO INVESTIGATE ORGANIZED CRIME IN INTERSTATE COMMERCE, S. DOC. NO. 725, at 199-203 (1st Sess. 1951).

⁹⁷ Senator Estes Kefauver, *The Citizen's Responsibility for Law Enforcement*, Speech Before the Economic Club of Detroit 4 (Nov. 20, 1950) (found in Estes Kefauver Collection, University of Tennessee Knoxville) (“I think it must be said, as we all realize, that 99 per cent of law enforcement must be with the local communities, and that it is the job of the local enforcement officers.”); Senator Estes Kefauver, *Draft of Senator Kefauver's Personal Statement on Moving on From the Crime Committee 4* (Mar. 1951), (found in Estes Kefauver Collection, University of Tennessee Knoxville) (“This is the result America needs: a realization that Uncle Sam can't and shouldn't take the responsibility for local law enforcement. Law enforcement is basically a local problem, and it is dangerous for Washington to do the job”).

⁹⁸ Senator Estes Kefauver, *The Citizen's Responsibility for Law Enforcement*, Speech Before the Economic Club of Detroit 4 (Nov. 20, 1950) (found in Estes Kefauver Collection, University of Tennessee Knoxville); *see also* Senator Estes Kefauver, *Draft of Senator Kefauver's Personal Statement on Moving on From the Crime Committee 4* (Mar. 1951) (found in Estes Kefauver Collection, University of Tennessee Knoxville).

To establish those hurdles, the most significant national level reform for which Kefauver advocated was the creation of a National Crime Commission⁹⁹ that would help local police departments to coordinate their efforts. Kefauver argued that such a Commission, combined with stronger local institutions, would be sufficient to defeat organized crime.¹⁰⁰ While he recognized that there would be opposition to such legislation “from the natural inertia that operates against any far-reaching program of social reform,” he argued that “the people of the United States will mobilize and force public opinion to favor such a program.”¹⁰¹

iii. Public Response

In one sense, Kefauver achieved his objective of shocking the public. Broadcast on national television, the committee’s hearings received massive public attention, becoming the most widely viewed congressional investigative hearings to that point. 72% of the American public was familiar with the Committee’s work. Students were sent home to watch the broadcasts.¹⁰² Approximately 30 million Americans viewed the hearings, and the committee received roughly 250,000 letters from the public.¹⁰³ According to *Life* magazine, “Never before had the attention of the nation been riveted so completely on a single matter . . . The Senate investigation into interstate crime was almost the sole subject of national conversation.”¹⁰⁴ The fascination was perhaps unsurprising. Kefauver had subpoenaed several prominent Mafia leaders, including Tommy Lucchese, Albert Anastasia, and Vito Genovese. Although they generally invoked the

⁹⁹ This was distinct from the National Crime Commission run by Elbert Gary.

¹⁰⁰ Senator Estes Kefauver, *Crime’s Frightening Upswing 2* (circa 1954) (found in Estes Kefauver Collection, University of Tennessee Knoxville).

¹⁰¹ Senator Estes Kefauver, *Crime’s Frightening Upswing 2* (circa 1954) (found in Estes Kefauver Collection, University of Tennessee Knoxville).

¹⁰² *Special Committee on Organized Crime in Interstate Commerce*, UNITED STATES SENATE, <https://www.senate.gov/about/powers-procedures/investigations/kefauger.htm> (accessed 24 Feb. 2022).

¹⁰³ Andrew Glass, *Kefauver Crime Committee Launched, May 3, 1950*, POLITICO, May 2, 2016.

¹⁰⁴ Found in *Special Committee on Organized Crime in Interstate Commerce*, UNITED STATES SENATE, <https://www.senate.gov/about/powers-procedures/investigations/kefauger.htm> (accessed 24 Feb. 2022).

Fifth Amendment and refused to testify, the televised nature of the hearings put high-ranking mobsters directly in the public gaze for the first time since the days of Al Capone.¹⁰⁵ The press highlighted many of the most far-reaching claims made about organized crime, including that it was a threat to democracy itself.¹⁰⁶ By 1951, even J. Edgar Hoover was forced to acknowledge the existence of syndicated organized crime, which he referred to as “a national disgrace.”¹⁰⁷

Yet while the Kefauver hearings caused a burst of great interest, public attention faded quickly. Within a year of the hearings, media outlets reported a decline in interest regarding organized crime and a return to office of many public officials who had been driven from their positions as a result of the hearings.¹⁰⁸ Kefauver continued to advocate for his proposed reforms but was unsuccessful. He tied this outcome to the public’s loss of interest, complaining that “the concern of local citizens . . . has been sporadic and needs dramatic stimulants.”¹⁰⁹

Scholars have criticized the evidence used by the Kefauver Committee, arguing that it was speculative at best, misleading at worst. Moore (1974) argues that

“the Committee not so much investigated the problem as it dramatized the perspectives of the crime commissions on national crime syndicates and of the Narcotics Bureau on the Mafia Because such groups as the press and the academic community failed to point out the weaknesses in the Committee's over-blown and unfounded statements, the public accepted

¹⁰⁵ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 98 (2005). Kefauver did secure the testimony of boss Frank Costello, who revealed relatively little, but whose theatrical mannerisms laid the foundation for many later depictions of the mobster as icon.

¹⁰⁶ See e.g., *Crime Seen Threat to US: Hally Says*, THE SUN, Jan 14, 1953, at 9; Charles Merrill, *Our Heritage is Worth Saving*, DAILY BOS. GLOBE, Mar. 25, 1951, at A18; *Crime Syndicate Set-Up Described by Williams*, N. Y. HERALD TRIB., Mar. 12, 1958, at 15 (quoting US Attorney Paul W. Williams to describe a national syndicate “which is assuming the proportions of a ‘second government’ by possessing economic power estimated in millions of dollars is now posing a ‘grave’ threat to the entire country”); *Federal Unit for Probing Crime Asked*, L.A. TIMES, Apr. 24, 1951, at 23 (quoting Senator Herbert O’Connor’s statement that organized crime’s “overlords and their army of henchmen pose a definite threat to the enforcement of the nation’s laws”).

¹⁰⁷ *Crime War at a Glance*, DET. FREE PRESS, Mar. 27, 1951.

¹⁰⁸ See A E Hotchner, *32 Top Crime Reporters Give an Inside Report on America’s Battle Against Crime*, THE SUN Nov. 9, 1952, at MI7; see also William Howard Moore, *THE KEFAUVER COMMITTEE AND THE POLITICS OF CRIME*, 238 (1974).

¹⁰⁹ Senator Estes Kefauver, Excerpts of Remarks of Estes Kefauver to the Tennessee Law Enforcement Officer’s Association 2 (Aug. 28, 1959) (found in Estes Kefauver Collection, University of Tennessee Knoxville); see also Senator Estes Kefauver, Excerpts of Kefauver Remarks to Meeting of Junior Order of United American Mechanics 5 (Apr. 15, 1961) (found in Estes Kefauver Collection, University of Tennessee Knoxville) (“Another weapon against crime which [the proposed National Crime Commission] would develop is the force of public opinion.”).

them, and the popular myths and misunderstandings grew stronger, buttressed by the "proofs" of the Kefauver Committee."¹¹⁰

Sociologist Daniel Bell argued that "neither the Senate Crime Committee in its testimony, nor Kefauver in his book, presented any real evidence that the Mafia exists as a functioning organization."¹¹¹ Joseph Albin argued that Kefauver did not prove the Mafia, he merely "assumed its existence."¹¹² Whatever the weaknesses of Kefauver's methodology, his marketing was undoubtedly effective. Even as public interest in organized crime declined, the hearings seem to have shaped popular understanding of the phenomenon. As Moore notes, "even after the initial shock and novelty of the Kefauver findings had lifted and critics began to question the more sweeping Committee statements, the public at large continued to hold to the older conspiracy view, thus making more difficult an intelligent appraisal of organized crime."¹¹³

iv. Legislative Outcomes

Despite the revelations of the Kefauver Commission, it resulted in relatively little national legislation. Instead, the bulk of the reformist energy was directed at the state and local level. For instance, the American Bar Association Commission on Organized Crime advocated the development of state watchdog agencies to monitor local officials for possible corruption.¹¹⁴ Local crime commissions and citizens' groups were established across the country, with the goal of monitoring and preventing crime and corruption.¹¹⁵ These organizations, which freely networked and shared information, were privately funded, non-partisan, and primarily composed

¹¹⁰ WILLIAM HOWARD MOORE, *THE KEFAUVER COMMITTEE AND THE POLITICS OF CRIME, 1950-1952* 134 (1974).

¹¹¹ Daniel Bell, *Crime as an American Way of Life*, 13 *THE ANTIOCH REV.* 131, 143 (1953).

¹¹² JOSEPH L. ALBIN, *THE AMERICAN MAFIA: GENESIS OF A LEGEND* 210 (1971).

¹¹³ WILLIAM HOWARD MOORE, *THE KEFAUVER COMMITTEE AND THE POLITICS OF CRIME*, 134 (1974).

¹¹⁴ M. Jay Racusin, *U.S. Bar Urges State Watch on Law Officials*, *N. Y. HERALD TRIB.*, Sep 11, 1951, at 19.

¹¹⁵ A E Hotchner, *Spies Against Crime*, *L. A. TIMES*, Apr 6, 1952, at H7; *see also Crime Commission Organized in City*, *N. Y. HERALD TRIB.*, Jan. 26, 1951, at 34; James Doherty, *Citizens' Anti-Crime Group Assigned Three Major Tasks*, *CHI. DAILY TRIB.*, Feb. 14, 1952, at 4.

of former law enforcement officials.¹¹⁶ Their establishment indicates a broadly shared perception by citizens that crime needed to be addressed within their cities following the Kefauver hearings and show that some grassroots mobilization occurred in the wake of the Kefauver hearings.

While local changes were seen in the aftermath of the hearings, national reform was more limited. The National Crime Commission which Kefauver believed to be necessary was never established. This was, perhaps, not fully surprising. The American federalist system had long been averse to any institution that resembled a national police force, which many felt the National Crime Commission did.¹¹⁷ J. Edgar Hoover expressed concerns that the NCC would be used to turn the FBI into a national police force.¹¹⁸ Hoover argued that stronger enforcement of existing laws, rather than reform, was needed. He claimed that if the public was vigilant and the laws on the books were enforced, organized crime could be eliminated.¹¹⁹

In the wake of the Kefauver hearings, the Eisenhower administration was reluctant to take a strong stance against organized crime. Calder and Lynch (2008) have closely traced the administration's response to the hearings. They show that not only did the President avoid speaking publicly on the issue, but indeed there is no evidence that he was briefed on organized

¹¹⁶ A E Hotchner, *Spies Against Crime*, L. A. TIMES, Apr. 6, 1952, at H7.

¹¹⁷ Adam H. Kurland, *The Travel Act at Fifty: Reflections on the Robert F. Kennedy Justice Department and Modern Federal Criminal Law Enforcement at Middle Age*, 63 CATH. U. L. REV. 1, 18 (2014) (citing Herbert A. Johnson, Nancy Travis Wolfe & Mark Jones, HISTORY OF CRIMINAL JUSTICE 253 (4th ed. 2008) (“[F]rom its inception as a nation, many Americans had opposed the creation of a national police force, fearing that such a centralization of in the hands of the federal government would lead to the sort of abuses perpetrated by European monarchies and dictatorships.”); James Galloway, *Crime Commission Would Be a Threat*, AUSTIN STATESMAN, Apr. 4, 1951, at 4.

¹¹⁸ BURTON HERSH, BOBBY AND J. EDGAR: THE HISTORIC FACE-OFF BETWEEN THE KENNEDYS AND J. EDGAR HOOVER THAT TRANSFORMED AMERICA (2008) (“The Director objected that this approach [establishing the NCC] amounted to one more backdoor scheme to turn the FBI into a national police force, an American Gestapo”).

¹¹⁹ *US Keeps Push on Hoodlums*, AUSTIN STATESMAN, Apr. 6, 1959 (“Let these persons be reminded that America's vast network of state and local law enforcement agencies traditionally have been the nation's front-line troops in the fight against crime. Let them also be reminded of the dangers inherent in granting such broad police powers to any federal agency”).

crime or racketeering. Moreover, there is an absence of any material on the subject within his presidential papers.¹²⁰ Eisenhower instead delegated the response to organized crime to his Attorney Generals, Herbert Brownell and later William Rogers. In 1954, Brownell established the Organized Crime and Racketeering Section (OCRS).¹²¹ The group was so small and poorly funded that it barely functioned. Initially composed of only 3 lawyers, it would only have 17 by 1961.¹²² It lacked the resources to pursue a national anti-organized crime strategy to and it is not clear that Congressional committees were even aware of its existence.¹²³ Indeed, its main function appears to have been to collect small bits of intelligence.¹²⁴ Nevertheless, OCRS was the first prosecutorial unit dedicated exclusively to the prosecution of organized crime.

v. Analysis

The Kefauver Committee represents a critical turning point in the American understanding of organized crime. For the first time, a branch of the federal government claimed to establish organized crime as a national problem by arguing that a group called the Mafia was part of a single unified conspiracy existing throughout the country. The Kefauver Committee represented an identifiable contingent of reformers. The reforms proposed by the Committee were challenged

¹²⁰ James D. Calder and William S. Lynch, *From Apalachin to the Buffalo Project: Obstacles on the Path to Effective Federal Responses to Organized Crime*, 11 TRENDS IN ORGANIZED CRIME 207, 216 n.17 (2008)

¹²¹ PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 196 (Feb. 1967).

¹²² James D. Calder and William S. Lynch, *From Apalachin to the Buffalo Project: Obstacles on the Path to Effective Federal Responses to Organized Crime*, 11 TRENDS IN ORGANIZED CRIME 207, 214 (2008).

¹²³ RONALD GOLDFARB, PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY'S WAR AGAINST ORGANIZED CRIME, 30-31 (1995); James D. Calder and William S. Lynch, *From Apalachin to the Buffalo Project: Obstacles on the Path to Effective Federal Responses to Organized Crime, 1957-1967*, TRENDS IN ORGANIZED CRIME, 215 (2008).

¹²⁴ James D. Calder and William S. Lynch, *From Apalachin to the Buffalo Project: Obstacles on the Path to Effective Federal Responses to Organized Crime*, 11 TRENDS IN ORGANIZED CRIME 207, 214-215 (2008). The reason for OCRS's limitations is somewhat unclear. The authors speculate that this may have been a product of the fact that the section's funds were too limited to allow attorneys to travel as well as the difficulty of interagency sharing, particularly with regards to the FBI. James D. Calder and William S. Lynch, *From Apalachin to the Buffalo Project: Obstacles on the Path to Effective Federal Responses to Organized Crime*, 11 TRENDS IN ORGANIZED CRIME 207, 216 n.14 (2008).

by several staunch opponents of reform, including Northern Democrats who feared damage to their electoral strongholds, as well as federal law enforcement agents such as J. Edgar Hoover.¹²⁵

The Committee undeniably raised public attention to the problem of organized crime. The committee's widely viewed broadcasts and the national press coverage they received mark this as a moment of significant public attention. This attention seems to have led to some pressure on neutrals and anti-reformers, as Hoover was forced to abandon his argument that the Mafia did not exist in the wake of the hearings. However, the speed with which this interest faded in the aftermath of the hearings suggest that any shifts in public threat perception were not sustained.

The Kefauver Committee clearly meets three of the five criteria that I identify as likely to drive shifts in public perception. 1) *The events will be surprising or unexpected.* Although the American public had an awareness of the existence of organized crime, and even though an Italian-American group known as the Mafia had been rumored to exist, the Kefauver Committee's allegation of a unified Mafia conspiracy throughout the nation was novel. 2) *Public outrage will be nonpartisan and distributed across social strata.* The Kefauver Committee itself was bipartisan, and while neither Northern Democrats nor the Republican Eisenhower administration were eager to adopt the issue of organized crime, they did not respond to the issue as a matter of party polarization. Moreover, the American public was almost uniformly engaged in the committee's work, suggesting the issue was not considered especially socially divisive. 3) *The criminal group's involvement in the event will be perceived as relatively unambiguous.* Though scholars later questioned the accuracy of the Committee's claims, the press and public appear to have accepted the existence and operation of a criminal hierarchy known as the Mafia.

¹²⁵ I include Eisenhower in the neutral category. His lack of interest in the problem of organized crime and willingness to delegate to members of the Department of Justice suggest that he was more apathetic towards reform than deeply interested in opposing it.

Two of the factors I identify are less clearly established. 4) *The events will affect or implicate national interests, including important national figures or parties and will receive considerable attention from the national press.* While the Kefauver Committee clearly received significant national attention, it remained somewhat unclear the degree to which its findings implicated national interests. Crime had always been a local issue, and while the extensive presence of the Mafia presented an argument that it affected national interests (for instance, interstate commerce), it remained plausible that the interests implicated were still best understood as local. 5) *The national government will be seen as responsible for addressing the event in question.* It is not clear that the national government was seen as responsible for this issue. This argument was highlighted by the response of skeptics such as Hoover, who pointed to the importance of local law enforcement responses. Though Kefauver advocated for a National Crime Commission, he also emphasized the local nature of crime. Even the Committee Report focused largely on local solutions to the problem, arguably undermining the case for a national response.

While the Kefauver hearings do seem to have made organized crime a subject of national conversation, the inability of the reform movement to sustain public attention likely prevented the development of robust national anti-organized crime institutions. Instead, most of the reform that happened occurred at the local level. However, the Eisenhower DoJ did establish the OCRS in response to the flurry of public attention the Committee hearings caused. The weakness and disfunction of this unit in the 1950s were too severe to consider the early OCRS a true example of competent enforcement. Nonetheless, as a group of prosecutors dedicated to investigating organized crime at the federal level, this should be considered a critical institutional tweak and a first step in the development of competent enforcement.

c. *Proving the Threat: The McClellan Hearings and the Apalachin Meeting*

i. Labor Racketeering Investigation

Organized crime receded from the national focus after the Kefauver Commission. However, a series of scandals involving union corruption would bring it back to the fore. In January 1957, the United States Senate Select Committee on Improper Activities in Labor and Management was established.¹²⁶ Under the direction of conservative Arkansas Democrat John McClellan, the committee (hereinafter the McClellan Committee) was particularly focused on the activities of the International Brotherhood of Teamsters. Allegations had emerged that labor leader Jimmy Hoffa had tried to unseat the president of the Teamsters with the help of mobsters.¹²⁷ McClellan appointed Robert Kennedy as chief counsel. Kennedy conducted a series of controversial, aggressive, and often inept interrogations of the union leaders and their mob associates.¹²⁸ The Committee hearings received significant press attention, which Robert Kennedy praised as forming “a substantial and constructive task in sifting the maze of day-to-day testimony and flashing it out across the nation, making the public aware of the enemy within.”¹²⁹

¹²⁶ The Committee was bipartisan, with an equal number of members from each party. The members of the committee were as follows: John L. McClellan (D-AR), John F. Kennedy (D-MA), Samuel J. Ervin (D-NC), Patrick V. McNamara (D-MI) (replaced by Frank F. Church (D-ID)), Irving M. Ives (R-NY), (replaced by Homer E. Capehart (R-IN)), Karl E. Mundt (R-SD)), Barry M. Goldwater (R-AZ), Joseph R. McCarthy (R-WI) (died on May 2, 1957 and replaced by Carl T. Curtis (R-NE)). *U.S. Senate. Select Committee on Improper Activities in the Labor or Management Field. 1/30/1957-3/31/1960 Organization Authority Record*, NATIONAL ARCHIVES CATALOG, <https://catalog.archives.gov/id/10515545> (accessed 24 Feb. 2022). See also DAN E. MOLDEA, *THE HOFFA WARS: THE RISE AND FALL OF JIMMY HOFFA* (2015).

¹²⁷ In March of 1957, the FBI coordinated an undercover operation that led to the arrest of Hoffa for trying to bribe a member of the committee.¹²⁷ Hoffa was ultimately acquitted, and elected president of the union in 1958. BURTON HERSH, BOBBY AND J. EDGAR: *THE HISTORIC FACE-OFF BETWEEN THE KENNEDYS AND J. EDGAR HOOVER THAT TRANSFORMED AMERICA* 173 (2008).

¹²⁸ BURTON HERSH, BOBBY AND J. EDGAR: *THE HISTORIC FACE-OFF BETWEEN THE KENNEDYS AND J. EDGAR HOOVER THAT TRANSFORMED AMERICA* 175-78 (2008).

¹²⁹ ROBERT F. KENNEDY, *THE ENEMY WITHIN* 238 (1960) (1960)

Earl Johnson, an attorney in the OCRS, later remarked on “the shocking revelations of the Kefauver and McClellan Committee investigations.”¹³⁰ According to Johnson, in the aftermath of these hearings, “a more active and successful campaign against organized crime has been the result.”¹³¹ Johnson bemoaned the fact that many Americans had historically seen organized crime as a matter of minimal concern. According to Johnson, this indifference was the reason why reform had not been achieved. In his words, the American public suffered from

“the attitude which shrugs off corruption of public officials, gangland style murders, and wide open gambling and other forms of vice as inherent, inevitable, or not particularly bad. And, it is the attitude which prevents key anti-crime legislation from being enacted, allows corrupted officials to remain in office, and denies law enforcement officers needed testimony against organized crime.”¹³²

Reformers argued the Mafia fundamentally relied on popular apathy in order to function. They saw overcoming public indifference as a critical aspect of the battle against organized crime.

ii. [The Apalachin Meeting](#)

On November 14, 1957, local police in the small town of Apalachin, New York, noted the presence of a large number of luxury cars with out-of-state license plates gathering at the estate of Joseph Barbara, who was known to have criminal ties. Police raided Barbara’s estate and arrested dozens of high-level mob figures from around the United States, as well as Italy and Cuba. The gathering of criminals was in fact a meeting of the leadership of Cosa Nostra, most likely called to discuss various aspects of the Mafia’s illegal activities, especially the division of territory following the recent murder of mob boss Albert Anastasia.¹³³

¹³⁰ Earl Jr. Johnson, *Organized Crime: Challenge to the American Legal System*, 53 J. CRIM. L., CRIMINOLOGY, & POLICE SCI. 399, 425 (1962).

¹³¹ Earl Jr. Johnson, *Organized Crime: Challenge to the American Legal System*, 53 J. CRIM. L., CRIMINOLOGY, & POLICE SCI. 399, 425 (1962).

¹³² Earl Jr. Johnson, *Organized Crime: Challenge to the American Legal System*, 53 J. CRIM. L., CRIMINOLOGY, & POLICE SCI. 399, 422 (1962).

¹³³ SELWYN RAAB, FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES 117-119 (2005); THOMAS REPPETTO, BRINGING DOWN THE MOB 11-14 (2006).

The meeting at Apalachin provided the first concrete proof of the existence of a nationally organized criminal conspiracy resembling Kefauver's hypothesis. It also allowed the McClellan Committee to raise its own profile. The Committee convened a special hearing on the meeting, noting the prevalence of union affiliates among the arrestees.¹³⁴ The Apalachin hearings provided the committee with an opportunity to advance the argument that the Mafia posed a significant threat. Apalachin was described as a "session of the Mafia grand council"¹³⁵ with possible trans-Atlantic ties.¹³⁶ Robert Kennedy argued that it was beyond dispute that "there is an underworld organization that has leadership, that has authority and that takes action against those who challenge it."¹³⁷ McClellan portrayed the meeting as indicative of a widespread criminal conspiracy threatening the economic well-being of the United States,¹³⁸ and even as a challenge to the United States government.¹³⁹ Kefauver claimed that Apalachin was proof that crime had worsened since the days of his committee, that an organization that was "pretty well broken up and dispersed" had, in the space of six years, been re-established and was likely "closely bound together by that infamous organization, the Mafia, the direct descendent of the brutal protectionist organization on the island of Sicily." According to Kefauver, "[t]he Mafia not only ties together national racketeering, but links the operations of hoodlums here with those in other nations."¹⁴⁰ Local leaders such as Cook County State's Attorney Benjamin S. Adamowski stated

¹³⁴ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 122 (2005).

¹³⁵ Leo Egan, *Council of Mafia Met in Apalachin, Says a U.S. Aide*, N. Y. TIMES, Jan. 10, 1958, at 1.

¹³⁶ *Luciano's Hand Seen in Apalachin Meeting*, NEWSDAY, July 1, 1958, at 5.

¹³⁷ *McClellan Sees Links to Mafia*, THE SUN, June 29, 1958, at 1.

SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 123 (2005); William D. Hall, *Mafia Attack on U.S. Economy Charged*, WASH. POST & TIMES HERALD, June 30, 1958; *Role of Mafia in U.S. Life to Be Unmasked*, DAILY BOS. GLOBE, June 30, 1958, at 24; *Mafia Trace Found in N.Y. Gang Confab*, THE SUN, July 1, 1958, at 1.

¹³⁹ *Mafia Threat to Government, McClellan Says*, L. A. TIMES, July 4, 1958.

¹⁴⁰ Estes Kefauver, *Bigtime Crime Worse Than 10 Years Ago*, THE ATLANTA J. & THE ATLANTA CONST., July 17, 1960, at SM 32-33. In the same article, Kefauver directly blamed the public for this situation, arguing that "[t]he public is basically responsible for the elimination of organized crime."

that the hearings gave clarity as to the existence of a national syndicate that controlled local crime.¹⁴¹ Robert Kennedy warned that “[i]f the proper steps are not taken immediately, the invisible government—the gangster economy—will control this country.”¹⁴²

iii. Government Response to Apalachin

Apalachin was a significant embarrassment for the FBI and Department of Justice, particularly in light of the attention brought by the McClellan Committee.¹⁴³ J. Edgar Hoover was forced to begin deploying FBI machinery to combat the Mafia.¹⁴⁴ He quickly developed the “Top Ten Hoodlums” program, whereby every FBI bureau would seek to identify and prosecute the top ten mobsters in its district.¹⁴⁵ He also began to institute a program of illegal electronic surveillance to begin collecting intelligence on the Mafia.¹⁴⁶

Attorney General William Rogers established the Special Group on Organized Crime, a group of prosecutors dedicated to investigating the Apalachin organization and organized crime

¹⁴¹ *Crime Foes Admit There is ‘Syndicate,’* CHI. DAILY TRIB., July 22, 1958, at 1. Adamowski also explicitly blamed the rise of crime on politics, stating “Democratic politics has had the lion’s share of responsibility for what has happened in Chicago.

¹⁴² Jack Hand, *Threat or Fantasy? How Real or Powerful is the Mafia?* HARTFORD COURANT, Jan. 5, 1958, at SM9.

¹⁴³ It is worth noting that the McClellan Committee’s investigations also resulted in important labor legislation. Specifically, the Landrum-Griffin Act of 1959 imposed regulations on union elections as well as the obligation on unions to submit annual financial reports to the Department of Labor. SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA’S MOST POWERFUL MAFIA EMPIRES* 123 (2005).

¹⁴⁴ BURTON HERSH, BOBBY AND J. EDGAR: *THE HISTORIC FACE-OFF BETWEEN THE KENNEDYS AND J. EDGAR HOOVER THAT TRANSFORMED AMERICA* 198 (2008). This was not done without some resistance. Upon receiving the first report of the Apalachin meeting, Hoover called it “baloney,” and insisted there was no Mafia. BURTON HERSH, BOBBY AND J. EDGAR: *THE HISTORIC FACE-OFF BETWEEN THE KENNEDYS AND J. EDGAR HOOVER THAT TRANSFORMED AMERICA* 175-78 (2008).

¹⁴⁵ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA’S MOST POWERFUL MAFIA EMPIRES* 120-21 (2005). Hoover’s commitment to the Top Ten Hoodlums Program was questionable at best. As time passed, Hoover reduced the size of the program in key mob-controlled cities such as Chicago. BURTON HERSH, BOBBY AND J. EDGAR: *THE HISTORIC FACE-OFF BETWEEN THE KENNEDYS AND J. EDGAR HOOVER THAT TRANSFORMED AMERICA* (2008) (noting that “even those survivors were routinely sent out on mundane investigations”).

¹⁴⁶ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA’S MOST POWERFUL MAFIA EMPIRES* 121 (2005); BURTON HERSH, BOBBY AND J. EDGAR: *THE HISTORIC FACE-OFF BETWEEN THE KENNEDYS AND J. EDGAR HOOVER THAT TRANSFORMED AMERICA* 164 (2008).

more broadly.¹⁴⁷ The Special Group on Organized Crime struggled as a result of poor coordination among federal law enforcement agencies, and particularly from a lack of cooperation on the part of the FBI.¹⁴⁸ In addition, they were criticized by some civil liberties groups as overly vigorous in their prosecution and were accused of subverting the right to peaceful assembly.¹⁴⁹ The small group of prosecutors indicted twenty of the Apalachin attendees for conspiring to thwart and obstruct the investigation of the meeting, resulting in a mass conviction of high-level mobsters, though it was later overturned on appeal.¹⁵⁰

In the immediate aftermath of the Apalachin meeting, few lasting reforms were achieved. In April 1959, the Special Group on Organized Crime was disbanded. As such, it cannot be considered an institutional reform. In January 1961, as the Eisenhower administration came to an end, Attorney General William P. Rogers proposed a package of six legislative measures to combat crime, none of which were passed.¹⁵¹

iv. [Analysis](#)

While the post-Apalachin period did not immediately result in the development of either permissive laws or permanent competent enforcement, this period was nonetheless important in the trajectory of reform. First, the Apalachin arrests coincided with the emergence of the McClellan Committee as a reformist contingent. The arrests brought organized crime back into the public eye and provided tangible evidence of Kefauver's national conspiracy thesis. This

¹⁴⁷ BURTON HERSH, BOBBY AND J. EDGAR: THE HISTORIC FACE-OFF BETWEEN THE KENNEDYS AND J. EDGAR HOOVER THAT TRANSFORMED AMERICA 163 (2008); RONALD GOLDFARB, PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY'S WAR AGAINST ORGANIZED CRIME 31 (1995).

¹⁴⁸ RONALD GOLDFARB, PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY'S WAR AGAINST ORGANIZED CRIME 31-32 (1995).

¹⁴⁹ RONALD GOLDFARB, PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY'S WAR AGAINST ORGANIZED CRIME 31-32 (1995).

¹⁵⁰ RONALD GOLDFARB, PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY'S WAR AGAINST ORGANIZED CRIME 31-32 (1995).

¹⁵¹ Martin R. Pollner, *Attorney General Robert F. Kennedy's Legislative Program to Curb Organized Crime and Racketeering*, 28 BROOK L. REV. 37, 42 n.32 (1961).

allowed reformers such as Kefauver, McClellan and Kennedy to frame the Mafia as a national threat, arguing that this meeting showed that the Mafia not only existed, but that it was sufficiently well-organized and cohesive to be holding national-level conferences. These arguments once again placed pressure on Hoover to acknowledge the problem of organized crime and even to adopt some reforms within the FBI. Likewise, the Eisenhower administration, which had been relatively neutral, responded to this event by forming temporary prosecution units and proposing some legislative change.

Arguments presented by reformers and highlighted in the press described Apalachin as demonstrative of the strength and sophistication of the Mafia, and even its potential to challenge the government. These arguments address the two factors that militated against the Kefauver Committee's ability to shift public opinion. A nationwide criminal conspiracy that could organize to rival the government 1) certainly implicated national interests and 2) arguably demanded a national response. Given the widespread attention that the Apalachin meeting received, it could therefore be expected to combine with the foundations laid in the Kefauver hearings to significantly impact public perceptions of organized crime.

d. Building Competent Enforcement: Robert Kennedy and OCRS

i. [Robert Kennedy](#)

In 1960, John F. Kennedy became president of the United States and appointed his brother Robert as Attorney General. Robert Kennedy had served as chief counsel on the McClellan Committee and had become well known for his aggressive, if somewhat inartful, questioning of witnesses. He had also written a best-selling book on the topic of organized crime, *The Enemy Within*, in which he had criticized the Department of Justice for their inaction.¹⁵² He had also

¹⁵² ROBERT F. KENNEDY, *THE ENEMY WITHIN* 318 (2017) (1960).

argued for the creation of national-level anti-organized crime institutions, particularly a national crime commission similar to that proposed by Kefauver.¹⁵³ Kennedy argued that “[o]nly through a nationwide network can we fight the widespread penetration of criminals into our economy.”¹⁵⁴ During his tenure as Attorney General, Kennedy sought improvements to the federal anticrime arsenal. In his words, “[t]he beast of organized crime is not a thing of the past. Nor is it tamed. It remains a powerful foe with which we must be concerned for many years to come . . . Ultimate success requires a continued campaign by federal and state law enforcement agencies and an increased awareness and involvement on behalf of every citizen.”¹⁵⁵

Kennedy was determined to make labor racketeering and organized crime a priority at the Department of Justice. In doing so, he campaigned explicitly against public indifference, claiming that “[t]oo often the community adopts the attitude that crime is the business of the police and should be left to them. The menace to freedom and respect for law is not organized crime so much as it is an inert people. Public awareness leads to public action.”¹⁵⁶ Kennedy claimed that the criminal threat was existential, arguing that “[i]f we do not on a national scale attack organized criminals with weapons and techniques as effective as their own, they will destroy us.”¹⁵⁷ In the words of former prosecutor Ronald Goldfarb, who worked in the OCRS under Kennedy, the Attorney General believed that “public ignorance and apathy had to be

¹⁵³ ROBERT F. KENNEDY, *THE ENEMY WITHIN* 264-65 (2017) (1960).

¹⁵⁴ Robert F. Kennedy, *THE ENEMY WITHIN*, 265 (2017) (1960)

¹⁵⁵ Robert F. Kennedy, *Program of the Department of Justice on Organized Crime*, 38 NOTRE DAME L. REV. 637 (1963).

¹⁵⁶ Robert F. Kennedy, *Program of the Department of Justice on Organized Crime*, 38 NOTRE DAME L. REV. 637 (1963).

¹⁵⁷ Robert F. Kennedy, *THE ENEMY WITHIN*, 265 (2017) (1960).

ended for good.”¹⁵⁸ To that end, Kennedy frequently spoke before the public on the subject of organized crime, testified before Congress, and sought to have the media channel his message.¹⁵⁹

ii. Building the Organized Crime and Racketeering Section

One of Kennedy’s first undertakings at the Department of Justice was to build a robust unit of federal prosecutors who specialized in the investigation and conviction of mobsters. Building on the units that had been established after the Kefauver hearings, Kennedy turned OCRS into a powerhouse. He drastically increased the size of the unit from 17 lawyers to more than 60.¹⁶⁰ He particularly sought to energize the section by hiring young leading lawyers, particularly those with strong foundations of knowledge in fields relevant to the prosecution of organized crime.¹⁶¹ He also instructed the section to coordinate with all federal law enforcement bodies to share intelligence, improving the federal government’s prosecutorial efficacy.¹⁶²

Kennedy’s expansion of OCRS significantly enhanced the federal government’s ability to combat organized crime. It created a coterie of prosecutors dedicated specifically to investigating syndicated criminal groups and facilitated their coordination with other law enforcement agencies. The result was a notable increase in federal prosecutorial activity against organized

¹⁵⁸ Ronald Goldfarb, *PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY’S WAR AGAINST ORGANIZED CRIME* 36 (1995)

¹⁵⁹ Att’y Gen. Robert F. Kennedy, Statement by Attorney General Robert F. Kennedy to the Permanent Subcommittee on Investigations of the Senate Government Operations Committee (Sept. 25, 1963); RONALD GOLDFARB, *PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY’S WAR AGAINST ORGANIZED CRIME* 36 (1995); see also Russell Porter, *R.F. Kennedy Hits Greed of Public*, N. Y. TIMES, June 15, 1961, at 1; *Robert Kennedy Calls Hartford Crime Center*, HARTFORD COURANT, Nov. 28, 1961, at 14A; William Kling, *Stiff Jail Terms for Mobsters are Urged by Robert Kennedy*, CHI. DAILY TRIB., at 1; *Bob Kennedy Rips Mask Off Cosa Nostra*, CHI. TRIB., Sept. 26, 1963, at 3.

¹⁶⁰ Robert F. Kennedy, *Program of the Department of Justice on Organized Crime*, 38 NOTRE DAME L. REV. 637 (1963).

¹⁶¹ BURTON HERSH, *BOBBY AND J. EDGAR: THE HISTORIC FACE-OFF BETWEEN THE KENNEDYS AND J. EDGAR HOOVER THAT TRANSFORMED AMERICA* 213-16 (2008). For a discussion of the establishment and operation of the Organized Crime and Racketeering Section, see generally, RONALD GOLDFARB, *PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY’S WAR AGAINST ORGANIZED CRIME* (1995).

¹⁶² Martin R. Pollner, *Attorney General Robert F. Kennedy’s Legislative Program to Curb Organized Crime and Racketeering*, 28 BROOK L. REV. 37, 38 n.8 (1961).

crime. Kennedy touted the fact that in the first two years of his tenure, prosecutions of racketeering had increased by 700% over 1960 levels, and convictions had increased nearly 400%.¹⁶³ Kennedy's Department of Justice would indict 687 members of organized crime groups and convict nearly 90% of them, including several high-level bosses.¹⁶⁴

iii. Anti-Crime Legislation

The existence of OCRS was not enough to target organized crime in a systematic matter. Prosecutors often struggled to build effective cases, particularly against high-level bosses. Very often they turned to an old standby that had been in place since the days of Capone: the tax code. Approximately 60% of all organized crime prosecutions brought from 1961-65 began as tax investigations.¹⁶⁵ Kennedy proposed to expand prosecutors' tools by making it easier to target interstate gambling, which was seen as the main source of organized criminal funding at the time.¹⁶⁶ To that end, he proposed a package of eight new laws.¹⁶⁷ Five of these were either identical or revised versions of laws that Attorney General Rogers had proposed after Apalachin.¹⁶⁸ Six of the bills were passed with bipartisan support, despite concern about possible incursions into state policing.¹⁶⁹

¹⁶³ Robert F. Kennedy, *Program of the Department of Justice on Organized Crime*, 38 NOTRE DAME L. REV. 637 640, n.11 (1963).

¹⁶⁴ Jeff Burbank, *Robert F. Kennedy's Crusade Against the Mob: Part 3*, THE MOB MUSEUM (June 14, 2018), <https://themobmuseum.org/blog/robert-f-kennedys-crusade-mob-part-3/> (accessed 24 Feb. 2022).

¹⁶⁵ G. ROBERT BLAKEY, ORGANIZED CRIME IN THE UNITED STATES: A REVIEW OF THE PUBLIC RECORD 38 (1982).

¹⁶⁶ In advocating for this wave of anti-organized crime legislation, Kennedy argued that effective targeting of gambling would undermine criminals' ability to fund other activities. Robert F. Kennedy, *Program of the Department of Justice on Organized Crime*, 38 NOTRE DAME L. REV. 637, 638 (1963).

¹⁶⁷ See generally, Att'y Gen. Robert F. Kennedy, Statement of the Honorable Robert F. Kennedy, Attorney General of the United States, Before Subcommittee No. 5 of the House Committee on the Judiciary, in Support of Legislation to Curb Organized Crime and Racketeering (May 17, 1961).

¹⁶⁸ *Robert Kennedy Urges New Laws to Fight Rackets*, N. Y. TIMES, Apr. 7, 1961.

¹⁶⁹ C.P. Trussell, *House Votes Bill to Combat Crime*, N. Y. TIMES, Aug. 24, 1961, at 20. The bills passed were as follows: An Act to Amend Title 18, United States Code, to Prohibit Travel or Transportation in Commerce in Aid of Racketeering Enterprises, Pub. L. No. 87-228 (Sept. 13, 1961) (outlawing the use the facilities of interstate commerce to conduct, deliver proceeds of, or commit a violent crime in furtherance of illegal gambling, liquor, narcotics or prostitution); An Act to Amend Chapter 50 of Title 18, United States Code, with Respect to the Transmission of Bets, Wagers, and Related Information, Pub. L. No. 87-216 (Sept. 13, 1961) (outlawing the

Although the anti-gambling laws would not be the most important in the federal prosecutor's arsenal, their passage indicated increased congressional openness to reform. Gambling was a quintessentially local matter, reflecting local values. The new package of laws enshrined it as a federal issue, based in part on the argument that it was tied to organized crime.¹⁷⁰ Kennedy's ability to secure the passage of these laws indicates that the anti-organized crime reform movement had made some inroads against the traditional federalist position.¹⁷¹

iv. The Valachi Hearings

In the Senate, John McClellan continued his efforts to publicize the existence of organized crime via another series of televised hearings, this time as part of the Permanent Subcommittee on Investigations. The central event was the October 1963 testimony of Joseph Valachi, a made member of the Genovese crime family.¹⁷² Valachi was the first member of the Mafia to break

transmission of information regarding gambling over wires); An Act to Provide Means for the Federal Government to Combat Interstate Crime and to Assist the States in the Enforcement of their Criminal Laws by Prohibiting the Interstate Transportation of Wagering Paraphernalia, Pub. L. No. 87-218 (Sept. 13, 1961) (outlawing the transmission of "any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing" to be used in bookmaking or interstate commerce via interstate commerce or in the mail); An Act to Strengthen the Federal Firearms Act, Pub. L. 87-342 (Oct. 3, 1961) (applying the Federal Firearms Act to any felon); An Act to Amend Section 1073 of Title 18, United States Code, the Fugitive Felon Act, Pub. L. 87-368 (Oct. 4, 1961) (expanding the Fugitive Felon Act to cover any felony); An Act to Amend the Act of January 2, 1951, Prohibiting the Transportation of Gambling Devices in Interstate and Foreign Commerce, Pub. L. No. 87-840 (Oct. 18, 1962) (banning the interstate transportation of gambling devices such as slot machines, except where states legalized the use and transportation of such machines). For a discussion of the laws proposed, see *Congress Enacts Five Anti-Crime Bills*, in CQ ALMANAC 1961 381 (17th ed. 1961) <http://library.cqpress.com/cqalmanac/cqal61-1373549> (accessed 13 Jan. 2022); *Anti-Crime Bills*, in CQ ALMANAC 1962 (18th ed. 1963), <http://library.cqpress.com/cqalmanac/cqal62-1326580> (accessed 13 Jan. 2022). See also G. R. Blakey & Harold A. Kurland, *The Development of the Federal Law of Gambling*, 63 CORNELL L. REV. 923 (1978).

¹⁷⁰ RONALD GOLDFARB, PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY'S WAR AGAINST ORGANIZED CRIME 39 (1995)

¹⁷¹ It is important to note that there were limits to what even Kennedy could achieve at this time. For instance, one significant tool which Kennedy was unable to achieve despite campaigning for it was a law allowing for the use of wiretapping in federal criminal trials. Wiretapping was considered to be a vital means of gathering evidence against organized crime, given the secretive nature of the criminal activity and the difficulty in securing witness testimony. However, deep concerns about the potential for abuse and incursions into privacy made such a law deeply suspect. RONALD GOLDFARB, PERFECT VILLAINS, IMPERFECT HEROES: ROBERT F. KENNEDY'S WAR AGAINST ORGANIZED CRIME 59 (1995); *Robert Kennedy Cites Wire-Tap Bill Benefits*, L. A. TIMES, Feb. 2, 1962, at 26; James E. Warner, *Legal Wiretaps Urged to Combat Underworld*, N. Y. HERALD TRIB., May 29, 1962, at 24; Marjorie Hunter, *Wiretaps Vital, Senate Unit Told*, N. Y. TIMES, May 11, 1962, at 15; Robert F. Kennedy, *Attorney General's Opinion on Wiretaps*, N. Y. TIMES, Jun. 3, 1962, at 213.

¹⁷² For Valachi's memoirs, see PETER MAAS, THE VALACHI PAPERS (2003) (1968).

omertà (the code of silence) and publicly attest to the Mafia's existence. He was also the first to reveal Cosa Nostra as the Mafia's name for its organization.¹⁷³ Kennedy was deeply involved in these hearings, serving as the opening witness. Kennedy emphasized the groundbreaking nature of Valachi's testimony, and particularly the fact that it confirmed the existence and structure of Cosa Nostra,¹⁷⁴ a "private government of organized crime."¹⁷⁵ McClellan stated that "the existence of such a criminal organization as Cosa Nostra is frightening. This organization attempts to be a form of government unto itself and outside of the law."¹⁷⁶

The press described the hearings as having "unmasked" Cosa Nostra, revealing a "new" organized criminality that functioned as an underworld government.¹⁷⁷ To be more precise, Valachi's testimony was seen as filling the gaps in public knowledge after Apalachin regarding the power of the Mafia.¹⁷⁸ Some protested that Valachi had revealed no information that was not already known to those who had been following organized crime.¹⁷⁹ Hoover complained that Valachi had only "corroborated and embellished the facts developed by the FBI as early as 1961."¹⁸⁰ Yet Valachi's testimony was generally portrayed as groundbreaking by reformers and the press. As such, Valachi served Kennedy and McClellan's aims of keeping the Mafia in the

¹⁷³ THOMAS REPPETTO, *BRINGING DOWN THE MOB* 82-83 (2006). Hoover argue that the revelation of the phrase Cosa Nostra was proof that he had been right that there was no group known as the "Mafia."

¹⁷⁴ Att'y Gen. Robert F. Kennedy, Statement by Attorney General Robert F. Kennedy to the Permanent Subcommittee on Investigations of the Senate Government Operations Committee 3-4 (Sept. 25, 1963).

¹⁷⁵ Att'y Gen. Robert F. Kennedy, Statement by Attorney General Robert F. Kennedy to the Permanent Subcommittee on Investigations of the Senate Government Operations Committee 3 (Sept. 25, 1963).

¹⁷⁶ Senator John L. McClellan, Statement by Senator John McClellan to the Permanent Subcommittee on Investigations of the Senate Government Operations Committee 2 (Sept. 25, 1963).

¹⁷⁷ John A. Goldsmith, *Probers Told of 'New' Criminal*, WASH. POST, Sept 26, 1963, at A3; Emanuel Perlmutter, *Robert Kennedy Cites Rise in Crime*, N. Y. TIMES, Sept. 26, 1963, at 1; *New Breed of Mobster Unmasked*, HARTFORD COURANT, Sept. 26, 1963, at 1; William Moore, *Bob Kennedy Rips Mask off Cosa Nostra*, CHI. TRIB., Sept. 26, 1963, at 3.

¹⁷⁸ Miriam Ottenberg, *U.S. Crime Kingdom is Bared by Convict*, BOS. GLOBE, Aug. 4, 1963, at 1.

¹⁷⁹ Walter Trohan, *Report from Washington*, CHI. TRIB., Oct. 9, 1963, at 2.

¹⁸⁰ ARTHUR SCHLESINGER, *ROBERT KENNEDY AND HIS TIMES*, VOLUME 1 269 (2002) (1978).

public eye and allowed them to emphasize the nature of Cosa Nostra as an underworld government, cohesive and unified enough to direct criminal activity nationwide.

v. [Analysis](#)

a. Theoretical Expectations

The Kennedy years represented the most successful bout of institutional development at the national level until this point. Robert Kennedy established the OCRS as a robust, well-resourced center of anti-organized crime prosecution. For the first time, prosecutors in this unit were sufficiently numerous and well-resourced to travel around the nation actively pursuing organized crime. In the process, they developed institutional knowledge and specialized skills in the legal mechanisms available to combat syndicated criminal groups. As such, the reforms made by the Kennedy DoJ allowed OCRS to function as a competent enforcement body.

Anti-gambling legislation, which was designed to target the primary money-making activity of organized crime, exposed the Mafia to federal prosecution on the basis of what had traditionally been a state offense. This package of laws was intended to make the criminal group more vulnerable to prosecution and to target a significant portion of its earning potential. As such, it may be considered an early attempt at establishing permissive laws. Although this legislation ultimately would not prove to be as successful as later reforms, it is noteworthy that the attempt to systematically target organized criminal activity at the legislative level tracks closely with reformers' concerted campaigns to raise the issue as a matter of public concern.

At a political level, the passage of anti-gambling laws which the Eisenhower administration had been unable to advance indicated that political momentum had shifted in favor of the reformers. Moreover, Hoover's inability to slow the growth of such institutions during this period represented a weakening of the anti-reform position. The reformers' public relations

campaign was boosted by Joseph Valachi's explosive testimony, which offered them a new rhetorical weapon to emphasize the continuing national threat posed by the shadowy organization now known as Cosa Nostra.

b. Counterargument: The Unique Position of Robert Kennedy

A potential counterargument should be addressed at this point. It is somewhat difficult to ascertain whether public opinion or merely Robert Kennedy's own personal interest drove these reforms. Admittedly, Kennedy occupied a unique position. As Attorney General, he was appointed, not elected, and was therefore not directly accountable to the public (though he was indirectly accountable). Within the DoJ, he had significant authority to develop the agency's priorities as he saw fit without needing to secure public buy-in. Even within the context of executive officials he enjoyed a uniquely privileged position. As the brother of the President, Kennedy had particularly strong job security and unparalleled access to the commander-in-chief. This insulated him from bureaucratic pressures, most notably the power of J. Edgar Hoover.¹⁸¹ As such, it is possible that Kennedy was singularly able to pursue his own agenda and would have achieved the same reforms regardless of public threat perception.

This argument has the greatest force with regards to the strengthening of OCRS. It was certainly in the development of offices within the DoJ that Kennedy had the greatest autonomy. However, insights into the broader political context can be gained by considering the anti-gambling laws. Kennedy's almost immediate push for such legislation suggested that he was interested in reform beyond the scope of what he could accomplish within the DoJ. To do so, he needed buy-in from leaders who were directly accountable to other constituents. Moreover, Kennedy's consistent public campaigns and speech-making suggest that he considered public

¹⁸¹ See generally BURTON HERSH, BOBBY AND J. EDGAR: THE HISTORIC FACE-OFF BETWEEN THE KENNEDYS AND J. EDGAR HOOVER THAT TRANSFORMED AMERICA (2008).

support important to advancing his anti-crime initiatives. Indeed, he explicitly referred to public apathy as inimical to the success of reform. Thus, while it is admittedly difficult to trace a direct causal link between shifts in public threat perception and the strengthening of OCRS as a body of competent enforcers, the broader context of Kennedy’s push for reform suggests that public perception was deeply important to the effort to build anti-crime institutions.

Figure 6.3: Onset in the US

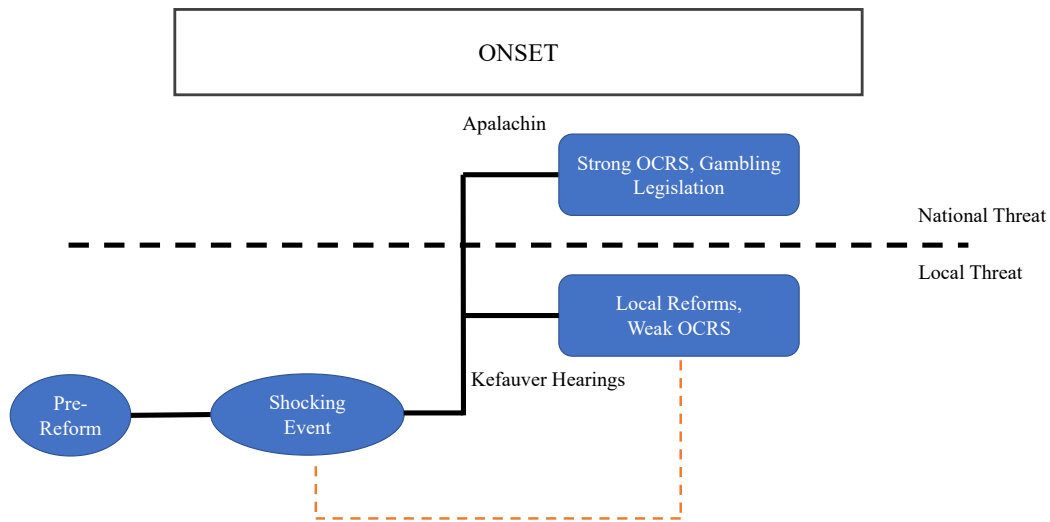


Table 6.1: Perception-Shifting Events

	Prohibition Gangsterism	Kefauver Hearings	McClellan Hearing/Apalachin
Affect/Implicate national interests and receive considerable press attention			X
National government responsible			X
Surprising/Unexpected	X	X	X
Nonpartisan/Distributed across social strata		X	X
Criminal group's involvement unambiguous	X	X	X
Outcome	Minimal federal response	Local reforms, Weak OCRS	Strong OCRS, Anti-Gambling Legislation

e. *Slowdown in the Johnson Years*

i. Johnson's Disinterest and the Atrophy of OCRS

Shortly after Valachi's testimony, President Kennedy was assassinated, halting the administration's initiatives. President Johnson was focused on promoting his capacious social agenda, as well as dealing with the conflict in Vietnam and rising racial tension at home. Thus, in the early years of his presidency, Johnson paid relatively little attention to organized crime and did not advance significant legislation on the issue.¹⁸² John Kennedy's death and Robert Kennedy's 1964 resignation as Attorney General also increased Hoover's autonomy. Without the reformist pressure brought by the Kennedys, Hoover allowed anti-organized crime investigative efforts within the FBI to wane.¹⁸³ In addition, reports of illegal electronic surveillance by the

¹⁸² SELWYN RAAB, FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES 156-57 (2005).

¹⁸³ Jeff Burbank, *Robert F. Kennedy's Crusade Against the Mob: Part 3*, THE MOB MUSEUM (June 14, 2018), <https://themobmuseum.org/blog/robert-f-kennedys-crusade-mob-part-3/> (accessed 24 Feb. 2022).

Department of Justice led to negative publicity for the DoJ’s anticrime activities.¹⁸⁴ Though OCRS remained at the Justice Department, it lost nearly 25% of its staff, and its activities were significantly curtailed.¹⁸⁵ By 1967, the head of OCRS acknowledged its inability to fulfill its mandate, stating “even taking into account other Federal investigative agencies with which the Justice Department operates—including Secret Service, FBI, Bureau of Customs, Internal Revenue Service—we couldn’t police one major community.”¹⁸⁶

ii. [The Rise in Crime](#)

Despite his administration’s disinterest, crime would become a major problem for Johnson. In the 1964 presidential election, Republican candidate Barry Goldwater made crime a key issue of his campaign, accusing the president of allowing violence and disorder to rise.¹⁸⁷ Though Johnson won the election handily, in the subsequent years, violent crime increased in the United States,¹⁸⁸ and arrests began to decline significantly.¹⁸⁹ Moreover, in the early 1960s, the decidedly liberal Warren Court had begun to take an expansive view of the protections afforded criminal suspects under the Fourth, Fifth, Sixth, and Fourteenth Amendments, which resulted in a series of Supreme Court decisions that were seen as particularly defendant-friendly.¹⁹⁰ The

¹⁸⁴ PRESIDENT’S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 197 (Feb. 1967).

¹⁸⁵ PRESIDENT’S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 197 (Feb. 1967).

¹⁸⁶ *The Federal Effort Against Organized Crime: Hearings Before a Subcomm. of the Comm. on Government Operations*, 90th Cong 2-3 (Apr. 5, 1967).

¹⁸⁷ Philip Dodd, *Goldwater Calls for Nation-Wide War on Crime*, CHI. TRIB., Oct. 8, 1964, at 7; Willard Edwards, *Barry Ties Increase in Crime to Johnson*, CHI. TRIB., 1, Sept. 11, 1964; Earl Mazo, *Goldwater Team Narrows Issues*, N. Y. TIMES, Oct. 14, 1964 (identifying street crime and violence as one of four issues that Goldwater would focus on in the days leading up to the election).

¹⁸⁸ NATHAN JAMES, CONGRESSIONAL RESEARCH SERVICE, *RECENT VIOLENT CRIME TRENDS IN THE UNITED STATES* 1-5 (2018).

¹⁸⁹ SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 173 (2005); PRESIDENT’S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* Ch. 2 (Feb. 1967).

¹⁹⁰ *Se, e.g. Mapp v. Ohio*, 367 U.S. 643 (1961) (extending the exclusionary rule to states); *Gideon v. Wainwright*, 372 U.S. 335 (1963) (finding that the Sixth Amendment right to counsel applies to the states through Fourteenth

Supreme Court's decisions were denounced by many as facilitating crime and making the jobs of police more difficult.¹⁹¹ For instance, scholar Alexander Bickel described the Court in the case of *Miranda v. Arizona*¹⁹² as “[taking] on a job that legislatures and other agencies might better have been allowed to do first.”¹⁹³ Conservative political leaders decried the Court as activist.

According to McClellan, the Court had “caused great frustration and produced much disarray in law enforcement and criminal justice procedures.”¹⁹⁴ A conference of state chief justices adopted a resolution criticizing the apparent laxity towards crime, stating that it was as vital “that those who breach the law be punished as it is that the innocent be protected, and it is equally essential that it be demonstrated that the law-abiding citizen will receive protection of the law from the lawless as it is that its guarantees will be afforded him who is accused of its breach.”¹⁹⁵

At the same time, the country was embroiled in significant violence and social unrest.¹⁹⁶ As the Civil Rights movement gained momentum, protests often turned violent and were termed

Amendment); *Miranda v. Arizona*, 384 U.S. 436 (1966) (requiring police to give a warning upon custodial interrogation).

¹⁹¹ See e.g., Clay Gowran, *How Supreme Court Ruling Puts Straitjacket on Police*, CHI. TRIB., Aug. 11, 1964, at 27; *Opinion in the United States*, N. Y. TIMES, June 19, 1966, at H175 (quoting newspapers from around the country on the Supreme Court's jurisprudence. Opinion on the issue was mixed); Arthur Krock: *In the Nation: The Wall Between Crime and Punishment*, N. Y. TIMES, June 14, 1966, at 46; *Law Officials Criticize Police Quizzing Curbs*, L. A. TIMES, June 15, 1966, at 13.

¹⁹² *Miranda v. Arizona*, 384 U.S. 436 (1966)

¹⁹³ Alexander Bickel, *Is the Warren Court Too 'Political'*, N. Y. TIMES, Sept. 25, 1966, at 244. Bickel's lengthy article is somewhat sympathetic to the outcomes of the Court decisions.

¹⁹⁴ Senator John McClellan, Excerpts: Remarks of Senator John McClellan, National Council on Crime and Delinquency, New York, New York 4 (Nov. 14, 1967) (found in McClellan Archives, Ouachita Baptist University, 20) i. National Council on Crime and Delinquency, 733.25). Senator McClellan regularly criticized the Warren Court's jurisprudence.

¹⁹⁵ *What the Chief Justices Say*, WASH. DAILY NEWS, Aug. 29, 1967 (found in McClellan Archives, Ouachita Baptist University, 07) i. Crime Newspaper Clippings 1968, 391:13).

¹⁹⁶ A full exploration of the use of violence in the political movements of the 1960s is beyond the scope of this dissertation. For analyses of this topic, see generally, BRUCE J. DIENEFELD, *THE CIVIL RIGHTS MOVEMENT: THE BLACK FREEDOM STRUGGLE IN AMERICA* (2d ed. 2021); ELIZABETH HINTON, *AMERICA ON FIRE: THE UNTOLD HISTORY OF POLICE VIOLENCE AND BLACK REBELLION SINCE THE 1960S* (2021); ARTHUR M. ECKSTEIN, *BAD MOON RISING: HOW THE WEATHER UNDERGROUND BEAT THE FBI AND LOST THE REVOLUTION* (2016); JOEL P. RHODES, *THE VOICE OF VIOLENCE: PERFORMATIVE VIOLENCE AS PROTEST IN THE VIETNAM ERA* (2001); *The Weather Underground: Report of the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Committee on the Judiciary*, 94th Cong. (1975).

riots by many in the press, as well as some political leaders. Demonstrations against the Vietnam War likewise often became violent. Bombings by terrorist groups such as the Weather Underground as well as the assassinations of figures such as Malcolm X, Martin Luther King, and Robert Kennedy himself led to a pervasive sense of deadly chaos. U.S. News and World Report described riots as a form of anarchy “just below the surface of many of America’s big cities—ready to burst into the open at the slightest provocation.”¹⁹⁷

In the context of this mounting social unrest, *Nation’s Business*, the monthly publication of the Chamber of Commerce, noted the increasing importance of crime as a matter of national significance. According to the publication, “[c]rime is considered a local problem and a local issue. Yet in all its manifestations—particularly violence in the streets—it probably will be the key national political issue of 1968.”¹⁹⁸ Deputy Attorney General Warren Christopher, in a speech before the Commonwealth Club of California echoed this sentiment, stating

“[t]he tradition of local responsibility for general crimes does not mean there is no Federal role. On the contrary, we believe the Federal Government must join with cities to build excellence in the local police as the first priority in the fight against crime. More broadly, we believe that the time has come for massive Federal assistance to the whole system of law enforcement and criminal justice.”¹⁹⁹

iii. [Johnson’s Response](#)

a. [The President’s Crime Commission](#)

Of course, the growing social unrest was not solely, or even predominately tied to organized criminal groups such as Cosa Nostra. Nonetheless, as public fear grew, Johnson increasingly

¹⁹⁷ *Anarchy Growing Threat to Big Cities*, U.S. NEWS & WORLD REP., Aug. 7, 1967, at 28 (found in in McClellan Archives, Ouachita Baptist University, 07) ii. Crime—US News & World Report, August 7, 1967, 391: 38).

¹⁹⁸ *Washington: A Look Ahead*, NATION’S BUSINESS, April 1968, at 7 (found in McClellan Archives, Ouachita Baptist University, 09) i. Crime Control Law 1986, 417: 39); *see also Riots and Politics: Meaning for ’68*, U.S. NEWS & WORLD REPORT, Aug 7, 1967, at 62 (found in in McClellan Archives, Ouachita Baptist University, 07) ii. Crime—US NEWS & WORLD REPORT August 7, 1967, 391: 38) (identifying crime as the emerging top issue in the presidential campaign).

¹⁹⁹ *The Administration’s War on Crime*, Congressional Record—Senate, S 957 (Feb. 6, 1968) (found in McClellan Archives, Ouachita Baptist University, 07) i. Crime Newspaper Clippings 1968, 391: 13).

began to speak on the subject of crime, and this included speaking about organized crime.²⁰⁰ The president even referred to organized crime as a “guerrilla war against society.”²⁰¹ Johnson’s Attorney General, Nicholas Katzenbach, publicly lamented the state of the fight against organized crime and advocated for new tools such as witness protection and immunity.²⁰²

In 1965, Johnson established the President’s Crime Commission, under the direction of Katzenbach, to study the state of crime in America.²⁰³ This included an analysis of organized crime. The Commission echoed many of the positions of the previous administration, finding that organized crime was national in scope and closely knit in structure.²⁰⁴ The Commission encouraged the media to continue to raise public awareness of the phenomenon,²⁰⁵ which it described as a threat to American society. According to the Commission Report,

“[o]rganized crime is not merely a few preying upon a few. In a very real sense it is dedicated to subverting not only American institutions, but the very decency and integrity that are the most cherished attributes of a free society. As the leaders of Cosa Nostra and their racketeering allies pursue their conspiracy unmolested, in open and continuous defiance

²⁰⁰ See e.g., President Lyndon B. Johnson, Special Message to the Congress on Law Enforcement and the Administration of Justice (Mar. 8, 1965), in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: LYNDON B. JOHNSON (1965, BOOK I) 263-71 (1965); President Lyndon B. Johnson, Remarks to the Members of the President’s Commission on Law Enforcement and Administration of Justice (Sept 8, 1965) in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: LYNDON B. JOHNSON 982-83 (1965, BOOK II) (1965); President Lyndon B. Johnson, Special Message to the Congress on Crime and Law Enforcement (Mar. 9, 1966), in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: LYNDON B. JOHNSON 291-99 (1966, BOOK I).

²⁰¹ *Johnson Orders a Drive on Crime*, N. Y. TIMES, May 6, 1966, at 28.

²⁰² *Katzenbach Sees Little Gain in US Fight on Crime*, N. Y. TIMES, Feb. 9, 1965, at 23.

²⁰³ Establishing the President’s Commission on Law Enforcement and Administration of Justice, Exec. Order No. 11236, 30 Fed. Reg. 9349, 3 CFR, 1965 Supp. (July 23, 1965). The Commission’s study included conducting early surveys of public opinion on crime. Jonathan Jackson, *Introducing Fear of Crime to Risk Research*, 26 RISK ANALYSIS 253, 254 (2006).

²⁰⁴ PRESIDENT’S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 192 (Feb. 1967) (“Today the core of organized crime in the United States consists of 24 groups operating as criminal cartels in large cities across the Nation. Their membership is exclusively Italian, they are in frequent communication with each other, and their smooth functioning is insured by a national body of overseers.”).

²⁰⁵ PRESIDENT’S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, THE CHALLENGE OF CRIME IN A FREE SOCIETY 208 (Feb. 1967) (“All newspapers in major metropolitan areas where organized crime exists should designate a highly competent reporter for full-time work and writing concerning organized criminal activities, the corruption caused by it, and governmental efforts to control it. Newspapers in smaller communities dominated by organized crime should fulfill their responsibility to inform the public of the nature and consequence of these conditions.”)

of the law, they preach a sermon that all too many Americans heed: The government is for sale; lawlessness is the road to wealth; honesty is a pitfall and morality a trap for suckers.”²⁰⁶

Katzenbach himself linked the success of organized crime to the lack of public interest in seriously combatting it, claiming that “[p]ublic apathy about organized crime—and the resulting lack of effective and local campaigns to eliminate it are the chief reasons organized crime flourishes in the United States.”²⁰⁷

b. The Strike Forces

In the aftermath of the release of the Katzenbach Commission report, the Johnson administration began to rebuild the DoJ’s enforcement capability. Beginning in 1967, OCRS began to experiment with federal strike forces, small groups of attorneys stationed outside of D.C. with a mandate to “concentrate and coordinate investigations of an organized criminal syndicate in a particular metropolitan area.”²⁰⁸ The strike forces operated under the control of the OCRS and were designed to focus on individual syndicates.²⁰⁹ They showed early signs of success and were expanded to an additional three cities by June 1968.²¹⁰

c. The Omnibus Crime Control and Safe Streets Act

As the Johnson administration made modest improvements to the power of enforcement agencies, anti-organized crime reformers within Congress pushed for legislative change to

²⁰⁶ PRESIDENT’S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 209 (Feb. 1967).

²⁰⁷ *Threat of Organized Crime*, L. A. TIMES, June 27, 1967, at A4.

²⁰⁸ *Federal Effort Against Organized Crime: Report of Agency Operations*, H.R. Rep. No. 1574 at 21 (June 20, 1968).

²⁰⁹ REPORT OF THE NATIONAL CONFERENCE ON ORGANIZED CRIME, OCTOBER 1-4, 1975, WASHINGTON, D.C., Appendix B 35 (1976). The idea of the groups was that “(1) by working together closely communications and coordination would be vastly improved, (2) that each participating agency would glean some appreciation for the methods, problems and requirements of the other law enforcement agencies, and (3) such a team would bring a focused investigative and prosecutive response to bear on a syndicate group and its associates.” REPORT OF THE NATIONAL CONFERENCE ON ORGANIZED CRIME, OCTOBER 1-4, 1975, WASHINGTON, D.C., Appendix B 35 (1976).

²¹⁰ *Federal Effort Against Organized Crime: Report of Agency Operations*, H.R. Rep. No. 1574 at 21 (June 20, 1968). The program was considered sufficiently successful to plan for additional strike forces in the coming year.

increase the repressive powers of the state. In 1968, the government passed the Omnibus Crime Control and Safe Streets Act (OCCSA),²¹¹ which considerably increased the ability of law enforcement.²¹² The OCCSA was primarily directed towards civil unrest and street crime, rather than organized crime. However, it had implications for the fight against the Mafia. Perhaps most significantly, it instituted a system regulating government use of electronic surveillance, facilitating prosecutors' efforts to gather and use wiretaps.²¹³ Wiretapping would be a particularly significant weapon in the fight against organized crime, given the difficulty of finding witnesses willing to testify against the Mafia.

iv. The Election of Nixon

Despite Johnson's efforts to respond to public concern, as crime rates rose nationwide, presidential candidate Richard Nixon campaigned in 1968 on an unabashedly law and order platform. Nixon lambasted the Johnson administration as soft on crime, calling for a new crusade to combat this scourge.²¹⁴ He criticized the administration as unwilling to take firm measures on crime, stating in an apparent swipe at the President's Crime Commission that "[i]t is too late for more commissions to study violence; it is time for the Government to stop it."²¹⁵

In his campaign, Nixon called for measures to enhance federal prosecutors' ability to combat organized crime, including laws making it a federal crime to invest the proceeds of crime in

²¹¹ Omnibus Crime Control and Safe Streets Act of 1968, 34 U.S.C. §10101 (June 19, 1968).

²¹² Because the OCCSA was not primarily directed at organized crime, I do not analyze it here except insofar as its provisions affected anti-organized crime reform. However, the passage of this bill was extremely contentious and many of its provisions quite significant for the development of American criminal justice. It should be considered at greater length as an important example of the politics of anti-crime legislation.

²¹³ Omnibus Crime Control and Safe Streets Act of 1968, 34 U.S.C. §1010, Title III (June 19, 1968). J. Edgar Hoover supported the legislation as a means of maintaining his ability to gather covert intelligence. BURTON HERSH, BOBBY AND J. EDGAR: THE HISTORIC FACE-OFF BETWEEN THE KENNEDYS AND J. EDGAR HOOVER THAT TRANSFORMED AMERICA 487 (2008).

²¹⁴ Robert Howard, *Nixon Blasts Crime Laxity; Asks Reform*, CHI. TRIB., Aug. 1, 1968, at 1; Robert Howard, *Attack Crime, G.O.P. Plank Asks*, CHI. TRIB., Aug. 3, 1968, at 1; Robert C. Albright, *Nixon Blasts Administration on Attitudes Toward Crime*, WASH. POST, Aug. 1, 1968, at A1.

²¹⁵ Robert C. Albright, *Nixon Blasts Administration on Attitudes Toward Crime*, WASH. POST, Aug. 1, 1968, at A1.

legitimate businesses and witness immunity legislation.²¹⁶ Unlike Goldwater in 1964, Nixon's campaign was successful. Polls throughout 1968 suggested that crime and lawlessness were the American public's top concern. Gallup found that 63% of Americans saw the existing system as too soft on crime, an increase from 48% three years earlier.²¹⁷ Public concerns presented the Republican party with a chance to take on the mantle of crime fighters, an opportunity which helped bring Richard Nixon into the White House.

v. Analysis

The Johnson administration began its tenure with relative disinterest in organized crime. In the absence of significant organized crime events, and with political attention focused on social programming and war abroad, OCSRS was allowed to atrophy. Nonetheless, reformers were able to revive interest in the fight against organized crime as part of the law-and-order politics of the late 1960s. During this time, crime emerged as one of the chief issues of national concern. Lyndon Johnson's shift from relatively disinterested in organized crime to taking steps to institute reform was closely aligned with the growing public resistance to civil disorder and the rise of the law-and-order politics of Richard Nixon. As such, this period indicates how sustained public concern about crime may push those leaders who would otherwise be neutral or hostile into the reformist camp.

It is worth noting, however, that the discussion of crime at this time was extremely broad. It was by no means limited to organized crime, but also included street crime, drug use, and political violence. The fact that anti-organized crime measures were tied to law-and-order

²¹⁶ Chalmers M. Roberts, *Nixon Hits Rise in Crime*, WASH. POST, May 9, 1968, at A1. It is worth noting that the OCCSA did enhance the government's ability to use wiretaps.

²¹⁷ George Gallup, *The Gallup Poll: Crime Is Top Domestic Worry*, L. A. TIMES, Feb. 28, 1968, at A5; George Gallup, *63% Find Softness on Crime*, WASH. POST, Mar. 3, 1968, at F7; *Gallup Poll: GOP Reflects Mood of the People*, BOS. GLOBE, Sept. 8, 1968, at 32.

politics suggests that the public may perceive criminal threats in a broad and overlapping fashion, or that it may not always distinguish too finely between types of crimes.

f. Nixon's War on Crime and Full Reform: The Passage of the OCCA

i. Nixon's Objectives and the Organized Crime Control Act

Nixon's victory would have significant ramifications for the fight against organized crime. Democrats, including Estes Kefauver, John McClellan, and Robert Kennedy, had historically provided leadership in the anti-organized crime movement.²¹⁸ However, with the rise in crime under Johnson and Nixon's electoral victory, Republicans were now poised to take on this role. Nixon took some concrete steps towards that end within the executive branch, for instance by expanding the strike force program that Johnson had begun.²¹⁹ However, to truly advance the anti-organized crime program, he aimed to pass significant legislation.

Early in 1969, John McClellan, along with Nebraska Republican Senator Roman Hruska, introduced the Organized Crime Control Act of 1969, which boasted several significant and controversial provisions. These included allowing a federal grand jury to issue reports criticizing public officials against whom they lacked sufficient evidence to indict;²²⁰ enabling judges to imprison uncooperative witnesses for civil contempt for up to 36 months;²²¹ and enhanced sentencing for dangerous special offenders.²²² In addition, McClellan submitted the Corrupt Organizations Act.²²³ Developed by Notre Dame Law Professor G. Robert Blakey, who had

²¹⁸ The role of the Democrats in combating organized crime should not be overstated. Politicians from large urban areas, who tended to be Democrats, were somewhat hesitant to lead the charge against organized crime, since many of them had ties to corrupt bosses and union leaders. Kennedy, as a Bostonian, was an outlier in this regard.

²¹⁹ *Hearings Before Subcomm. No. 5 of the Comm. on the Judiciary of the House of Representatives*, 91st Cong. 154 (May 21, 1970) (statement of Hon. John N. Mitchell, Att'y Gen. of the United States) (outlining the growth of the strike force program as the thrust of the federal effort against organized crime). The strike forces were disbanded and merged with the US Attorney's Offices in 1989.

²²⁰ Organized Crime Control Act of 1969, S.30, 91st Cong. Title I (1969).

²²¹ Organized Crime Control Act of 1969, S.30, 91st Cong. Title III (1969).

²²² Organized Crime Control Act of 1969, S.30, 91st Cong. Title VIII (1969).

²²³ Corrupt Organizations Act of 1969, S. 1861, 91st Cong. (1969).

served as Chief Counsel of the Senate Subcommittee on Criminal Laws and Procedures, the Corrupt Organizations Act drew on principles of antitrust law and was explicitly intended to combat the infiltration of organized crime into the legitimate economy.²²⁴ The law targeted individuals that profited from racketeering for severe criminal and civil penalties. In addition to facilitating the imprisonment of organized criminals, it was designed to deprive them of resources via criminal forfeiture.²²⁵ As Attorney General John Mitchell argued, “[i]n organized crime’s ownership of legitimate business, men tend to be a cheaper commodity than property. If we can convict a Mafia lieutenant and place him in jail, another may take this place. Perhaps we should investigate the deterrent of heavy financial loss.”²²⁶

ii. [Responses to the Organized Crime Control Act](#)

McClellan’s proposals were the subject of extensive scrutiny. Hearings were conducted throughout 1969, with prominent legal scholars, government officials, and members of the bar asked to provide feedback on the bills. The objectives of the proposals were broadly supported

²²⁴ Corrupt Organizations Act of 1969, S. 1861, 91st Cong. Preamble (1969).

²²⁵ Corrupt Organizations Act of 1969, S. 1861, 91st Cong. (1969) §1963(c); G. R. Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts - Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009, 1018 (1980). Blakey and Gettings note that the forfeiture provisions were initially limited to an "interest in any enterprise," though they were expanded to include "any interest acquired," i.e. illicit profits. G. R. Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts - Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009, 1018 n.49 (1980).

²²⁶ Eileen Shanahan, *Mitchell Studies Antitrust Action Against Mafia*, N. Y. TIMES, Mar. 28, 1969, at 18.

by several institutions, including the Department of Justice,²²⁷ the Department of the Treasury,²²⁸ and the Chamber of Commerce.²²⁹ Even so, leaders of these institutions were concerned about the scope of the proposed legislation and recommended revisions.²³⁰

Other groups, particularly civil libertarians, were more hostile. The American Civil Liberties Union generally opposed the anti-crime legislation, arguing that “[a]t a time in our history when mounting fear and often outrage at increasing criminal activity is the prevailing mood, it is all-too-easy to strike out blindly in ‘shot-gun’ fashion at the threat posed by criminal activity and all-too-tempting to try to meet that threat by circumventing constitutional guarantees.”²³¹

²²⁷ Letter from Deputy Attorney General Richard G. Kleindienst to Hon. John L. McClellan (Aug 11, 1969), in *Organized Crime Control Act of 1969, Report of the Committee on the Judiciary of the United States Senate*, S. Rep. No. 91-617, 91st Cong. 121 (Dec. 18, 1969) (“The Department favors the objectives of S. 1861, and believes that with some possible revisions its combination of criminal penalties and civil remedies, which has been highly effective in removing and preventing harmful behavior in the field of trade and commerce, may be effectively utilized to remove the influence of organized crime from legitimate business.”). The Department of Justice did resist some proposed reforms. For instance, Congress considered raising the Organized Crime and Racketeering Section to the status of a Division within the Department of Justice, separate from the Criminal Division. This would have increased its organizational significance. Attorney General Mitchell noted these potential advantages but expressed concern that such a change would create jurisdictional overlap and undermine the unity that the Criminal Division enjoyed. Letter from John Mitchell to John McClellan (Aug. 5, 1965) (found in McClellan Archives, Ouachita Baptist University, 16) ii. Criminal Laws and Procedures, 499-3). Though McClellan expressed a sympathy for the proposal, he declined to support it because of the Attorney General’s position. 116 CONG. REC. S829 (daily ed. Jan. 22, 1970).

²²⁸ *Organized Crime Control Act of 1969, Report of the Committee on the Judiciary of the United States Senate*, S. Rep. No. 91-617 at 126 (Dec. 18, 1969) (“The bill would make applicable to racketeering activities certain equitable remedies developed in antitrust law for the purpose of preventing the infiltration of legitimate organizations by racketeers. The Department is in general agreement with this objective.”).

²²⁹ *Measures Relating to Organized Crime, Hearings Before the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary of the United States Senate*, 91st Cong. 417 (June 3, 1969) (statement of Donald F. Taylor, president of Merrill Manufacturing Corp., appearing on behalf of the Chamber of Commerce of the United States) (“Certainly, however, we approve the objectives of some of the bills before your committee, This is particularly true of S. 1623 and S. 1861 sponsored by Senator McClellan and Senator Hruska.”).

²³⁰ For instance, the Department of Justice recommended that that the bill clarify its definition of key terms such as “racketeering activity” and narrow the scope of prohibited activities, in order to avoid constitutional violations. Letter from Deputy Attorney General Richard G. Kleindienst to Hon. John L. McClellan (Aug 11, 1969), in *Organized Crime Control Act of 1969, Report of the Committee on the Judiciary of the United States Senate*, S. Rep. No. 91-617, 91st Cong. 121-23 (Dec. 18, 1969).

²³¹ *Measures Relating to Organized Crime, Hearings Before the Subcommittee on Criminal Laws and Procedures of the Committee on the Judiciary of the United States Senate*, 91st Cong. 455 (June 3, 1969) (statement of Lawrence Speiser, Director, Washington Office, American Civil Liberties Union).

Likewise, the Women's International League for Peace and Freedom appeared before the Judiciary Committee to testify in opposition to the bill.²³²

iii. Reformers' Arguments

As the legislation was examined and revised, the Nixon administration worked to build support for the anti-organized crime agenda, repeatedly emphasizing the strength of the Cosa Nostra monolith and the existential threat that the Mafia posed to the nation. In his April 23, 1969 *Special Message to the Congress on a Program To Combat Organized Crime in America*, Nixon asked Congress to pass S.30, the bill that would lay the foundation for the OCCA. Nixon described Cosa Nostra as “an alien organization . . . a totalitarian and closed society operating within an open and democratic one.”²³³ He argued that organized crime “corrupts our governing institutions and subverts our democratic processes”²³⁴ and tied organized crime to the drug trade.²³⁵ He also laid blame on the American public for the spread of organized crime and warned of its impending encroachment in dark terms.

“[Cosa Nostra] has succeeded so far because an apathetic public is not aware of the threat it poses to American life. This public apathy has permitted most organized criminals to escape prosecution by corrupting officials, by intimidating witnesses and by terrorizing victims into silence. As a matter of national ‘public policy,’ I must warn our citizens that the threat of organized crime cannot be ignored or tolerated any longer.”²³⁶

²³² *Hearings Before Subcomm. No. 5 of the Comm. on the Judiciary of the House of Representatives*, 91st Cong. 461 (May 21, 1970) (statement of Mrs. Selma W. Samols, Esq., on Behalf of the Women's International League for Peace and Freedom).

²³³ President Richard M. Nixon, *Special Message to the Congress on a Program to Combat Organized Crime in America* (Apr. 23, 1969), in PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: RICHARD M. NIXON 315-21 (1969).

²³⁴ Richard Nixon, *Special Message to the Congress on a Program to Combat Organized Crime in America* (April 23, 1969), PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: RICHARD M. NIXON 315-21 (1969).

²³⁵ Richard Nixon, *Remarks at a Bipartisan Leadership Meeting on Narcotics and Dangerous Drugs* 830-57 (Oct. 23, 1969), PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: RICHARD M. NIXON (1969).

²³⁶ Richard Nixon, *Special Message to the Congress on a Program to Combat Organized Crime in America* (April 23, 1969), PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: RICHARD M. NIXON 315-21 (1969).

Members of the Department of Justice echoed the President's messaging. U.S. Attorney for the District of New Jersey Frederick B. Lacey made appeals to members of the bar association to move the public to action against organized crime, arguing that "unless you, as leaders, arouse an apathetic public to stem the tide of crime in this nation, our society as we know it is doomed."²³⁷ Attorney General John Mitchell advocated for the OCCA in part by emphasizing the power and cohesion of the Mafia:

Today, a greatly expanded Cosa Nostra, consisting of 24 groups or 'families,' operates in most of the States, in Mexico, in the Bahamas, in parts of Canada, and other regions of the world. Under the domination of a 'commission,' made up of the heads of the most powerful 'families,' who are in constant communication with each other, its activities are tightly controlled and conducted pursuant to a code which regulates their conduct, duties, and interrelationships. It should be understood, however, that La Cosa Nostra is only the inner core of organized crime. The confederation's thousands of workers and associates come from many walks of life."²³⁸

By January 1970, no anti-organized crime bill had been passed. In his 1970 State of the Union address, Nixon criticized Congress for failing to pass any legislation to address organized crime, claiming that crime was a sufficient scourge in the United States that war should be declared against it.²³⁹ Mitchell likewise faulted Congressional delay for hamstringing the war on crime.²⁴⁰

iv. Public Attitudes

Despite the Nixon administration's talk of a public apathy, the topic of organized crime had roused considerable interest. *Nation's Business* noted in June 1970 that crime was "one of the topics which interest [readers] most."²⁴¹ To that end, it promoted the Chamber of

²³⁷ Fred J. Cook, *The People v. the Mob; or, Who Rules New Jersey?*, N. Y. TIMES MAG., Feb. 1, 1970, at 35 (found in McClellan Archives, Ouachita Baptist University, 12) i. Organized Crime Control Act S. 30, 450:14).

²³⁸ *Hearings Before Subcomm. No. 5 of the Comm. on the Judiciary of the House of Representatives*, 91st Cong. 152 (May 21, 1970) (statement of Hon. John N. Mitchell, Att'y Gen. of the United States).

²³⁹ Richard Nixon, *Annual Message to the Congress on the State of the Union* (January 22, 1970), PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: RICHARD M. NIXON 8-16 (1970).

²⁴⁰ *Mitchell Hits Hill Delay on Crime Controls*, WASH. POST, Oct. 7, 1969, at A2; Leroy F. Aarons, *Congress Hampers Crime Drive, Mitchell Says*, WASH. POST, Dec. 14, 1969, at A21.

²⁴¹ *Memo From the Editor*, NATION'S BUSINESS, June 1970, at 7 (found in McClellan Archives, Ouachita Baptist University, 09) iii. *The Tide is Turning Against Crime*, *Nation's Business*, June 1970, 417: 69).

Commerce's Deskbook on Organized Crime to tell American businesspeople "what to look for to prevent the Mafia from creeping into your business."²⁴² The *Wall Street Journal*, acknowledging concerns about the repressive potential of the OCCA, nonetheless argued that "the nation by now may have reached a point where the real danger of repression would be not in the passage of strong anti-crime laws but in a failure to do so. Crime has become an emotional issue. While serious enough in real terms, it probably seems even worse in the minds of many because of exaggerated fears."²⁴³ Indeed, the passage of the OCCA was a reflection of the democratic function and rule of law, for "[i]f such a system is to work properly it is necessary that laws be strong enough to cope with what the electorate regards as important problems. . . the evidence indicated that existing laws were not in fact strong enough to deal with racketeers and their disgusting activities".²⁴⁴ The *Boston Globe* compared fear of the Mafia to that of the Black Panthers, arguing that "[t]o most fair-minded Americans, the Mafia and the many satellite elements that constitute organized crime are unquestionably the biggest and most powerful influence, and of a frightening nature, upon the quality of life in the country today."²⁴⁵ The *Los Angeles Times* advocated for reform with the argument that "[s]o great is the threat [of organized crime] that nothing less than a major national effort can deter the big business of crime."²⁴⁶ The *New York Times* highlighted the economic impact of organized crime, noting that "[t]he infiltration by organized crime of the economy has become so great in recent years that it is

²⁴² *Memo From the Editor*, NATION'S BUSINESS, June 1970, at 7 (found in McClellan Archives, Ouachita Baptist University, 09) iii. The Tide is Turning Against Crime, *Nation's Business*, June 1970, 417: 69).

²⁴³ *Review and Outlook: Crime and Punishment*, WALL ST. J., Oct. 20, 1970 (found in McClellan Archives, Ouachita Baptist University, 24) ii. Law and Order—Crime, 748.9).

²⁴⁴ *Review and Outlook: Crime and Punishment*, WALL ST. J. (Oct. 20, 1970) (found in McClellan Archives, Ouachita Baptist University, 24) ii. Law and Order—Crime, 748.9). This article was in fact written after the passage of the OCCA, but analyzed the factors leading to the bill's success.

²⁴⁵ Dexter D. Eure, *Which is Greater Threat: Black Panthers or Mafia*, THE BOS. GLOBE, July 28, 1970, at 11.

²⁴⁶ *New War on Organized Crime*, L. A. TIMES, Apr. 25, 1969, at D8.

estimated that the rackets collect more than \$30 billion a year in the United States, with a net profit of \$7 billion to \$10 billion.”²⁴⁷ Moreover,

“[t]he labyrinthine nature of the criminal and racket operations makes the cost to the nation’s industrial and business community impossible to determine accurately, but the Federal estimates are an indication of its massiveness. Similarly, the cost to labor and the consumer is undeterminable, though monstrous ‘Sweetheart’ contracts and other unfair practices that some employers enter with Mafia-controlled racket unions are the bane of the legitimate labor movement.”²⁴⁸

Even Martin Luther King spoke on organized crime as exacerbating poverty, stating that “[o]rganized crime is the nightmare of the slum family.”²⁴⁹

Public concerns do seem to have made an impact on the legislature. With midterm elections approaching, Republicans appeared most likely to benefit from the politics of law and order, despite being the party in power.²⁵⁰ Many Democrats were concerned that they would suffer electorally as a result of public concern about crime.²⁵¹ In the words of an anonymous senator who voted for the OCCA “despite misgivings,”²⁵² “[e]veryone’s afraid of being called soft on crime.”²⁵³ As such, there was considerable pressure on both parties to prove that they could produce tangible results in the fight against crime.

v. Legislative Debates on the Threat of Organized Crime

²⁴⁷ Charles Grutzner, *A High-Profit Business: Organized Crime in the US*, N. Y. TIMES, Jan. 11, 1970, at 119.

²⁴⁸ Charles Grutzner, *A High-Profit Business: Organized Crime in the US*, N. Y. TIMES, Jan. 11, 1970, at 119.

²⁴⁹ Nicholas Gage, *Organized Crime in City Bleeds Slums of Millions*, N. Y. TIMES, Sept. 27, 1970, at 1.

²⁵⁰ Fred P. Graham, *Both Parties Press Crime as 1970 Campaign Issue*, N. Y. TIMES, Jan. 4, 1970, at 1 (“The Republican ‘ins,’ in contrast to the normal situation, appear most likely to benefit from the continuing crime controversy, and the Democratic ‘outs’ are scrambling to build an anticrime image.”).

²⁵¹ Fred P. Graham, *Both Parties Press Crime as 1970 Campaign Issue*, N. Y. TIMES, Jan 4, 1970 (cited in 116 CONG. REC. S594 (daily ed. Jan. 21, 1970); *The Nation: Political Pressures Shape the Crime Bills*, N. Y. TIMES, Sept. 27, 1970, at E6.

²⁵² *Senate Passes Organized Crime Bill*, news source unlisted, (found in McClellan Archives, Ouachita Baptist University, 12) i. Organized Crime Control Act S. 30, 450:14).

²⁵³ *Senate Passes Organized Crime Bill*, (found in McClellan Archives, Ouachita Baptist University, 12) i. Organized Crime Control Act S. 30, 450:14).

The Senate debated the Organized Crime Control Act from January 21-23, 1970. Senators of both parties spoke of organized crime as an existential threat, much as the press had. Senator Robert Byrd (D-WV), stated that “[o]rganized crime is just as great a threat to the well-being of our Nation as are the continued upsurge of street violence and the work of militants who seek to burn down our cities or destroy our educational institutions.”²⁵⁴ Strom Thurmond (R-SC) argued that crime had reached “crisis proportions” and that this was at least in part due to the “insidious and invisible empire designated by various names, the best known of which are the Mafia and the Cosa Nostra.”²⁵⁵ George Murphy (R-CA) spoke of how “organized crime permeates all spheres of our society. Octopus like, organized crime is a complex and highly organized menace to society.”²⁵⁶ Harrison Williams (D-NJ) described it as a “cancer threatening the life of the body politic of the United States,”²⁵⁷ while Alan Bible (D-CA) echoed these sentiments even more vividly, describing organized crime as “a cancerous growth eating away at the heart and substance of our society—as a parasite feeding on the poor and reaping huge profits from illegal gambling, loan sharking, and the corruption of legitimate business enterprises.”²⁵⁸

There were some attacks on the bill within the Senate by liberals, who primarily critiqued it on due process grounds. Stephen Young (D-OH) argued that the bill “presents one of the most serious attacks in our Nation's history against individual privacy and the concept of due process of law.”²⁵⁹ Edward Kennedy (D-MA), while acknowledging organized crime as a “blight on our nation” and conceding that some provisions in the bill had merit, nonetheless criticized it as

²⁵⁴ 116 CONG. REC. S606 (daily ed. Jan. 21, 1970).

²⁵⁵ 116 CONG. REC. S952 (daily ed. Jan. 23, 1970).

²⁵⁶ 116 CONG. REC. S962 (daily ed. Jan. 23, 1970).

²⁵⁷ 116 CONG. REC. S970 (daily ed. Jan. 23, 1970).

²⁵⁸ 116 CONG. REC. S970 (daily ed. Jan. 23, 1970).

²⁵⁹ 116 CONG. REC. S851 (daily ed. Jan. 21, 1970).

overly expansive.²⁶⁰ Despite these concerns, the bill passed the Senate almost unopposed. The final vote was 73-1, with 26 abstentions.²⁶¹

Despite its overwhelming support in the Senate, the OCCA stalled in the House. Chairman of the House Judiciary Committee Emanuel Celler (D-NY), questioned its constitutionality and effectiveness, arguing it would do little to combat crime on the streets.²⁶² Reformists criticized the House's delay. In an April 1970 speech before the Senate, Senator McClellan described the consequences of the House's reluctance in quasi-apocalyptic terms. According to McClellan,

“[t]he crime menace that pervades our land today constitutes the greatest threat to our internal security and well-being. If the present rate continues unchecked throughout this decade, by 1980 the number of major crimes in this country will have reached the astronomical figure of 18 million annually. I do not believe that our society can withstand such a soaring scourge of lawlessness—such a vicious assault upon its structure—nor will our nation be able to survive such a devastating blow to its sovereignty.”²⁶³

Congressman Bill Alexander (D-AR), in testimony before the House Judiciary Committee, argued that “the one area of crime that has contributed as much as anything to a breakdown in respect for the law has been organized crime. All of us have seen, heard, and read about the growth in organized crime, while there has been no corresponding interest in governmental determination to kill this cancer that plagues our society.”²⁶⁴ Alexander further emphasized the public demand for the legislation, stating

“the people of this country are sick of living in fear. The people of this country are sick of seeing increased lawlessness. The people of this country are sick of unsolved crimes and unprosecuted criminals. The people of this country are sick of seeing the world's greatest

²⁶⁰ 116 CONG. REC. S845 (daily ed. Jan. 21, 1970).

²⁶¹ The lone nay vote was Lee Metcalf (D-MT). Despite their objections in debate, both Young and Kennedy voted for the Organized Crime Control Act.

²⁶² John W. Finney, *Senate Approves Measure to Fight Organized Crime*, N. Y. TIMES, Jan. 24, 1970, at 1.

²⁶³ Senator John McClellan, *Crime Today*, 116 CONG. REC. S5439 (daily ed. Apr. 9, 1970) (found in McClellan Archives, Ouachita Baptist University, 11) i. *Crime Today*—Jefferson City, Missouri September 4, 1970, 419: 71).

²⁶⁴ Representative Bill Alexander, *Draft of Testimony on H.R. 15698 Before the House Judiciary Committee 2* (May 20, 1970) (found in McClellan Archives, Ouachita Baptist University, 12) i. *Organized Crime Control Act S. 30*, 450:14).

power being impotent to put a two-bit thief in jail. And the people of this country are sick of seeing professional criminals being continually turned loose to continue their attacks on society. The people of this country are looking to this Congress to help correct this intolerable situation. They expect the Congress to act, and to act now. It is my feeling that the Congress can take no action in 1970 any more important than to pass this legislation and let the people of this country know that we are on their side, that we, too, are sick of crime, and that we are dedicated to its elimination.”²⁶⁵

Alexander’s emphasis on public demand for legislation seems to have had some foundation. With the Senate bill appearing poised to die in committee, Republicans pushed forward in attacking Democrats as soft on crime. As the midterms approached, Republicans seemed likely to benefit yet again from a law and order stance. The *New York Times* described the political pressure to pass the OCCA as “irresistible.”²⁶⁶ This sentiment was echoed by Rep. Abner Mikva (D-IL). Mikva, in speaking against the OCCA, quipped

I suppose I am addressing these remarks to those few people who come from safe districts or to those who decided for some reason or other that they do not want to come back here, or to those who have some kind of death wish about reelection; because I recognize at this point that urging people to vote against S. 30 [the Senate draft of the OCCA] is not the most politic thing to do.”²⁶⁷

House hearings on the legislation took place during the summer of 1970, and the legislation was brought before the entire chamber in October, weeks before the midterm elections. During the debates, many Representatives echoed the sentiments of their Senate colleagues with regard to the threat of organized crime. Robert Sikes (D-FL) argued that “Congress should leave no stone unturned in our efforts to insure that every step within our power has been taken to curb this growing threat to the domestic peace and to the internal security of the Nation.”²⁶⁸ Robert Price (R-TX) described organized crime as a “deadly threat to

²⁶⁵ Representative Bill Alexander, Draft of Testimony on H.R. 15698 Before the House Judiciary Committee 4 (May 20, 1970) (found in McClellan Archives, Ouachita Baptist University, 12) i. Organized Crime Control Act S. 30, 450:14).

²⁶⁶ John W. Finney, *Senate Approves Measure to Fight Organized Crime*, N. Y. TIMES, Jan. 24, 1970, at 1.

²⁶⁷ 116 CONG. REC. H35204 (daily ed. Oct. 6, 1970).

²⁶⁸ 116 CONG. REC. H35310 (daily ed. Oct. 7, 1970).

the well-being of this Nation.”²⁶⁹ Mario Biaggi (D-NY) proposed the bill go even further by criminalizing Mafia membership outright.²⁷⁰

Opponents of the bill were more strident in their criticism in the House than in the Senate. Almost all liberal Democrats, they attacked the OCCA primarily on civil libertarian grounds. James Scheuer (D-NY), William Fitts Ryan (D-NY), Bertram Podell (D-NY), Abner Mikva (D-IL), John Conyers (D-MI), and Bob Eckhardt (D-TX) were among the most vocal critics. Eckhardt called the bill “a monster” and a “fraud upon the public.”²⁷¹ The opponents of the OCCA nonetheless recognized that the political momentum was against them. Conyers bemoaned this “episode in the continuing problem that we are confronted with here when public hysteria inspires legislative passion.”²⁷² When Representative John Henry Kyl (R-IA) noted that there were provisions in the bill that would not have passed several years prior, Conyers retorted that “I would like to add to that statement with which I agree and say that there are provisions in this bill that probably would not pass if the bill came up after November 3, 1970.”²⁷³

The OCCA was passed by the House on October 7, 1970. The final vote was 341-26, with 63 abstentions. The House version was agreed to by the Senate on a voice vote five days later.²⁷⁴ On October 15, Richard Nixon signed the OCCA into law. As he did so, he stated that “I think that this should be a warning to those who engage in these acts that we in this country are

²⁶⁹ 116 CONG. REC. H35320 (daily ed. Oct. 7, 1970).

²⁷⁰ 116 CONG. REC. H35343 (daily ed. Oct. 7, 1970). Representative Biaggi’s proposed amendment was struck down as a likely violation of principles of free association. It was also generally considered to be discriminatory, as it would have limited the definition of Mafia organizations to persons of Italian ancestry. For the entire debate on the proposed amendment, *see* 116 CONG. REC. H35343-46 (daily ed. Oct. 7, 1970).

²⁷¹ 116 CONG. REC. H35216 (daily ed. Oct. 6, 1970).

²⁷² 116 CONG. REC. H35210 (daily ed. Oct. 6, 1970).

²⁷³ 116 CONG. REC. H35211-12 (daily ed. Oct. 6, 1970).

²⁷⁴ 116 CONG. REC. S36296 (daily ed. Oct. 12, 1970).

not going to tolerate that kind of activity in the future and that the full force of the Federal Government . . . will be brought against these actions wherever there is a Federal interest.”²⁷⁵

vi. [Analysis](#)

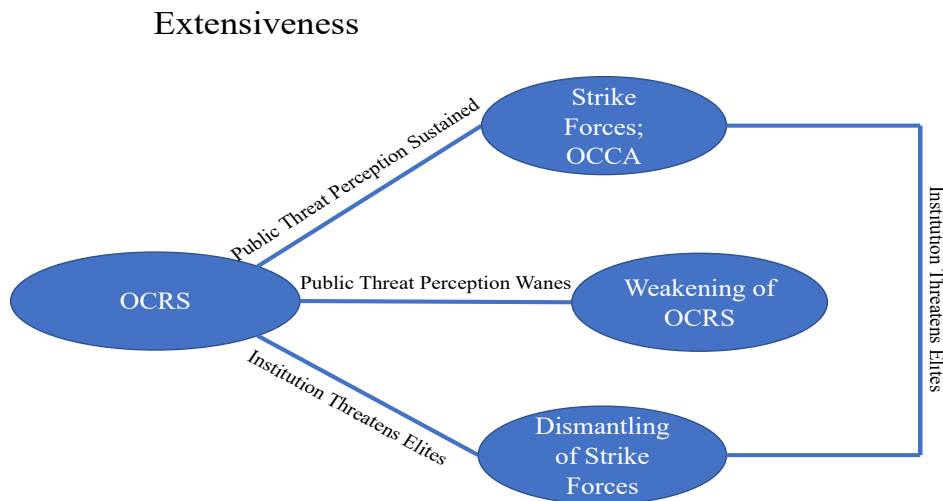
With the passage of the OCCA, the United States definitively established strong reform. In addition to a robust unit of specialized enforcers, it now had laws that would allow prosecutors to target organized criminal groups as whole entities. The OCCA provided both substantive provisions to prosecute criminals and mechanisms to seize their assets. As such it meets both of the aspects of a robust permissive law. At the same time, this law represented a significant increase in federal power that drew criticism, particularly from civil libertarians.

The passage of the OCCA was the product of rising concern on the part of the American public regarding the problem of crime. Though Americans’ fear was not confined to organized crime, politicians who were interested in claiming the “tough on crime” mantle regularly emphasized organized crime as one of the significant threats facing the country. Richard Nixon and the Republican party campaigned on their anti-organized crime position, as did conservative Democrats like McClellan. In advocating for such legislation, reformers regularly emphasized the power, strength, and cohesiveness of organized crime, depicting it as a relatively unified national group that worked cooperatively at a national, and even international, level. In addition, the reformers consistently described Cosa Nostra as a sort of shadow government conspiring to undermine American democracy. Depictions of the Mafia as an octopus or cancer infiltrating the United States economy and system of government likewise reflected the idea that organized crime was a singular force permeating and directing American society.

²⁷⁵ President Richard Nixon, *Remarks on Signing the Organized Crime Control Act of 1970* (Oct. 15, 1970), PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES: RICHARD M. NIXON 846-47 (1970).

Moderate and liberal Democrats who may have been resistant to reform faced enormous pressure to support it in the run-up to the 1970 midterms. The overwhelming nature of concern about crime made anything resembling a “soft on crime” position politically untenable. In this environment, even skeptics of the bill’s provisions were, with rare exception, unwilling to vote against it. In this way, the overwhelming concern about crime in the opening years of the 1970s pushed the last of the neutrals, and even some anti-reformers, into the reform camp.

Figure 6.4: Extensiveness in the US



V. Analysis and Implications

a. The American Case in the Theory

The American experience of developing legal institutions to prosecute organized crime generally comports well with my theory. Organized crime had been a feature of American life for centuries. Criminal organizations composed primarily of Italian immigrants and their

descendants mobilized the American public to outrage and even violence as early as the nineteenth century. During Prohibition, a push for stronger federal laws received some elite support. Yet reformers were unable to make inroads on the issue, in large part because of lack of interest in the South. This, combined with robust federalism and fear of a national police force effectively prevented the national government from establishing strong institutions to combat organized crime. Even with the rise of the anti-organized crime movement of the mid twentieth century, it took twenty years of sustained campaigning by a committed cadre of political leaders for the federal government to develop its strongest institutions. As such, the experience of the United States demonstrates the political difficulty that such institutions may face, even when organized crime is an issue of significant public salience.

i. [Shifting Public Threat Perception](#)

The anti-organized crime movement in the United States was led by a small group of committed activists, primarily within the legislative and executive branches. Key legislators included Estes Kefauver and John McClellan, as well as the members of their respective committees. Executive leaders included Robert Kennedy and Richard Nixon. These individuals worked to advance institutional reforms by appealing to the public regarding the scope of organized crime as a threat to the nation. Although no single episode shifted the public's perception of organized crime, a series of events could be said to have convinced the public.

The first event which brought organized crime to public attention as a national issue was the Kefauver hearings. These hearings were held specifically to build public awareness of organized crime, and their scope and popularity brought the issue to national attention. Though not sufficient in and of themselves to cement organized crime as a matter of national threat or secure major change at the national level, the hearings did lead to local reforms as well as the

foundation of the OCRS, albeit in a weak and dysfunctional form. It was not until the McClellan hearings, and particularly the Apalachin Meeting, that reformers could show that the Mafia existed as a single organization with a national reach, and therefore required federal government involvement. In the wake of Apalachin, anti-crime activists such as McClellan, Kennedy, and even Kefauver increasingly began to refer to organized crime as a national conspiracy, a criminal government, and a threat to democracy itself. This rhetoric was a crucial means of galvanizing the public to see organized crime as a national threat requiring federal intervention.

These events also undermined the position of anti-reformers, particularly J. Edgar Hoover. Hoover adamantly resisted the focus on organized crime, which he saw as likely to undermine the FBI. However, the continued revelations of the scope of Cosa Nostra built support for anti-crime initiatives in Congress, as legislators moved into the pro-reform camp. This was demonstrated by Congress' willingness to pass anti-gambling legislation aimed at organized crime in 1961-62. The appointment of the staunchly reformist Robert Kennedy as Attorney General resulted in the development of a robust Organized Crime and Racketeering Section. OCRS, which focused exclusively on investigating and coordinating the prosecutions of organized criminal groups, fits the theoretical requirements of a competent enforcement body. Since the US still lacked permissive laws, at this stage it had undergone *weak reform*.

ii. [Atrophy](#)

While the Kennedy years represented the initial push for reform, these efforts were weakened somewhat in the early years of the Johnson administration. Johnson was relatively disinterested in organized crime, preferring to focus on social programing. Combined with a resurgent J. Edgar Hoover, this led the executive branch to de-emphasize the prosecutorial reform that had characterized the Kennedy DoJ. Rather than dismantle reforms such as the OCRS, Johnson

simply allowed them to fall into a state of decay. Though this neglect was short-lived, the weakening of the OCRS during this period demonstrates how institutional developments, especially new ones, can be undermined if public attention is not sustained. The weakening of the OCRS during this period is consistent with my expectation of *institutional atrophy*.

iii. [Extension of Reform](#)

Ultimately, reform was extended in the late Johnson and Nixon years as a direct result of political forces. Rising crime rates and massive social unrest in the late 1960s led Republicans to campaign on a law-and-order platform which incorporated a commitment to combatting organized crime. Media narratives surrounding the issue at the time tended to advance the argument that groups such as the Mafia were not merely criminological phenomena, but a massive threat to the nation's ability to function. Public concern about crime ultimately brought Richard Nixon to the White House. Seeking legislative achievements to fulfill his campaign promises, Nixon backed efforts to combat organized crime, specifically John McClellan's Organized Crime Control Act. In advocating for the OCCA, reformers portrayed the Mafia as a shadow government threatening the American economy, and even its sovereignty. This rhetoric was echoed by Congresspeople of both parties, who felt increasing pressure to show that they could do something about crime. As my theory would predict, the pro-reform camp emphasized organized crime as a particularly strong cohesive power which posed a threat to the entire nation.

Though some in Congress resisted, particularly Democrats with strong civil libertarian priorities, they were effectively marginalized. Indeed, the success of public pressure seems to have played a particularly strong role in shifting neutrals and anti-reformers. As Republicans benefitted from public perception that they were the party of law and order, Democrats faced pressure to show that they could take anti-crime action. In the process, remaining neutrals in

Congress were pushed into the pro-reform camp and supported the OCCA. The OCCA, and particularly its substantive provisions, fits my definition of a permissive law. By allowing prosecutors to target criminal groups as enterprises, RICO opened the entire membership of the targeted group to liability. Moreover, the statute includes strong asset forfeiture provisions. Therefore, with the passage of the OCCA, the United States had undergone *strong reform*.

iv. [A Postscript on Rollback](#)

The U.S. would eventually experience one noteworthy rollback in its institutional development. In 1989, Attorney General Dick Thornburgh announced that the Organized Crime Strike Forces would be disbanded and merged with the United States Attorney's Offices.²⁷⁶ The strike forces, originally developed under the Johnson administration and expanded under the Nixon administration, operated within U.S. Attorneys' Offices, but were centrally controlled by the OCS in Washington D.C. They were therefore independent of individual U.S. Attorneys.

The strike forces had been criticized as ineffective and poorly coordinated.²⁷⁷ However, the decision to disband them was seen as part of a bureaucratic turf war, a result of U.S. Attorneys' displeasure with the independence of the strike forces.²⁷⁸ A bipartisan group of senators urged the Attorney General to delay the move.²⁷⁹ In an op-ed in the *New York Times*, Senators Edward Kennedy and Sam Nunn attributed the decision to "U.S. Attorneys resent[ing] their lack of control over organized-crime cases on their home turf" and lambasted the move to dismantle the strike forces as undermining prosecutorial expertise in the field of organized crime.²⁸⁰

²⁷⁶ Ronald J. Ostrow, *Thornburgh Will Disband Crime Strike Forces, Merge Units with U.S. Attorneys*, L. A. TIMES, June 20, 1989, at 5.

²⁷⁷ See ROBERT F. KELLER, WAR ON ORGANIZED CRIME FALTERING--FEDERAL STRIKE FORCES NOT GETTING THE JOB DONE, REP. TO CONG. NO. GGD-77-17 (Mar. 17, 1977).

²⁷⁸ James B. Jacobs, *The Rise and Fall of Organized Crime in the United States*, 49 CRIME & JUST. 17 (2020).

²⁷⁹ Ronald J. Ostrow, *Thornburgh Will Disband Crime Strike Forces, Merge Units with U.S. Attorneys*, L. A. TIMES, June 20, 1989, at 5.

²⁸⁰ Sam Nunn & Edward M. Kennedy, *A Move the Mob Would Like*, N. Y. TIMES, June 19, 1989, at A15.

At this time, I do not have sufficient data to fully analyze the dismantling of the strike forces. However, this event is broadly consistent with my theory's expectations about rollback. The independence of the strike forces posed a bureaucratic challenge to the leadership within U.S. Attorney's Offices and was resented accordingly. Particularly as the government achieved increasing success against Cosa Nostra, leaders in the Department of Justice could argue that these organizations were no longer needed. Moreover, since OCRS remained in effect, the government was not deprived of competent enforcement. Strike forces may well have posed a greater threat to U.S. Attorneys than did criminal groups. Though further research is needed to understand the mechanisms by which the strike forces were disbanded, this event suggests that even where strong institutional reform has occurred, some rollback remains a possibility.

b. Alternative Explanations

I consider two possible alternative explanations arising from this case. The first is that anti-organized crime institutions are not the product of events shifting public pressure, but rather that they are merely the result of a learning process on the part of elite decisionmakers. The second is that party politics, rather than public pressure, drives reform.

i. Decisionmaker Learning

One possible counterargument to my theory is that institutions are a product of decisionmaker learning rather than public pressure. In this account, leaders may initially be skeptical of anti-organized crime institutions for various reasons (i.e. concerns about civil liberties or federalism, cost-consciousness, disinterest). However, mounting evidence of the power and/or danger of organized crime eventually convinces a sufficiently high number to support reform.

This alternative is potentially quite powerful because it can explain much of the same variation as my theory. Particularly where leaders learn about crime in the same manner as the

public (i.e. as a result of activities that receive considerable media coverage), their support for reform may co-vary with shifts in public threat perception. Moreover, this mechanism would seem to explain the onset of events like the Kefauver and McClellan hearings, in which legislators with relatively little connection to issues of organized crime in their home states sought to promote and publicize the issue in order to build support for reform. In the case of Robert Kennedy, the experience of working on the McClellan Committee seems to have played a significant role in making him a reformer.

The American experience from 1950-1970 presents a particularly useful opportunity to test this hypothesis, since so many of the same individuals are key players throughout this time period. Therefore, we can assess the impact of a regular increase in information on elite support for reform. While individual decisionmakers may be impacted by what they learn about the threat of crime, this is insufficient to explain increased reformism. Arguably, if there was any time that demonstrated the potential threat posed by organized crime, it was the Prohibition era. The considerable violence of the New York and Chicago gangs, as well as their ability to engage in corruption at relatively high levels had been demonstrated repeatedly. Yet reformers were unable to build support, a fact was linked explicitly to indifference, rather than ignorance. Even during the midcentury period, there was evidence that leaders were not driven by new information. Declining support for the OCRS in the Johnson administration more closely follows a reduction in attention to organized crime than a lack of information. J. Edgar Hoover likewise demonstrated a willingness to minimize FBI involvement in anti-organized crime activity even after mounting evidence of criminal activity. As such, while informational mechanisms may explain the shift of some individuals from neutrals or anti-reformers to reformers, they are insufficient to explain the timing of institutional establishment.

ii. Party Direction

A second alternative explanation is that the development of anti-organized crime institutions is in fact driven by parties rather than the public. In this account, parties or factions within parties have divergent policy preferences, and the ability to establish anti-organized crime institutions is merely a reflection of power within these groups. In this interpretation, public sentiment matters in some sense at an electoral level, but factions pursue policies based on their own preferences. This logic may be most compelling as an explanation for the Johnson administration's shift away from the anti-organized crime initiatives of the Kennedy years. Johnson took office very shortly after the Valachi hearings, and it would be difficult to argue that public perception of organized crime had changed during that time. The atrophy of the OCRS may therefore be best explained by shifting priorities of the new administration rather than a response to the public. By contrast, the rising power of Nixon's Republican party offered reformist Democrats like McClellan a chance to revive their project by building an alliance with Republican lawmakers.

Undoubtedly, the preferences of parties or factions play a significant role in the establishment of institutions. However, I argue that this explanation does not explain the U.S. case as well as my theory. For instance, if party preference rather than public perception shifts drove reform, we would expect no change to occur during the Eisenhower or Johnson administrations, when disinterested leaders held the most power. While it is true that those administrations saw less reform than the Kennedy and Nixon administrations, they nonetheless did adopt changes (founding OCRS and the strike forces). More to the point, they did so when public attention to crime increased significantly. In addition, if party preferences, rather than public pressure, drove reforms, we would not expect to see OCCA pass by a significant majority, as it did. The fact that

many Congresspeople, including liberal Democrats, felt that pressure to adopt the law was ‘irresistible’ suggests that popular sentiment played a significant role in driving reform.

c. Implications of the American Case

i. State Strengthening Effects

Two features of the American experience are worth highlighting for their broader implications. First, this case demonstrates the ability of anti-organized crime institutions to act as state-strengthening agents. From the earliest days of the Kefauver Commission, skeptics of reform were concerned about the likelihood that efforts to combat organized crime would lead to a broadening of the power of the federal government, with the greatest fear being the establishment of a national police force. Though no national police force was developed, these concerns were nonetheless prescient. The fight against organized crime has massively increased the ability of the federal government to regulate the lives of citizens. For instance, Title III of the Omnibus Crime Control and Safe Streets Act²⁸¹ legitimized the regulated use of federal wiretaps in criminal prosecutions, permitting federal law enforcement to use this invasive technique.

The OCCA, and particularly RICO, went even further. By allowing for the use of severe criminal and civil penalties against organizations that engage in a pattern of racketeering activity, RICO provided prosecutors with an incredibly powerful tool, one whose reach extended far beyond the bosses of Cosa Nostra.²⁸² RICO has been used to establish federal jurisdiction against everything from the Key West Police Department²⁸³ to pharmaceutical companies²⁸⁴ to the

²⁸¹ Omnibus Crime Control and Safe Streets Act of 1968, 34 U.S.C. §1010, Title III (June 19, 1968).

²⁸² Deanna Paul, *Federal Prosecutors Are Using a Law Intended for the Mob in Unexpected Cases*, WALL ST. J., Dec. 26, 2021.

²⁸³ *United States v. Casamayor*, 837 F.2d 1509 (11th Cir. 1988).

²⁸⁴ *Painters & Allied Trades Dist. Council 82 Health Care Fund v. Takeda Pharm. Co.*, 943 F.3d 1243 (9th Cir. 2019).

Fédération Internationale de Football Association (FIFA).²⁸⁵ Indeed, RICO's potential to increase federal power was recognized relatively early, at least by the law's principal architect, G. Robert Blakey. Blakey and Gettings (1980) explicitly denied that RICO was only intended to combat organized crime.²⁸⁶ They argue that while combatting organized crime certainly was a purpose of RICO, organized criminal enterprises were never the only ones the law was meant to combat. They point out that no such limitation exists in the statute.²⁸⁷ This expansion of the government's power was also recognized by the Reagan Department of Justice, where associates expressed concern that a rise in civil RICO suits "threatens to federalize a number of actions that belong in state courts and to erode recent restrictions on our federal securities law."²⁸⁸

The permissive laws that were demanded by anti-organized crime activists built an edifice that expanded federal law enforcement's power to regulate activities far beyond the racketeering of Cosa Nostra. Though arguably justified by the size and wealth of organized crime in the United States, it is worth noting the broad ramifications of these reforms, which played a significant role in building the centralized power of American federal law enforcement.

ii. [Elite Direction of Reform](#)

A second implication of the American case is that shifts in public perception of organized crime need not be driven by criminal activity, but can be manufactured by elites. From 1950-

²⁸⁵ Press Release, Department of Justice, Nine FIFA Officials and Five Corporate Executives Indicted for Racketeering Conspiracy and Corruption, Department of Justice Office of Public Affairs (May 27, 2015), <https://www.justice.gov/opa/pr/nine-fifa-officials-and-five-corporate-executives-indicted-racketeering-conspiracy-and> (accessed 25 Feb. 2022).

²⁸⁶ G. R. Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts - Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009, 1017-18 n.45 (1980). For a counter-argument that RICO was only intended to combat organized crime, see Gerard E. Lynch, *RICO: The Crime of Being a Criminal Parts I and II*, 87 COLUM. L. REV. 661 (1987).

²⁸⁷ G. R. Blakey & Brian Gettings, *Racketeer Influenced and Corrupt Organizations (RICO): Basic Concepts - Criminal and Civil Remedies*, 53 TEMP. L.Q. 1009 (1980); see also G. Robert Blakey & Thomas A. Perry, *An Analysis of the Myths That Bolster Efforts to Rewrite RICO and the Various Proposals for Reform: "Mother of God- Is This the End of RICO?"*, 43 VAND. L. REV. 851, 866-68 (1990).

²⁸⁸ Robert F. [illegible] to Roger Clegg, Memorandum, March 27, 1984, OAG [Galebach Files], Box 249, Folder Clegg Memos, National Archives and Records Administration, College Park, MD, 1.

1970, the rise in visibility of organized crime, and particularly that of Cosa Nostra, was almost entirely a product of publicity campaigns by pro-reform activists such as Kefauver, McClellan, and Kennedy. Unlike its Italian cousins, the American Mafia did relatively little to draw attention to itself—it did not wage campaigns of violence against the state, nor did it engage in significant visible internal bloodletting.²⁸⁹ Even the Apalachin Meeting, which played a significant role in convincing the public of the power of the Mafia, was a product of the group’s carelessness in holding a large meeting rather than a result of their efforts to impact public opinion. Instead, the most significant stories surrounding Cosa Nostra were revelations of its scope and structure, which were touted primarily by the media and congressional bodies.

The elite-driven nature of America’s rising concern about Cosa Nostra suggests that the behavior of organized criminals themselves is not necessarily the key factor in explaining when governments will target these groups. Even criminal organizations that do not engage in highly visible violence or corruption may become the target of anti-organized crime reform movements. Moreover, public perception of organized crime as a threat does not necessarily depend on changes in the group’s activities or shifts in the threat that it objectively poses to ordinary citizens. At least in some circumstances, is possible for reformers to convince the public that organized crime is a threat even if the criminals themselves try to keep a low profile.

Nonetheless, while elite reformers may be able to manipulate the public’s perception of organized crime, the American case suggests that they cannot simply ignore it. During Prohibition, reformist elites were unable to secure institutional development at the federal level in the absence of Southern concern about organized crime. Likewise, despite Kefauver’s interest

²⁸⁹ There were some exceptions to this rule, such as the attempted assassination of turncoat Frank Costello outside his apartment or the highly visible murder of boss Albert Anastasia in the barbershop of the Park Sheraton Hotel in New York. However, in general Cosa Nostra preferred to keep its violence hidden. SELWYN RAAB, *FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES* 114-15 (2005).

in building his reputation as a crime-fighter, he was unable to establish the National Crime Commission based off the impact of his hearings. It was not until the Apalachin Meeting and McClellan hearings that Robert Kennedy was able to translate reformist energy into a robust unit of federal prosecutors. Similarly, the social unrest of the late 1960s and the law-and-order push of the Nixon campaign led Congressional leaders, and particularly vulnerable Democrats, to feel pressured to pass the OCCA. Thus, the American experience building anti-organized crime institutions suggests not only that pro-reform leaders may be able to shape public perception of organized crime as a national threat, but that, particularly in the absence of visible activity by the criminals, this is exactly what they must do.

VI. Conclusion: The Results of Institutional Reform in the U.S.

Though it took twenty years to establish America's key anti-organized crime legal institutions, it took another decade to realize their full impact against Cosa Nostra. For many years, federal prosecutors were hesitant to make use of the RICO statute to bring cases against Mafia groups.²⁹⁰ The law was novel and untested, and its ability to withstand judicial scrutiny was unestablished.

A combination of bureaucratic change, academic activism and permissive jurisprudence would eventually reveal the full strength of the federal government's weapon. J. Edgar Hoover's death in 1972 allowed for new leadership in the FBI that was far friendlier towards vigorous investigation of organized crime.²⁹¹ These leaders found an important ally in RICO's architect,

²⁹⁰ The exact reasons for this delay remain disputed and are beyond the scope of this dissertation. Explanations include unfamiliarity with law, concerns that the courts would strike down cases brought under RICO, outdated investigative methods, and bureaucratic disruption within the executive branch. For a discussion of this debate, see James D. Calder, *RICO's "Troubled . . . Transition": Organized Crime, Strategic Institutional Factors, and Implementation Delay, 1971-1981*, 25 CRIM. JUS. REV. 31, 33-35 (2000).

²⁹¹ SELWYN RAAB, FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES 210 (2005).

G. Robert Blakey. In the decade after RICO's passage, Professor Blakey became frustrated by the failure of prosecutors to use it effectively. Blakey established a think tank on legal responses to organized crime at Cornell University, known as the Cornell Institute on Organized Crime. He also ran summer seminars directed towards training prosecutors on the use of the law and advocating for RICO-style legislation at the state level.²⁹² Among Blakey's students were leading FBI investigators who would ultimately be persuaded of the benefits of launching RICO investigations as a means of targeting organized crime systematically.²⁹³ This strategy was made feasible by a series of favorable court decisions. In the years after its enactment, prosecutors primarily used RICO to target mob-infiltrated unions and businesses.²⁹⁴ Broad interpretation of the provisions of RICO by the federal judiciary made it increasingly clear that cases brought

²⁹² SELWYN RAAB, FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES 214 (2005).

²⁹³ SELWYN RAAB, FIVE FAMILIES: THE RISE, DECLINE, AND RESURGENCE OF AMERICA'S MOST POWERFUL MAFIA EMPIRES 214-17 (2005).

²⁹⁴ *United States v. Scotto* 641 F.2d 47 (2d Cir. 1980). See also Thomas J. Salerno & Tricia N. Salerno, *United States v. Scotto: Progression of a Waterfront Corruption Prosecution from Investigation through Appeal*, 57 NOTRE DAME L. REV. 364, 403-05 (1982) (Salerno and Salerno express initial skepticism about the ability of prosecutions like Scotto's to fundamentally change corruption); Selwyn Raab, *Scotto Begins Sentence for Labor Racketeering*, N.Y. TIMES, July 24, 1981, at B1.

under RICO would be upheld by the courts.²⁹⁵ Given this liberal interpretation of RICO, prosecutors were prepared to make increasingly aggressive use of it.²⁹⁶

Among the U.S. Attorneys who was most ambitious in his use of RICO was Rudolph “Rudy” Giuliani, the United States Attorney for the Southern District of New York (SDNY). Giuliani was determined to root out Cosa Nostra once and for all, and New York, the city of the Five Families, was an ideal place to start.²⁹⁷ In a series of trials, SDNY brought the bosses of Cosa Nostra to court. The most significant cases included *United States v. Salerno*, which led to the conviction of the bosses of each of the Five Families; *United States v. Castellano*²⁹⁸; and *United*

²⁹⁵ See e.g., *United States v. Scotto* 641 F.2d 47 (2d Cir. 1980); *United States v. Turkette* 452 U.S. 576 (1981). Subsequent cases did limit the parameters of RICO prosecution somewhat. See *Sedima, S.P.R.L. v. Imrex Co* 473 U.S. 479, 482 (1985); *H.J. Inc. v. Northwestern Bell Telephone Company*, 492 U.S. 229 (1989). Moreover, there were significant circuit splits regarding the extent to which defendants had to participate in predicate acts in order to be charged under RICO (this was particularly contentious in cases of RICO conspiracy). For instance, the First Circuit held in *United States v. Winter*, that “[t]o be convicted as a member of an enterprise conspiracy, an individual, by his words or actions, must have objectively manifested an agreement to participate, directly or indirectly, in the affairs of an enterprise through the commission of two or more predicate crimes.” 663 F.2d 1120, 1136 (1st Cir. 1981); the Second Circuit took a similar approach in *United States v. Ruggiero*, 726 F.2d 913, 921 (2d Cir. 1984). However, the Seventh, Ninth and Eleventh Circuits, took far broader approaches, requiring only agreement to participate in an enterprise, rather than to agree to commit the predicate acts. See *United States v. Neapolitan* 791 F.2d 489 (7th Cir. 1986); *United States v. Brooklier* 685 F.2d 1208 (9th Cir. 1982); *United States v. Carter* 721 F.2d 1514 (11th Cir. 1984). For a detailed discussion of the jurisprudence on RICO conspiracy, see generally Jeanette Cotting, *RICO's Conspiracy Agreement Requirement: A Matter of Semantics?*, 21 HOFSTRA L. REV. 725 (1993). Nevertheless, the courts generally took a liberal view of RICO, which tended to give prosecutors significant power.

²⁹⁶ In order to strengthen the legal controls meant to guarantee that federal organized crime prosecutions would yield convictions, the DoJ instituted a policy whereby all proposed RICO actions had to be reviewed by attorneys in the Organized Crime and Racketeering Section. The OCRS then could, and often did, modify cases prior to the proceedings being filed Edward S.G. Dennis, Jr., *Current RICO Policies of the Department of Justice*, 43 VAND. L. REV. 651, 654-55 (1990).

²⁹⁷ Ed Magnuson, *Hitting the Mafia*, TIME, Sept. 29, 1986.

²⁹⁸ *United States v. Castellano* 610 F. Supp. 1359 (S.D.N.Y. 1985).

States v. Badalamenti (the ‘Pizza Connection’ case).²⁹⁹ Following Giuliani’s success, RICO was increasingly used to target criminal organizations in other jurisdictions.³⁰⁰

The result of this sustained prosecutorial effort was a considerable weakening of traditional mafia-style criminality in the United States.³⁰¹ RICO, combined with the increased effectiveness of federal investigators and prosecutors, allowed the U.S. government to target these hierarchical organizations as enterprises and to actively pursue the powerful bosses who had dominated them. Cosa Nostra continues to exist, but it has never managed to regain the power it had in the first half of the twentieth century.³⁰² In this respect, the institutional development that occurred from 1950-1970 in the United States was generally successful in its initial goal of dismantling the American Mafia.

²⁹⁹ *United States v. Badalamenti et. al* 794 F.2d 821 (2d Cir. 1986). *Badalamenti* was built on an internationally coordinated investigation and resulted in the conviction of several high-level mafiosi. For a discussion of U.S.-Italian coordination in the “Pizza Connection” investigation, see ALEXANDER STILLE, EXCELLENT CADAVERS, 128-29 (2011) (1995); *A Partnership is Born: 'Pizza Connection' Only the Beginning*, THE FBI: FEDERAL BUREAU OF INVESTIGATION (May 17, 2006), https://archives.fbi.gov/archives/news/stories/2006/may/falcone_051706 (accessed 14 Jan. 2022). The investigation also involved support from several other countries, including Turkey, Switzerland, Brazil, Spain, Canada, the UK, Germany, and Mexico. *The Pizza Connection: Painstaking Work Leads to Landmark 1980s Heroin Bust*, FBI: FEDERAL BUREAU OF INVESTIGATION (Apr. 5, 2019), <https://www.fbi.gov/news/stories/the-pizza-connection-35th-anniversary-040519> (accessed 14 Jan. 2022).

³⁰⁰ See e.g., *United States v. Gotti*, 782 F. Supp. 737 (E.D.N.Y. 1992); *United States v. Calabrese*, 2008 U.S. Dist. LEXIS 84583 (N.D. Ill 2008) (upholding conviction of key leaders of the Chicago Outfit); *United States v. Angiulo* 897 F.2d 1169 (1st Cir. 1990) (upholding convictions of Boston’s Patriarca crime family).

³⁰¹ Jay S. Albanese, *The Italian-American Mafia*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 142, 152 (Letizia Paoli ed., 2014).

³⁰² Jay S. Albanese, *The Italian-American Mafia*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 142, 152 (Letizia Paoli ed., 2014). See also Jack Boyd, *The Death of the Mafia?*, HARV. POL. REV. (Feb. 17, 2015).

Table 6.2: US Timeline

Dates	Events
Jan 16, 1919	18th Amendment Passed
Feb 14, 1929	St. Valentine's Day Massacre
Feb 1930-April 1931	Castellammarese War
1949	American Municipal Association petition
1950-1951	Kefauver Committee
Jan 1957-March 1960	McClellan Committee Hearings
Nov 14, 1957	Apalachin Meeting
1960	Election of John F. Kennedy
1961	Robert Kennedy becomes Attorney General
	OCRS Strengthened (Onset of Institutional Reform: Competent Enforcement)
1961-1962	Anti-Gambling Laws Passed (Early attempt at permissive law)
Oct 1963	Valachi Hearing
Nov. 22, 1963	The Assassination of John F. Kennedy
Nov. 1964	Johnson's Election
July 1965-June 1967	President's Crime Commission
1967	Strike Forces Established
June 1968	Passage of Omnibus Crime Control and Safe Streets Act
Nov. 1968	Election of Richard Nixon
1969-1970	Debates over Organized Crime Control Act
Oct. 15, 1970	Organized Crime Control Act Passed (Permissive Law)

Chapter VII: Conclusion

I. Introduction

Throughout the 1980s and 1990s, organized crime appeared to be an issue of growing concern for democratic countries around the world. As this dissertation has shown, many implemented significant and lasting institutional changes within their domestic legal frameworks. As the twenty-first century opened, it was conceivable that organized crime would be a major focus of the international community. In 2000, the United Nations Convention Against Transnational Organized Crime (UNTOC), often known as the Palermo Convention, was signed.¹ The UNTOC, which seeks to address problems of organized crime through mechanisms of international law, arguably represented a further step in the development of the legal machinery to combat this threat.

With the attacks of September 11, 2001, the United States, along with much of the democratic world, would shift its focus away from organized crime and onto the threat of terrorism. With this shift in focus, public concern about organized crime fell, and the development of legal institutions designed to combat groups such as Cosa Nostra slowed down. Nonetheless, many of the laws and policing bodies that had been developed continue to exist and to play a significant role in the law enforcement work of democratic nations. In some cases, including Italy, the very institutions that were established to combat organized crime have come to play a role in the war on terrorism.² Thus, while organized crime may not be the central political issue it once was, the ramifications of institutional development are still felt.

¹ United Nations Convention Against Transnational Organized Crime and the Protocols Thereto (Nov. 15, 2000).

² For instance, the Direzione Nazionale Antimafia was given competence to investigate terrorism, and is now known as the Direzione Nazionale Antimafia e Antiterrorismo (National Antimafia and Anti-terrorism Directorate).

In this dissertation, I have sought to explain when democratic states begin to establish legal institutions to combat organized crime, as well as the extensiveness to which they develop them. I focus on two types of institutional reform in particular: permissive laws and competent enforcers. *Permissive laws* are laws that allow prosecutors to target a criminal group's key assets in a systematic, large-scale way. These include efforts to make large swathes of the group, and particularly high-level leaders, vulnerable to prosecution (membership liability laws) as well as efforts to facilitate the seizure of criminal assets (asset forfeiture laws). *Competent enforcers* are units of investigators or prosecutors who specialize in the pursuit of organized crime. I argue that such institutions are difficult to develop, as they expand the power of the national government, causing civil libertarian concerns. In addition, they often threaten existing bureaucratic and political interests, particularly in contexts where there is a high level of criminal corruption of politics.

My argument proceeds in two parts. I begin by considering the factors that explain the onset of institutional reform. I argue that, while a small contingent of political leaders³ may be committed to reform and a small contingent may be committed to preventing reform, the majority of decisionmakers is likely to be neutral at the outset. Reform is only possible, therefore, when events drive the formation of a sufficiently large coalition of decisionmakers to support institutional development. I argue that domestic politics, and particularly public pressure, is the key driving force explaining the formation of such coalitions. More specifically, coalitions will shift when the domestic public goes from seeing organized crime as a local problem to seeing it as a national threat.

³ These may be legislators, bureaucrats, or executive officials, depending on the context of the change being sought.

In order for this shift to occur, the issue of organized crime must receive significant and sustained public attention. Events that shift public perception may include high-profile acts of violence, but that is not necessary. Revelations of a group's existence, if previously unknown, corruption scandals, or evidence of significant economic infiltration by organized crime may be sufficient to shift public perception of the nature of the organized criminal threat. Moreover, this shift need not follow a single significant event, but may happen over time, with a series of growing crises contributing to the public's sense of the threat of organized crime. In order to classify events that may shift public perception of organized crime *ex ante*, I identify five criteria that are necessary for the public to see organized crime as a national threat. The event(s) that shift public threat perception will 1) affect or implicate national interests, including important national figures or parties, and will receive considerable attention from the national press. 2) The national government will be seen as responsible for addressing the event in question. 3) These events will be surprising or unexpected. 4) Public outrage will be nonpartisan and distributed across social strata. 5) The criminal group's involvement in the event will be perceived to be relatively unambiguous.

Where these criteria are met, the public perception of organized crime is likely to shift. Where the public sees organized crime as a national threat, it is likely to support political leaders taking steps to combat the problem. This creates an opportunity for reformers to channel public concern into pressure on neutrals to support the changes for which the reformers advocate. In doing so, they may develop a sufficiently large political coalition to successfully adopt at least one anti-organized crime institution. Where events do not meet the five criteria listed above, but nonetheless bring greater attention to organized crime, smaller changes short of full institutional

reform are possible. I call these smaller changes *institutional tweaks*, and they can serve as a basis for more extensive reform if public opinion shifts later.

The second part of my theory concerns the extensiveness to which institutional reform occurs. I consider a state to have undergone *no meaningful institutional reform* when it has neither permissive laws nor competent enforcement; *weak reform* when it has adopted either competent enforcers or permissive laws; *moderate reform* when it has adopted competent enforcers and one form of permissive law (membership liability law or asset forfeiture law); and *strong reform* when it has adopted competent enforcers and both forms of permissive law. As public perception of the threat of organized crime initially shifts, neutrals in the decision-making process become more willing to accept the arguments of reformers, creating an opening for the onset of anti-organized crime institutional development. However, the anti-reform factions remain, and there is no guarantee that the impetus for reform can be sustained over the long term. Even after initial anti-organized crime reforms are adopted, if the public perception of crime as a threat is not sustained, the adoption of further reforms is unlikely. I argue that public perception of organized crime as a national threat is most likely to be sustained where the criminal group being combatted is perceived by the public as relatively unified and cohesive in its operations. Such groups are most effectively portrayed as enemies capable of threatening the well-being of the nation as a whole and therefore may drive a sustained push for institutional development.

Finally, I argue that in some cases, institutions will experience rollback. This may occur when organized crime recedes sufficiently as a national threat that political leaders no longer feel the need to sustain the fight against them. In these cases, institutions may be ignored, marginalized, or under-resourced, in a process of *institutional atrophy*. In addition, where political leaders feel that anti-organized crime institutions pose a greater threat to them than the

appearance of being soft on crime, they will take active steps to reverse the development of those institutions in a process of *institutional rollback*. This may occur when the criminal group is strong enough relative to the state to impose its will, whether through corruption or acts of violence. It may also occur when the legal institutions designed to combat organized crime are turned against politicians themselves.

In this chapter, I will conclude by reviewing my findings, assessing their significance, and presenting an agenda for further study. This chapter proceeds as follows. Section II will review the findings of my case studies. Section III considers the alternative explanations to my theory. Section IV presents future extensions of this research agenda. Section V discusses the significance of my project and concludes.

II. Reviewing the Findings

In this dissertation, I attempt to demonstrate the mechanisms of my theory through close process tracing of two main case studies, Italy and the United States. In addition, I provide a shorter, medium-n analysis of seven democracies from around the world. Combined, these case studies provide strong support for the mechanisms postulated in my theory and suggest that they are generalizable to a broad range of democracies. The empirical section begins with Chapter III, a medium-n overview of institutional development in seven democratic countries representing a cross-section of the world: Australia, Canada, Colombia, Germany, India, Japan, and South Africa. This chapter presents the outcomes of all cases (onset and extensiveness of reform), though process tracing could only be done consistently to explain the onset of institutional development.

In Australia, a series of investigative commission reports regarding the presence of mafia-type organized crime led to a growing consensus that the country was at risk of falling victim to

criminal infiltration. The result was the establishment of the National Crime Authority,⁴ a specialized anti-organized crime policing body (competent enforcers). Following a surge in concern about gang crime, particularly from outlaw motorcycle groups, Australia would ultimately pass the Proceeds of Crime Act and the Serious and Organised Crime Act, permissive laws designed to facilitate prosecution of organized criminals and enable asset forfeiture. The result was a system of *strong reform*.

In Canada, a series of high-profile attacks by biker gangs, particularly in Quebec, led to significant public outrage and the demand for harsh anti-organized crime laws. The Canadian parliament ultimately passed Bill C-95, creating a criminal organization offense. The government later adopted the Proceeds of Crime Act, which allowed for asset forfeiture. In addition, Canada has established specialized anti-organized crime policing units within the Royal Canadian Mounted Police (RCMP) as well as an extensive system of joint task forces. Although more decentralized than most competent enforcement systems, these policing units exist throughout the country and operate under the auspices of the federal police. As such, Canada has undergone *strong reform*.

Like Italy, Colombia experienced a significant campaign of violence by criminal organizations, particularly Pablo Escobar's Medellin Cartel. The Colombian government faced consistent pressure from the United States to sign an extradition treaty which allowed drug traffickers to be tried and imprisoned in the US. Colombian leaders, seeing this as an insult to the nation's sovereignty, initially resisted implementing the treaty. However, following the assassination of Rodrigo Lara Bonilla, public demand for action against the drug cartels led the government to begin extraditing traffickers and to develop specialized anti-cartel police forces.

⁴ Later replaced by the Australian Crime Commission and subsequently by the Australian Criminal Intelligence Commission.

(*moderate reform*). However, a sustained campaign of terror targeting state officials as well as civilians, eventually led the government to revoke the treaty (*rollback*). Under continued pressure from the United States, Colombia reinstated the treaty, and eventually also passed asset reform legislation (*strong reform*). While the Colombian case fits with the theory, the outsized role of US pressure makes this a somewhat anomalous case and suggests a need for further research on the importance of international pressure.

Germany has generally seen itself as not having a significant organized crime problem. However, the country experienced a crime wave following reunification, leading to the passage of the Organized Crime Control Act, which gave German prosecutors a series of increased powers against organized crime, including asset forfeiture. In addition, the German national police established a specialized anti-organized crime police unit, the General and Organised Crime Division.⁵ However, as German crime rates stabilized, calls for reform did not continue, and the country remains in a state of *moderate reform*.

Japan, which has a long history of mafia-style crime in the form of its yakuza organizations, has historically allowed these groups to operate in an unusually open fashion. However, after Japan experienced a significant increase in violence during the yakuza conflicts of the 1980s, the public mobilized in favor of a crackdown on the groups. Combined with international calls for action against the yakuza and a series of corruption allegations against the ruling party, the Japanese government faced considerable pressure to crack down on the yakuza and ultimately passed the Boryokudan Countermeasures Law. Japanese law, unlike most countries' permissive laws, relies largely on administrative measures designed to drive the yakuza out of business, as well as sanctions on citizens who deal with them. However, in the

⁵ Now the Serious and Organised Crime Division.

Japanese context, these measures have been successful at targeting criminals' men and money and they qualify as permissive laws. The Japanese effort has been sustained with a series of increasingly severe regulations on the yakuza, as well as the formation of a specialized police unit, making this a case of *strong reform*.

South Africa, like Germany, has relatively little history of organized crime. However, massive increases in gang violence following the end of apartheid made crime a national priority. In response to the growing fear of criminal violence, South Africa passed the Prevention of Organised Crime Act,⁶ which was modelled on the RICO statute. This law included provisions allowing for the prosecution of criminal groups as enterprises as well as asset forfeiture. South Africa achieved *strong reform* when it established the Directorate of Special Operations, known as the Scorpions. The Scorpions were a highly effective specialized police force dedicated to targeting organized crime and corruption. However, once they started investigating high-level members of the ANC party, they were disbanded, in an instance of *rollback*. However, because South Africa maintains a anti-organized crime policing body (the Hawks), as well as specialized units within the National Prosecuting Authority, South Africa is still an example of *strong reform*.

The most anomalous case in my study is that of India. Though India has a long history of localized gang crime, it has little tradition of unified organized criminal groups. My theory would therefore predict that India would not develop strong anti-organized crime institutions.⁷ Indeed, India a case of *weak institutional development*, as the country has some asset forfeiture legislation, but lacks competent enforcers at the national level as well as membership liability

⁶ The Prevention of Organised Crime Act was passed two years after the Proceeds of Organised Crime Act. The Prevention of Organised Crime Act incorporated parts and repealed parts of the Proceeds of Organised Crime Act.

⁷ India does have significant anti-organized crime laws and law enforcement units at the sub-national level, though these do not fall within my theoretical scope.

laws.⁸ However, the Mumbai bombing of 1993, which was one of the worst terror attacks in the nation's history, was carried out by one of Mumbai's major organized criminal figures. This attack arguably fit the criteria for an event that would be expected to cause a shift in public perception of the threat of organized crime. Yet no major anti-organized crime movement resulted. It is possible that this shift did not occur because the public saw the attack as ideologically, rather than economically, motivated. Nonetheless, the Indian case is the weakest case for my theory and suggests that in some cases anti-reformist politics may be able to withstand moments of enflamed public passions.

Following this global overview, I turn to an in-depth analysis of my main cases. The Italian case is divided into two chapters. In Chapter IV, I trace the development of the Rognoni-La Torre Law, which was passed in September 1982 to address mafia criminality, particularly that of Sicily's Cosa Nostra, the Campanian Camorra, and the Calabrian 'Ndrangheta. The Rognoni-La Torre Law established mafia-type association as a crime in Italian law and also provided mechanisms for asset forfeiture. Mafia groups have a long history in Italy and have periodically engaged in public displays of violence. Historically, this violence was largely concentrated in the impoverished South of Italy and treated as a problem of that region. A few activists and political leaders, particularly within the Italian Communist Party, sought to establish laws to combat organized crime. While particularly egregious killings, such as the Ciaculli bombing, led to the establishment of parliamentary investigations (an *institutional tweak*), they did not change public perception of mafia groups as a local issue.

⁸ As discussed in the chapter, the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act of 1976 allows for the seizure of proceeds in the context of some smuggling crimes. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act of 1988 also allows asset forfeiture in the context of the narcotics trade.

The onset of the Second Mafia War and the campaign of the Corleonesi faction against officials of the Italian state began to cause public understanding of mafia groups to shift. The Corleonesi faction's steady campaign of murder against increasingly prominent Sicilian legal and political figures led the Italian press to gradually move from speaking of mafia crime as a "Sicilian" or "Southern" problem to a national issue. This shift was reflected in the rhetoric of government officials. Antimafia activists at this time campaigned to criminalize mafia association. While political support for such legislation increased as the deaths mounted, permissive laws were not adopted until the murder of General Carlo Alberto Dalla Chiesa. Dalla Chiesa, who had famously defeated the Red Brigade terrorist group, was considered a national hero, and his assassination showed that Cosa Nostra was willing to target anyone it considered a threat. Dalla Chiesa's death was covered as an attack on the nation, there was public outrage throughout the country, and Parliament moved quickly to pass the Rognoni-La Torre Law (*weak institutional development*). Though support for antimafia action had been building with the murder campaign against Sicilians, institutional onset only became possible once the mafia attacked a national figure.

Chapter V explores the extensiveness of institutional reform in the Italian case by analyzing the foundation of Italy's competent enforcement agencies, the Direzione Investigativa Antimafia (DIA), the Direzione Nazionale Antimafia (DNA), and the Direzioni Distrettuali Antimafia (DDA).⁹ Despite the successful passage of the Rognoni-La Torre Law and the mass conviction of Sicilian mafiosi in the Maxiprocesso, many politicians wished to move away from a focus on the Mafia in favor of a return to normalcy. This led the reformist movement to stall somewhat in the late 1980s. However, as violence resurged in the early 1990s, public concern about organized

⁹ This chapter also acknowledges the establishment of additional specialized units within Italy's three main policing bodies.

crime began to rise again, leading to increased pressure on national leadership to take an antimafia stance. The political capital to be gained from antimafia activity led prominent members of the Christian Democracy and Socialist parties to adopt reformist positions. This shift allowed reformers such as Giovanni Falcone, to gain greater political influence and to push forward plans for the development of competent enforcement bodies. Both the Italian press and advocates of reform regularly emphasized the cohesion and sophistication of the mafia 'octopus' as a justification for the creation of specialized policing (DIA) and prosecutorial (DNA/DDA) bodies. Despite significant concern from some leaders, particularly in the judiciary, about the consequences of increasing the power of the national government via these new agencies, the law enforcement bodies were both established by January 1992. The result was *strong reform*.

Chapter VI traces the development of anti-organized crime legal institutions in the United States. Unlike Italy, the United States did not experience a sustained campaign of violence carried out by Cosa Nostra. Rather, a contingent of Congressional activists, led by Southern Democrats such as Estes Kefauver and John McClellan launched congressional campaigns to raise the profile of mafia groups as a threat in the United States. Bureaucratic intransigence, combined with a strong federalist tradition and fear of a national police force prevented reform in the 1950s, though significant institutional tweaks occurred. In particular, the Department of Justice established a very weak anti-organized crime unit, known as the Organized Crime and Racketeering Section (OCRS). Following the Apalachin meeting of 1957, which appeared to reveal Cosa Nostra as a unified conspiracy organized nationwide, public and government concern about crime began to increase. During the Kennedy presidency, Congress was increasingly willing to pass anti-organized crime legislation. In addition, reformist Attorney General Robert Kennedy was able to leverage the growing concern about the Mafia to overcome

resistance by FBI director J. Edgar Hoover and augment OCRS, turning it into a robust unit of specialized prosecutors (competent enforcers). At this point, the US had undergone *weak reform*.

In the wake of President Kennedy's assassination, declining interest in organized crime and a resurgent J. Edgar Hoover led to the weakening of OCRS. However, increased crime rates in the late 1960s led Republican Richard Nixon to campaign on a robust law-and-order platform. Nixon explicitly argued that the Mafia was a unified entity capable of posing a direct threat to American democracy. Nixon's election and Democrats' fear of appearing soft on crime placed significant pressure on legislators in both parties to support legislation that could be expected to pose a significant challenge to organized criminal groups. Despite some resistance from civil libertarians, the final result was overwhelming congressional support for the Organized Crime Control Act, which included the RICO statute. RICO allowed prosecutors to charge those who profit from a criminal enterprise, a provision which would ultimately allow cases to be brought against entire criminal organizations. It also provided for the forfeiture of criminal assets, and with its passage the US had established *strong reform*.

III. Alternative Explanations

a. *Institutions as Low-Hanging Fruit*

The cases presented in this chapter allow me to address several alternative explanations to my theory. The first plausible alternative explanation is that anti-organized crime institutions are low-hanging fruit adopted by politicians in an effort to stave off public concern about rising crime rates or to enhance the power of the nation's law enforcement bodies. In this argument, the institutions that are established are chosen because they are easy to pass. Where corruption is high, politicians and bureaucrats with ties to organized crime may pass laws or establish new law enforcement bodies with the expectation that they will be able to manage the ability of these

institutions to target criminals. Indeed, they may even support the creation of such institutions as a means of threatening organized criminals with prosecution on an as-needed basis.¹⁰

This explanation is not entirely inconsistent with my theory, as it does consider the possibility that public concern may drive government action against organized crime. It may provide an accurate description of some anti-organized crime policy changes that occur in the wake of significant organized crime events, particularly the smaller changes that I refer to as institutional tweaks. However, this argument fails to recognize the political difficulty inherent in passing significant anti-organized crime reform. In both Italy and the United States, as well as many of the countries in the global survey chapter, establishing permissive laws and competent enforcement bodies was the subject of great controversy. Such institutions are often resisted by civil libertarians, who have seen them as a potential threat to personal freedom. Moreover, institutional actors, including the FBI in the United States and the *Consiglio Superiore della Magistratura* in Italy, resisted reform out of concern that it would undermine their institutional positions. The years-long process needed to establish permissive laws and competent enforcers in the United States and Italy, even after organized crime had become a major national issue in these countries, demonstrates that such institutions are not easily obtained, but that developing them often requires political commitment and sustained reformist efforts.

In addition, there is little evidence to suggest that corrupt actors assume that legal institutions will be easy to control. The Italian case is particularly important here. The Christian Democracy party had long relied on the Southern vote and had been willing to maintain ties with mafiosi to secure that vote. Despite the significant power of the DC in the early 1980s, when they would theoretically have been well-placed to manage any institutions developed to combat organized

¹⁰ This is consistent with Durán-Martínez's (2015) and Lessing's (2017b) observations that repressive institutions may be used to crack down on organized criminal groups selectively.

crime, the party generally sought to avoid significant reform as long as possible. In the aftermath of Pio La Torre's death, the proposed Rognoni-La Torre Law was buried until the murder of Dalla Chiesa made reform unavoidable. Likewise, in the late 1980s and early 1990s, despite the apparent victory of the Maxiprocesso, powerful factions within the DC sought to stymie further reform. The Italian case suggests that parties with corrupt ties to organized crime recognize institutional reform as a possible threat rather than a manageable tool and would prefer to avoid it rather than risk the consequences of institutional development.

b. Elite Preferences

A second alternative explanation is that the development of anti-crime institutions is not reflective of public opinion, but of the preferences of elites. In this argument, political leaders will develop anti-organized crime institutions not in response to (possibly transitory) shifts in public opinion, but rather in response to other factors. I focus on two particular logics of elite preference: decisionmaker learning and party politics.

i. Decisionmaker Learning

It is possible that when elites come to understand that organized crime poses a sufficiently dangerous threat (in terms of safety, economic well-being, etc.), governments will respond by building up institutions to combat the threat. In this logic, institutional development does not follow popular politics as much as learning on the part of leaders about the scope and scale of organized crime as a threat to the society. Political leaders who are responding to organized crime as an emergent threat may be motivated at least in part by concerns that public fear will lead to political blowback. However, in this argument, it is elite calculations about the benefits

of institution building, rather than the public's attitude, that ultimately determines the timing and extensiveness of institutional reform.

This argument has some appeal, as elites clearly do play a role in determining when reform occurs. Anti-organized crime reformers are elites, and their interest in developing institutions may be distinct from public attitudes. For instance, both Estes Kefauver and Pio La Torre advocated for the creation of new institutional reforms before their respective publics clearly saw organized crime as a threat. Both leaders appear to have been convinced that organized crime was a genuine threat to the interests of the public. Moreover, the United States case in particular shows that elites may play a significant role in convincing the public that organized crime is a threat when criminal groups are not particularly visible. However, the timing of reforms in both the US and Italy suggests that elite preferences for reform will not be implemented until public preferences align with them. Despite Kefauver's success in making organized crime a national talking point, the public's return to apathy undermined Kefauver's legislative goals. Only when evidence emerged that the mafia existed as a unified entity did institutional reform take place. In Italy, the existence and violence of Cosa Nostra was known by the early 1960s at the latest and became increasingly apparent over the subsequent decades. Yet despite the steady increase in information that Italian lawmakers had regarding the size and danger of the mafia problem, no meaningful reform was taken until the Dalla Chiesa murder made organized crime a national issue.

ii. [Party Politics](#)

Elite preferences may also have shaped anti-organized crime reform through the impact of political parties or factions within parties. In this account, factions have divergent policy preferences, and the ability to establish anti-organized crime institutions reflects the distribution

of power among these groups. Party preferences may be driven by many factors, including an interest in building electoral strongholds and image crafting. This may, for instance, motivate parties to try and be seen as advocates of law and order or anti-corruption warriors. According to this logic, parties will accept institutions only to the extent that those institutions promote the parties' key interests. Unlike the decisionmaker learning hypothesis, the party politics hypothesis anticipates that the adoption of reform will be a function of parties' political preferences rather than the emergence of new information. In this interpretation, public sentiment matters in some sense at an electoral level, but factions pursue policies based on their own preferences, independent of public opinion.

This explanation should be taken quite seriously, given the centrality of party politics to many democratic countries. Within my cases, the priorities of parties, as well as factions within parties, play a significant role in determining some of the institutional reforms which occur. For instance, the hesitancy of Democrats such as Harry Truman to support the efforts of the Kefauver Committee appears to have been driven by concern about undermining the party's strength in key urban areas with high levels of organized crime. In Italy, Communist opposition to the interests of landowners had driven a commitment to opposing Cosa Nostra which far predated widespread public outrage about organized crime. At the same time, the DC's need to maintain electoral strength in the South, particularly given concern about the possible election of a Communist government, led some factions of the party to accept a partnership with criminal organizations which incentivized them to oppose anti-organized crime reform. Given the importance of these interests in the politics of reform, I do not deny that parties and factions are key political actors in the development of anti-organized crime institutions.

Nonetheless, I argue parties' influence is secondary to and largely driven by public perception. After all, if party preferences can direct the establishment of reform separately from public opinion, they should also be able to prevent reform. However, I find that where the public comes to see organized crime as a national threat, even anti-reform factions often find that it is necessary to accept some institutional development. In the US, the Eisenhower and Johnson administrations were relatively resistant to reform. However, both accepted reform in the presence of mounting public concern about crime. The Italian case highlights the shortcomings of the party politics explanation even more clearly. As mentioned, in Italy powerful political factions, particularly within the DC, opposed reform. Yet following significant shifts in public understanding of the threat posed by organized crime, particularly the Dalla Chiesa murder in 1982 and rising concern about the Mafia in the early 1990s, anti-reform factions were not only unable to prevent change, but in fact switched their political stance to support it. This suggests that public perception plays a significant role in determining both the timing and extensiveness of institutional reform, which cannot be ignored in favor of a party interest-centric explanation.

c. International Pressure

A final alternative explanation that must be considered relates to the role of international actors. It is possible that in most contexts international pressure, rather than shifts in the attitude of domestic publics, drives reform. Where a powerful country, supranational body (the EU), or international organization (the UN) demands that countries take steps to combat organized crime, they may be able to force countries to adopt changes to their legal and institutional systems if enough leverage is applied. The United States, as a global hegemon with secure borders, may be uniquely immune to such pressure, and therefore too anomalous to fall within this theoretical explanation.

This argument finds significant support within my dissertation. Many of the countries within my global survey chapter, including Canada, Colombia, and Japan, faced at least some pressure to combat organized crime, particularly from the United States. In the case of Colombia in particular, that pressure was significant, and its importance in driving the adoption of the extradition treaty cannot be denied. Even Italy experienced external pressure to combat the mafia, particularly from other states in Europe who feared the effects of mafia groups within an integrated European market.

Nevertheless, international factors cannot explain the timing or extensiveness of institutional development as well as my theory. In the cases analyzed, where meaningful reform is actually implemented, the onset coincides with changes in domestic, rather than international, pressure. Though international pressure certainly exists, states seem to be able to resist it when their publics are not interested in anti-organized crime reform. This is true even in the most extreme case of international pressure in my global survey, that of Colombia. Although Colombia signed the Extradition Treaty of 1979 under American pressure, they did not make use of it until the assassination of Rodrigo Lara Bonilla led the Colombian public to demand the state take action against Pablo Escobar. Moreover, Colombia revoked the treaty in response to internal pressure (Escobar's campaign of violence against the state), even at the risk of alienating the US.¹¹

Although domestic pressure seems to do a better job of explaining the timing and extensiveness of reform than international pressure, this does not mean that the latter should be ignored. For instance, in Colombia, the United States did ultimately secure the reimplementation of institutional reform by using its leverage to pressure the Samper government to sign a new

¹¹ Thus, a distinction between adopting an institutional reform and implementing that reform must be made. In the Colombian case, the adoption of the treaty is better explained by US pressure than domestic threat perception, while implementation is better explained by domestic pressure.

extradition treaty. Because the importance of international pressure exists across many cases and is not well-accounted for in my theory, I believe it deserves closer study. I will return to this topic in the following section, in which I discuss possible extensions of this research project.

IV. Extensions

a. The Role of the Media

In addition to explaining the onset and extensiveness of significant legal developments, this study of anti-organized crime institutions suggests several avenues for future research. First, more work should be done to explore the role of the media in shaping public perceptions of the threat of organized crime. Due to the limited availability of public survey data regarding organized crime for the periods of my study, this project relies heavily on media sources to understand how the public perceived this issue. By drawing on a variety of sources from different regions and political perspectives and supplementing them with secondary source material, I am able to draw some conclusions about how the Italian and American publics responded to the issue of organized crime. However, it is not clear how the messaging that the media chose to convey impacted public opinion.

Future work, in political science, as well as media studies, should more closely study the ways in which news sources of different perspectives (including different regions as well as political leanings) present the problem of organized crime. Of course, there is a vast and rich literature on the relationship between the media and public perception of crime on which such future work could be built (Schlesinger and Tumber 1994; Sacco 1995; Ditton et al 2004; Boda and Szabó 2011; Baranauskas and Drakulich 2018; Mastrorocco and Minale 2018). It is possible that media messaging drives public perception of the threat of organized crime in a way that my theory fails to capture. Future studies should focus on rhetorical choices made by particular

media outlets. In addition, studies should evaluate how media representation impacts public action. For instance, are communities that consume news media from a particular political perspective more active in their response to strong anti-crime measures than those from a different political perspective? It should also consider the ways in which local, rather than national, media may impact public perception. Findings should also be tested against various types of media, including print, radio, and television. In the context of more recent institutional development, it will also be vital to consider the role of the internet and social media in developing public understanding of organized crime.

b. International Politics

Second, future work should analyze the role of international politics in the formation of anti-organized crime legal institutions. I have already argued in the alternative explanation section that domestic factors are more important than international ones in explaining the onset and extensiveness of reform. However, that does not mean that international pressure does not play a significant role in the development of legal mechanisms to combat organized crime. One possibility is that international pressure may incentivize political leaders to create a greater sense of fear among the domestic population. Even where a state is facing significant pressure to combat organized crime, leaders may not wish to appear to bow to the pressure of other nations or international bodies. Instead, they may take steps to raise the salience of organized crime as a threat to the domestic population in order to justify taking the steps they are being pressured to implement.

Another possibility is that international pressure may explain the form that anti-crime institutions take, if not their timing. Even if political leaders respond to their domestic constituents' perceptions of organized crime as a threat, it is not clear that those constituents

have clearly defined preferences regarding the form that anti-crime institutions take. When faced with domestic pressure to ‘do something’ about organized crime, political leaders may take the steps that international actors prefer. The Colombian case is particularly telling here. The United States was committed to implementing the Extradition Treaty of 1979. The Colombian public, however, was generally opposed to the Treaty, seeing it as an imposition on Colombia’s sovereignty. As such, this was an especially difficult institution to establish. However, once the public saw Pablo Escobar as a national threat, it became possible to implement the United States’ preferred measure. However, it should be noted that Japan stands as a counterexample to this hypothesis. Despite pressure from the United States, Japan has refused to criminalize the yakuza, but has maintained its unique administrative approach to combating organized crime. Further examination is necessary to establish whether the Japanese case is anomalous.

Relatedly, the role of international norms and international law, as well as the role of supranational bodies such as the EU, should be considered in evaluating the development of anti-organized crime legal institutions.¹² Significant international and supranational legislation may play an important role in the development of more recent anti-organized crime institutions. Such legislation would include the UN Convention on Transnational Organized Crime of 2000 and the EU Council Framework Decision of October 24, 2008 (2008/841/JHA). Because the majority of the reforms discussed in my dissertation occurred prior to the twenty-first century, this project may not fully capture the impact of such international legal development. It is possible that later-

¹² This is consistent with the arguments of a number of scholars of norms research who have noted the relationship between international norms and domestic law. *See e.g.*, Martha Finnemore & Kathryn Sikkink, *International Norm Dynamics and Political Change*, 52 INT’L ORG. 887 (1998); Andrew P. Cortell & James W. Davis, *Understanding the Domestic Impact of International Norms: A Research Agenda*, 2 REV. OF INT’L STUD. 65 (2000); Andrew P. Cortell & James W. Davis, *When Norms Clash: International Norms, Domestic Practices, and Japan’s Internalisation of the GATT/WTO*, 31 REV. OF INT’L STUD. 3 (2005); and Sebastian Heilmann and Nicole Schulte-Kulkmann, *The Limits of Policy Diffusion: Introducing International Norms of Anti-Money Laundering into China’s Legal System*, 24 GOVERNANCE 639 (2011).

reforming countries may have adopted some of their legal institutions out of a desire to comply with their international legal obligations under regimes such as the UNTOC. Alternatively, they may have done so out of a sense of pressure borne from a growing consensus regarding the anti-organized crime measures that the international community expects states to implement. Future work on the effects of international and supranational legal bodies would bring important insights from the fields of international law and international relations to this area of research.

c. Non-legal Measures

Third, additional work should be done to explain when democratic states will turn to measures other than legal institutions to combat organized crime. This dissertation is explicitly focused on domestic criminal law and policing bodies as tools of state repression of organized crime, since these are typically the first line of defense in combating criminal groups. However, in some cases, these are not the main measures that states use to combat organized crime. As criminal organizations become sufficiently powerful and well-armed to be able to effectively challenge the state, legal institutional norms may be insufficient forms of repression.

There are several noteworthy cases of militarized repression. Mexico, for instance, has utilized such repression to combat the extreme violence of drug cartels.¹³ In Colombia, a militarized crackdown was combined with the use of the legal system to combat cartels. It remains unclear when states will choose one response over the other. Future work should explore not only when states will choose to pursue military rather than legal repression but should evaluate the relationship between the institutions of military crackdown and the normal

¹³ This is not to deny that Mexico has anti-organized crime legal institutions, but merely to note that it has taken an approach that privileges a militarized response to repressing organized crime. *See generally* GEORGE W. GRAYSON, STRATEGIC STUDIES INSTITUTE, US ARMY WAR COLLEGE, THE IMPACT OF PRESIDENT FELIPE CALDERÓN'S WAR ON DRUGS ON THE ARMED FORCES: THE PROSPECTS FOR MEXICO'S "MILITARIZATION" AND BILATERAL RELATIONS (2013); BENJAMIN LESSING, MAKING PEACE IN DRUG WARS, Ch. 7 (2017).

institutions of the legal system in the context of wars against organized crime. Such work could add further nuance to our understanding of the role of the state in the politics of organized crime as well as the tradeoffs and political decisions that drive various forms of state repression.

d. Reform in Non-democracies

Fourth, future work should consider how non-democratic states approach the politics of developing institutions to combat organized crime. In this study, I have explicitly limited my focus to democracies, due to the difficulties of comparing democratic and non-democratic legal systems. However, the field of comparative politics has been considerably enriched over the course of the last several decades by adding nuance to the democratic-authoritarian divide and by exploring the politics of non-democratic regimes (Linz 2000; Levitsky and Way 2002; Schedler 2006; Haber 2008; Slater 2010; Svoboda 2012; Geddes et al 2014, 2018). Similarly, comparative law and politics have benefitted from an improved understanding of how non-democratic states approach law as an institution (Clague et. al 1996; Helmke 2002; Moustafa 2007; Solomon 2007; Shen-Bayh 2018; Ríos-Figueroa and Aguilar 2018). As such, the assumptions and findings of my research may be tested, problematized, and ultimately improved by considering how they function outside of the democratic context. Authoritarian regimes with divergent legal systems and long histories of organized criminal activity, such as Russia and China, offer particularly promising areas for future study.

e. Institutional Effectiveness

Fifth, more work should be done to evaluate the strength and effectiveness of different anti-organized crime legal institutions. In this dissertation, I focus exclusively on explaining the processes through which such institutions are established. I do not assess how they function or compare the effectiveness of different systems. However, in order to develop a fuller picture of

the significance of institutional reform, such analysis is deeply important. Of course, when considering the effectiveness of legal institutions in a comparative context, future studies must consider differences among legal systems, as well as among the criminal organizations being combatted. Given the significant differences that exist among nations on these dimensions, developing robust and generalizable mechanisms for evaluating the ‘successes’ of legal institutions across different cases will be a highly complex task. Nonetheless, such work has the potential to offer policymakers a useful tool for considering the forms that institutions should take within their specific context.

f. Reform in Other Areas of Politics

Finally, future work should consider the application of the mechanisms laid out in this theory in contexts other than organized crime. Although I focus specifically on the establishment of legal institutions to combat organized crime, many aspects of the theory may have broader applicability. Shifts in public threat perception, political coalition-building, and anti-reform resistance may exist in a broad array of political contexts, including terrorism, public health, and the environment. More research should be done to see if the development of legal institutions around those issues follows a similar pattern to that which I have described in explaining the development of anti-organized crime reform.¹⁴ If my argument is broadly generalizable, this theory could be expanded to provide a more comprehensive understanding of large-scale institutional development. However, if the mechanisms I have outlined are particular to the context of organized crime, this may allow political scientists and legal scholars to develop better understandings of the nuanced ways in which political issue areas themselves affect the possible

¹⁴ Scholars have noted the tendency of public reaction to drive institutional reform in at least some domains of policymaking. Sunstein (2004) notes the impact of public fear and reactiveness in the design of regulatory bodies. Friedman (2011) observes similar patterns in state responses to terrorism.

scope of reform movements. Either way, by considering responses to other crises, we will improve our understanding of the politics of institutional development.

V. Why This Project Matters

I conclude this dissertation with a reflection on the project itself and a consideration of why research on the politics of anti-organized crime institutions matters.

First, this project emphasizes the politics of law by analyzing the means by which powerful legal instruments such as 416-bis and RICO have come into existence. In doing so, it denaturalizes the laws themselves and demonstrates the importance of political coalitions and public pressure in the formation of specific provisions of the legal code. Of course, this is not novel in and of itself, as scholars have long recognized that politics impacts law, and have gone to great lengths to show how particular legal institutions have been used to reflect, reinforce, or change existing power structures.¹⁵ The present study contributes to this intellectual tradition by focusing on how political forces interact with each other to establish or prevent a certain type of powerful legal institution from forming in the first place.

Moreover, this study does not restrict itself to assessing such processes in a single country. Rather, by providing a detailed analysis of two countries with significant anti-organized crime legal institutions as well as a global overview of seven others, it demonstrates that such politics may function in several important contexts. This suggests that the politics of law and law enforcement formation may be generalizable, and that the insights of comparative politics can be

¹⁵ See e.g., MARTTI KOSKENNIEMI, *THE POLITICS OF INTERNATIONAL LAW* (2011); GERALD ROSENBERG, *THE HOLLOW HOPE: CAN COURTS BRING ABOUT SOCIAL CHANGE?* (2d ed. 2008); DAVID KAIRYS, *THE POLITICS OF LAW* (3d ed. 1998); MICHAEL J. PERRY, *THE CONSTITUTION IN THE COURTS: LAW OR POLITICS?* (1996); John Ferejohn, *Judicializing Politics, Politicizing Law*, 65 L. & CONTEMP. PROBS. 41 (2002); William J. Stuntz, *The Pathological Politics of Criminal Law*, 100 MICH. L. REV. 505 (2001); Richard J. Pierce, Jr., *Is Standing Law or Politics*, 77 N.C. L. Rev. 1741 (1999).

leveraged to improve our understanding of the institutions which shape and regulate our socio-political life.

Second, this study identifies and defines the legal institutions that are critical for combating organized crime and establishes their political importance. In focusing on permissive laws and competent enforcers, it presents a framework for evaluating anti-organized crime legal institutions across national contexts. Moreover, this project goes to considerable lengths to demonstrate the controversial nature of such reforms and the difficulties faced in establishing them. In doing so, it complexifies our understanding of the possibilities for developing political institutions to respond to social problems in the absence of a perceived crisis.

One of the main reasons that these reforms are so controversial is their tendency to increase the power of national governments to enter into the lives of private citizens, whether via investigations, prosecutions, or asset seizure. Such power, once established, may significantly increase the reach of the state.¹⁶ Such enhancement of the national government's centralized power would seem to reflect a form of state-building. This state-building process is especially significant because it is occurring in the context of stable Western democracies in the modern era. This suggests that rather than threatening the governments of democratic states, organized crime, particularly within the last half of the twentieth century, has been a powerful agent of state growth. In other words, sub-state actors such as organized criminal groups may allow politicians to grow the reach of even the most stable democracies.

Third, this study provides insight into the importance of public opinion and the powerful politics of fear. Even where elites have a strong interest in securing institutional reform, they can only do so when the public recognizes the group as a sufficient threat to demand large-scale

¹⁶ This is arguably consistent with Scott's (1998) conception of making the population increasingly legible to a centralized leviathan.

change. Moreover, even where institutional actors have a strong interest in stopping reform, they likely will not be able to do so if the public has been convinced that organized crime poses a national threat. By tracing this process, the project provides evidence that public perception not only influences, but actively constrains the political activities of decisionmakers, at least in the context of democracies.

Even as it emphasizes the importance of public opinion, this dissertation demonstrates the role of threat perception in driving public demands and the scope of possible political activity. After all, it is only where the public finds a criminal group to be a national-level threat that the dominant political coalitions shift in favor of reform. This suggests that where political activists access and capitalize on the public's sense of threat and resulting fear, they may be able to advance reforms that the public would otherwise decline to support. Moreover, the US case in particular highlights the ability of elites to influence and direct public opinion, particularly through the politics of fear. By showing how politicians may create a sense of national threat, even in the absence of visible violence on the part of the criminal group itself, this case demonstrates that elites may manipulate public opinion to secure otherwise infeasible reforms. Although this approach may be used to secure important institutional change to combat a real threat, it is entirely conceivable that it may also be used to override meaningful checks on the power of centralized government. As such, this project suggests possible cause for caution, in addition to avenues for change.

Fourth, this project improves our understanding of the state as a meaningful actor in the criminal politics. The domestic legal system is the first line of defense for the state in repressing crime, particularly in the context of stable democracies. By demonstrating how states develop robust institutions to combat such groups, this dissertation opens the black box of the state to

evaluate the political forces that lead democratic governments to crack down on criminal organizations. In doing so, it complexifies our understanding of the role of the state in criminal politics by exploring state repression as the product of contestation between competing forces within the national leadership.

This theory follows previous work in recognizing that criminal organizations may have agency in driving state repression, particularly where they engage in visible violence.¹⁷ Criminal groups' decisions to engage in highly visible violence, as Cosa Nostra did in the 1980s and 1990s, may be sufficient to drive public threat perception and force otherwise unwilling political leaders to accept reform. However, this project also recognizes that states may choose to engage in repression even where criminal groups do not engage in highly visible activity, as was in the case in the United States. By presenting the various incentives that political leaders within the state may face, this project explores the puzzle of state repression of powerful non-visible criminal groups. In doing so, it expands and complexifies our understanding of the state as an actor in the politics of organized crime.

Finally, this project contributes to our understanding of key cases within the field of criminal politics. Italy and the United States are very different countries in many ways, yet they have both engaged in some of the most high-profile legal repression of organized crime in the world. In the process, these countries have developed powerful but distinct institutional frameworks that serve as exemplars of the means by which democratic legal systems may target criminal groups. As such, by reading the Italian and American cases together and exploring the ways in which they

¹⁷ See e.g., BENJAMIN LESSING, *MAKING PEACE IN DRUG WARS* (2017); Richard Snyder & Angélica Durán-Martínez, *Drugs, Violence, and State-Sponsored Protection Rackets in Mexico and Colombia*, COLOM. INTERNACIONAL 61 (2009); Angélica Durán-Martínez, *To Kill and Tell? State Power, Criminal Competition, and Drug Violence*, 59 J. OF CONFLICT RESOL. 1377 (2015); Vidal Romero et al., *Presidential Approval and Public Security in Mexico's War on Crime*, 58 LATIN AM. POL. & SOC'Y 100 (2016).

mirror and diverge from each other, we improve our understanding of the paths that states may take to build legal institutions to combat organized crime.

In addition, by exploring the processes by which these institutions were developed, we may also learn more about the sacrifices that were made to achieve them. Particularly in the Italian and Colombian contexts, many judges, police officers, politicians, journalists, and activists gave their lives in order to build institutional edifices that could meaningfully threaten powerful criminal organizations. In studying the development of these institutions, scholars may better understand the purpose for which those sacrifices were made. To the extent that enhancing efforts to combat organized crime has improved the societies in which legal institutions are established, it is surely important to understand the forces that make building these institutions possible and the costs at which they are achieved.

Appendix A: Overview of Country Systems

This appendix presents a very brief overview of the political, legal, and policing structures of my two main cases as well as the seven cases discussed in the medium-n chapter. The countries are listed in alphabetical order.

a. Australia

Australia is a parliamentary democracy with an independent executive, legislative, and judicial branch.¹ Like much of the British Commonwealth, it has a common law legal system.² The criminal justice system is adversarial and relies on trial by jury.³ Australia has a federalist structure made up of six states, three internal territories, and seven external territories.⁴ Though the states retain autonomous decision-making capacity, power became increasingly centralized in the National Government over the course of the twentieth century.⁵ Even so, virtually all criminal prosecutions occur at the state level,⁶ and the states are considered to be responsible for matters of criminal law and criminal procedure.⁷ Crown Prosecutors, who are members of the

¹ *Australian System of Government*, PARLIAMENTARY EDUC. OFF., <https://peo.gov.au/understand-our-parliament/how-parliament-works/system-of-government/australian-system-of-government/> (accessed 8 Feb. 2022)

² Donald Gordon, *Legal Systems in Australia: Overview*, THOMAS REUTERS PRAC. L. (Mar. 1, 2021), [https://uk.practicallaw.thomsonreuters.com/0-638-7137?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-638-7137?transitionType=Default&contextData=(sc.Default)&firstPage=true) (accessed 26 Feb. 2022).

³ Donald Gordon, *Legal Systems in Australia: Overview*, THOMAS REUTERS PRAC. L. (Mar. 1, 2021), [https://uk.practicallaw.thomsonreuters.com/0-638-7137?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-638-7137?transitionType=Default&contextData=(sc.Default)&firstPage=true) (accessed 26 Feb. 2022).

⁴ Local governments also exist, but as they are not mentioned in the Australian Constitution, they are responsible to the state governments. See *Chapter 1, Overview of Australian Federalism*, PARLIAMENT OF AUSTRALIA § 1.19, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/reffed/reffed/report/c01 (accessed 26 Feb. 2022).

⁵ See *Chapter 1, Overview of Australian Federalism*, PARLIAMENT OF AUSTRALIA, §§ 1.47-51, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Former_Committees/reffed/reffed/report/c01 (accessed 26 Feb. 2022).

⁶ Paul Marcus and Vicki Wayne, *Australia and the United States: Two Common Criminal Justice Systems Uncommonly at Odds*, 12 TUL. J. OF INT'L & COMP. L. 28 (2004)

⁷ Julie Ayling and Rod Broadhurst, *Organized Crime Control in Australia and New Zealand*, in THE OXFORD HANDBOOK OF ORGANIZED CRIME 612 (Letizia Paoli ed., 2014); Philip Jenkins, *The Politics of Organized Crime in Australia: A Comparative View*, 12 J. OF CRIME AND JUST. 103 (1989).

executive branch operating under the Attorney General's Department, try cases as representatives of the people. Police primarily conduct criminal investigations.⁸ The Australian Federal Police are responsible for combating complex or transnational crimes, as well as those threatening national security. Serious and organized crimes are included within their mandate.⁹ In addition, state police forces are responsible for enforcing state and federal laws and may also carry out investigations into organized criminal networks.¹⁰

b. Canada

Canada is a parliamentary democracy with an independent executive, legislative, and judicial branch.¹¹ The Canadian legal system is pluralist, combining elements of both the common and civil law traditions.¹² The criminal justice system is adversarial and relies on trial by jury.¹³ Canada has a federalist structure, and the country is made up of ten provinces and three territories. The Canadian Constitution was originally designed to centralize political power, but judicial interpretation has led to an increasingly broad conception of provincial power.¹⁴ The

⁸ The Public Interest Advocacy Centre, *Hot Topics: Australian Legal System, Chapter 7: Executive*, STATE LIBRARY NEW SOUTH WALES (2011), <https://legalanswers.sl.nsw.gov.au/hot-topics-australian-legal-system/executive> (accessed 26 Feb. 2022).

⁹ *Our Organisation*, AUSTRALIAN FED. POLICE, <https://www.afp.gov.au/about-us/our-organisation> (accessed 3 Jan. 2021).

¹⁰ See e.g., *State Crime Command*, NEW SOUTH WALES POLICE, https://www.police.nsw.gov.au/about_us/organisational_structure/units/state_crime_command (accessed 3 Jan. 2021); *Crime and Intelligence Command*, QUEENSLAND POLICE SERV. (Oct. 14, 2021), <https://www.police.qld.gov.au/organisational-structure/crime-counter-terrorism-and-specialist-operations/crime-and-intelligence> (accessed 26 Feb. 2022); *Crime Command*, VICTORIA POLICE, <https://www.police.vic.gov.au/crime-command> (accessed 3 Jan. 2021).

¹¹ *Our Procedure: The Canadian Parliamentary System*, HOUSE OF COMMONS CANADA, https://www.ourcommons.ca/About/OurProcedure/ParliamentaryFramework/c_g_parliamentaryframework-e.htm (accessed 8 Feb. 2022).

¹² *Where Our Legal System Comes From*, DEP'T OF JUST. CANADA (Sept. 1, 2021), <https://www.justice.gc.ca/eng/csj-sjc/just/03.html> (accessed 3 Jan. 2021). Quebec is the only province to have a civil code, which is based off the French Code Napoléon.

¹³ Christopher Somerville, *Legal Systems in Canada: Overview*, THOMAS REUTERS PRAC. L. (July 1, 2021), [https://uk.practicallaw.thomsonreuters.com/w-013-0460?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-013-0460?transitionType=Default&contextData=(sc.Default)&firstPage=true) (accessed 26 Feb. 2022).

¹⁴ Martha Field, *The Differing Federalisms of Canada and the United States*, 55 L. & CONTEMP. PROBS. 107 (1992).

provinces do carry out criminal prosecutions. However, the federal government is presumed to have jurisdiction over criminal law, while provincial prosecutorial authority is delegated by Parliament.¹⁵ In practice, most cases are tried in provincial courts and can be appealed through the provincial appellate system.¹⁶ Prosecutors are representatives of the Queen and are therefore part of the executive branch.¹⁷ Policing occurs at the federal, provincial, and municipal level.¹⁸ Although enforcement of the Canadian Criminal Code was the responsibility of the provincial government, the federal police, known as the Royal Canadian Mounted Police (RCMP) are responsible for enforcing federal criminal statutes.¹⁹ They share considerable responsibility with provincial police in cases of organized crime.²⁰ Moreover, the RCMP can act as provincial police “on contract” in all provinces except Ontario and Quebec.²¹

c. Colombia

Colombia is a constitutional presidential democracy with a civil law system in which the legal code is the main source of law.²² Colombia has a unitary system of government composed of 32 departments plus the capital district of Bogotá. For most of its history, Colombia had an

¹⁵ This was established in the cases *A.G. Canada v. CN Transportation*, [1983] 2 S.C.R. 206, 1198413 D.L.R. (4th) 16 (Can.); *R. v. Wetmore*, [1983] 2 S.C.R. 284, [1984] 2 D.L.R. (4th) 577 (Can.). For a discussion, see Mark Carter, *Recognizing Original (Non-Delegated) Provincial Jurisdiction to Prosecute Criminal Offences*, 38 OTTAWA L. REV. 163, 166-67 (2007).

¹⁶ *How the Courts Are Organized*, DEP'T OF JUST. CANADA (Sept. 1, 2021), <https://www.justice.gc.ca/eng/csjsjc/ccs-ajc/02.html> (accessed 3 Jan. 2021).

¹⁷ PUBLIC PROSECUTION SERVICE OF CANADA, THE FEDERAL PROSECUTION SERVICE DESKBOOK, PART III: PROCEDURAL ISSUES AND TRIAL PRACTICE—DESIGNATION OF THE PARTIES AND THE PROSECUTORS (Mar. 1, 2014), [ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p3/ch02.html](https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p3/ch02.html) (accessed Jan. 3 2021).

¹⁸ *Country Profile: Canada*, OSCE POLIS, <https://polis.osce.org/country-profiles/canada> (accessed 8 Feb. 2022).

¹⁹ Margaret E. Beare and Frederick T. Martens, *Policing Organized Crime: The Comparative Structures, Traditions, and Policies Within the United States and Canada*, 14 J. OF CONTEMP. CRIM. JUST. 398 (1998).

²⁰ Margaret E. Beare and Frederick T. Martens, *Policing Organized Crime: The Comparative Structures, Traditions, and Policies Within the United States and Canada*, 14 J. OF CONTEMP. CRIM. JUST. 398 (1998).

Margaret E. Beare and Frederick T. Martens, *Policing Organized Crime: The Comparative Structures, Traditions, and Policies Within the United States and Canada*, 14 J. OF CONTEMP. CRIM. JUST. 398 (1998).

²² Antonio Ramirez, *An Introduction to Colombian Governmental Institutions and Primary Legal Sources*, GLOBALEX (May 2007), <https://www.nyulawglobal.org/globalex/Colombia.html> (accessed 26 Feb. 2022).

inquisitorial judicial system.²³ However, this model was seen as contributing to the country's extraordinarily high rates of criminal impunity, and since adopting the 1991 Constitution, the country has had an adversarial system.²⁴ Prosecution falls under the control of the Attorney General's Office (*Fiscalía General de la Nación*).²⁵ Although historically part of the judiciary, the prosecution was put under the control of the executive branch with Law 600 of 2000.²⁶ Prior to the transition to an adversarial system, prosecutors played a fairly minimal role in the trial process.²⁷ Instead, instruction judges were responsible for overseeing investigations and determining whether a crime had been committed, while a separate trial judge determined guilt or innocence.²⁸ Since the adoption of the 1991 Constitution, however, the role of the prosecutor has grown considerably, largely at the expense of the instruction judge.²⁹ Cases may be appealed up to the level of the Supreme Court, though constitutional issues are reserved for the Constitutional Court.³⁰ Colombia's civilian police force, the National Police (*Policía Nacional de Colombia*), operates throughout the nation, and is under the authority of the Ministry of Defense.³¹

²³ Michael R. Pahl, *Wanted: Criminal Justice - Colombia's Adoption of a Prosecutorial System of Criminal Procedure*, 16 FORDHAM INT'L L. J. 608 (1992).

²⁴ Michael R. Pahl, *Wanted: Criminal Justice - Colombia's Adoption of a Prosecutorial System of Criminal Procedure*, 16 FORDHAM INT'L L. J. 608 (1992).

²⁵ Antonio Ramirez, *An Introduction to Colombian Governmental Institutions and Primary Legal Sources*, GLOBALEX (May 2007), <https://www.nyulawglobal.org/globalex/Colombia.html> (accessed 26 Feb. 2022).

²⁶ L. 600 de 2000, julio 24, 2000, Diario Oficial [D.O] No. 44.097 (Colom.); Luz E. Nagle, *Process Issues of Colombia's New Accusatory System*, 14 SW. J. OF L. & TRADE IN THE AMERICAS 223 (2012).

²⁷ Andrés Torres, *From Inquisitorial to Accusatory: Colombia and Guatemala's Legal Transition* (L. & Just. in the Americas, Working Paper No. 4, 2007).

²⁸ Andrés Torres, *From Inquisitorial to Accusatory: Colombia and Guatemala's Legal Transition* (L. & Just. in the Americas, Working Paper No. 4, 2007).

²⁹ Luz E. Nagle, *Process Issues of Colombia's New Accusatory System*, 14 SW. J. OF L. & TRADE IN THE AMERICAS 223 (2012); Luz E. Nagle, *Evolution of the Colombian Judiciary and the Constitutional Court*, 6 IND. INT'L & COMP. L. REV. 59 (1995).

³⁰ Antonio Ramirez, *An Introduction to Colombian Governmental Institutions and Primary Legal Sources*, GLOBALEX (May 2007), <https://www.nyulawglobal.org/globalex/Colombia.html> (accessed 26 Feb. 2022).

³¹ Constitución Política de Colombia [C.P.] capítulo VII, art. 218; *Organigrama de la Policía Nacional*, POLICÍA NACIONAL DE COLOMBIA, <https://www.policia.gov.co/organigrama> (accessed 8 Feb. 2022).

d. Germany

Germany is a democratic federal parliamentary republic with a civil law system and inquisitorial mode of conducting criminal trials.³² Germany has a single national criminal code and code of criminal procedure.³³ However, all trial and appellate courts in Germany are state courts.³⁴ The courts of last resort are federal, ensuring uniformity in states' interpretation of national law.³⁵ Both the police and prosecutors are primarily state-level actors, though federal policing bodies do play a significant role in responding to organized crime.³⁶ In particular, the Federal Criminal Police Office (*Bundeskriminalamt*—BKA) is responsible for investigating international organized crime, as well as other serious crimes and threats to national security.³⁷ However, while federal police carry out important functions, they have historically been a much smaller force than the state police departments.³⁸ Germany has an inquisitorial model of conducting trials, in which prosecutors are not seen as adversaries of the accused. Instead, they are intended to serve as impartial officers working closely with the police in conducting criminal

³² Dr Jochen Lehmann, *Legal Systems in Germany: Overview*, THOMAS REUTERS PRAC. L. (Apr. 1, 2021), [https://uk.practicallaw.thomsonreuters.com/w-007-7132?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-007-7132?transitionType=Default&contextData=(sc.Default)&firstPage=true) (accessed 26 Feb. 2022); Robin Hoffman, *Formalism versus Pragmatism – A Comparative Legal and Empirical Analysis of the German and Dutch Criminal Justice Systems with Regard to Effectiveness and Efficiency*, 28 MAASTRICHT J. OF EUR. & COMP. L. 452 (2021).

³³ FLOYD FEENEY, BUREAU OF JUSTICE STATISTICS, GERMAN AND AMERICAN PROSECUTIONS: AN APPROACH TO STATISTICAL COMPARISON (Feb. 1998).

³⁴ James J. Sheehan, *Germany—Justice*, BRITANNICA (Feb. 23, 2022), <https://www.britannica.com/place/Germany/Justice> (accessed 26 Feb. 2022).

³⁵ James J. Sheehan, *Germany—Justice*, BRITANNICA (Feb. 23, 2022), <https://www.britannica.com/place/Germany/Justice> (accessed 26 Feb. 2022). There are some areas of law over which the states exercise exclusive control.

³⁶ Dietrich Oberwittler and Sven Höfer, *Crime and Justice in Germany: An Analysis of Recent Trends and Research*, 2 EUR. J. OF CRIMINOLOGY 465 (2005). These include the Federal Police (*Bundespolizei*—BPOL), the Federal Criminal Police (*Bundeskriminalamt*—BKA), and the German Parliament Police (*Polizei beim Deutschen Bundestag*—Polizei DBT).

³⁷ *Areas of Crime*, BUNDESKRIMINALAMT, https://www.bka.de/EN/OurTasks/AreasOfCrime/areasofcrime_node.html;jsessionid=31ADF4C8D893567862CF7E902F91F01A.live0602 (accessed 26 Feb. 2022).

³⁸ *German Law Enforcement Coping with Change*, SAM HOUSTON ST. U. NEWS (Nov. 19, 1999), https://www.shsu.edu/~pin_www/T@S/1999/AlbrechtSpeech.html (accessed 26 Feb. 2022).

investigations, without seeking any particular outcome.³⁹ During trial, judges play an active role in organizing evidence and interviewing witnesses.⁴⁰

e. India

India is a federal parliamentary democracy with a mixed legal system.⁴¹ The Indian legal system is primarily adversarial, though it incorporates some inquisitorial elements and no longer utilizes the jury system.⁴² Though states may pass their own laws, the country has a national Penal Code and Code of Criminal Procedure, and the court structure is unitary.⁴³ A single court hierarchy exists throughout the country, with courts of original jurisdiction existing at the district level, a subdivision of the state.⁴⁴ It is primarily the responsibility of the state police to conduct investigations into crime, though federal policing institutions do exist.⁴⁵ In particular, the Central Bureau of Investigation is responsible for overseeing investigations into multistate and

³⁹ Julia Bröder, *How Public Prosecutors Work in Germany*, DEUTSCHLAND.DE (May 20, 2019), <https://www.deutschland.de/en/topic/politics/how-public-prosecutors-work-in-germany> (accessed 26 Feb. 2022); Eberhard Siegismund, *The Public Prosecution Office in Germany: Legal Status, Functions, and Organization in UNAFEI ANNUAL REPORT FOR 2001 58* (Sean Eratt ed., Feb. 2003).

⁴⁰ FLOYD FEENEY, BUREAU OF JUSTICE STATISTICS, GERMAN AND AMERICAN PROSECUTIONS: AN APPROACH TO STATISTICAL COMPARISON (Feb. 1998). The judge (or in some cases a panel) also makes the ultimate decision whether to convict or acquit.

⁴¹ “India has a hybrid legal system having elements of civil law, common law, equitable law, and customary and religious laws.” Ashish Bhan & Mohit Rohatgi, *Legal Systems in India: Overview*, THOMAS REUTERS PRAC. L. (Mar. 1, 2021), [https://uk.practicallaw.thomsonreuters.com/w-017-5278?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-017-5278?transitionType=Default&contextData=(sc.Default)&firstPage=true) (accessed 26 Feb. 2022).

⁴² Ashish Bhan & Mohit Rohatgi, *Legal Systems in India: Overview*, THOMAS REUTERS PRAC. L. (Mar. 1, 2021), [https://uk.practicallaw.thomsonreuters.com/w-017-5278?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-017-5278?transitionType=Default&contextData=(sc.Default)&firstPage=true) (accessed 26 Feb. 2022); MRINAL SATISH, *An Introduction to the Indian Criminal Justice System*, in DISCRIMINATION AND THE RULE OF LAW: REFORMING RAPE SENTENCING IN INDIA 15 (2016).

⁴³ MRINAL SATISH, *An Introduction to the Indian Criminal Justice System*, in DISCRIMINATION AND THE RULE OF LAW: REFORMING RAPE SENTENCING IN INDIA 15 (2016).

⁴⁴ MRINAL SATISH, *An Introduction to the Indian Criminal Justice System*, in DISCRIMINATION AND THE RULE OF LAW: REFORMING RAPE SENTENCING IN INDIA 15 (2016); Ashish Bhan & Mohit Rohatgi, *Legal Systems in India: Overview*, THOMAS REUTERS PRAC. L. (Mar. 1, 2021), [https://uk.practicallaw.thomsonreuters.com/w-017-5278?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-017-5278?transitionType=Default&contextData=(sc.Default)&firstPage=true) (accessed 26 Feb. 2022).

⁴⁵ Madan Lal Sharma, *Organised Crime in India: Problems and Perspectives*, in UNAFEI RESOURCE MATERIAL SERIES NO. 54 82 (Sept. 1999); *Law and Order*, GOVERNMENT OF INDIA MINISTRY OF HOME AFFAIRS, <https://www.mha.gov.in/commoncontent/law-and-order> (accessed 8 Feb. 2022).

international organized crime.⁴⁶ Although investigations are conducted by police, they are supervised by a magistrate judge.⁴⁷ Prosecutors are appointed by state governments, and while they historically were attached to police departments, they have been independent since 1973.⁴⁸ The prosecutor is understood to be an impartial advocate of justice who is directed by the judge.⁴⁹

f. Italy

Italy is a unitary constitutional parliamentary republic.⁵⁰ It follows a civil law model and has traditionally had an inquisitorial system. However, since the adoption of a new Code of Criminal Procedure in 1988, the legal system has followed a mixed adversarial-inquisitorial model.⁵¹ Prosecution falls under the auspices of the judiciary, which is independent and self-governing.⁵² The *Consiglio Superiore della Magistratura*, or High Council of the Judiciary, is responsible for governing the judicial branch.⁵³ Italy has specialized antimafia prosecutors who

⁴⁶ Madan Lal Sharma, *Organised Crime in India: Problems and Perspectives*, in UNAFEI RESOURCE MATERIAL SERIES NO. 54 82 (Sept. 1999).

⁴⁷ K.N. Chandrasekharan Pillai, *Public Prosecution in India*, 50 J. OF THE INDIAN L. INST. 629 (2008).

⁴⁸ Madan Lal Sharma, *The Role and Function of Prosecution in India*, UNAFEI RESOURCE MATERIAL SERIES NO. 53 185; K.N. Chandrasekharan Pillai, *Public Prosecution in India*, 50 J. OF THE INDIAN L. INST. 629 (2008).

⁴⁹ Ysrao Judge, *Duty of The Public Prosecutor In The Criminal Justice System*, LEGAL SERV. INDIA <http://www.legalservicesindia.com/article/1606/Duty-of-The-Public-Prosecutor-In-The-Criminal-Justice-System.html> (accessed 26 Feb. 2022).

⁵⁰ *Italy*, EUR. COMMITTEE OF THE REGIONS: DIVISION OF POWERS <https://portal.cor.europa.eu/divisionpowers/Pages/Italy-Introduction.aspx> (accessed 8 Feb. 2022).

⁵¹ Marco Gubitosi et al., *Legal Systems in Italy: Overview*, THOMAS REUTERS PRAC. L. (Apr. 1, 2021), [https://uk.practicallaw.thomsonreuters.com/w-007-7826?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-007-7826?transitionType=Default&contextData=(sc.Default)&firstPage=true) (accessed 26 Feb. 2022); William T. Pizzi & Mariangela Montagna, *The Battle to Establish an Adversarial Trial System in Italy*, 25 MICH. J. OF INT'L L., 429 (2004).

⁵² Title IV, §1, art. 104 Costituzione [Cost.] (It.); *See also Italy's Judicial System*, CONSIGLIO SUPERIORE DELLA MAGISTRATURA – INT'L CORNER, https://www.csm.it/en/web/csm-international-corner/high-council-for-the-judiciary/italy-s-judicial-system?show=true&title=&show_breadcrumb= (accessed 8 Feb. 2022). Prior to the 1988 reforms, an examining magistrate (*giudice istruttore*), rather than the prosecutor, would have been responsible for investigations. William T. Pizzi and Luca Marafioti, *The New Italian Code of Criminal Procedure: The Difficulties of Building an Adversarial Trial System on a Civil Law Foundation*, 17 YALE J. OF INT'L L. 1 (1992).

⁵³ Title IV, §1, art. 104-07 Costituzione [Cost.] (It.); *About the Council*, CONSIGLIO SUPERIORE DELLA MAGISTRATURA, <https://www.csm.it/en/web/csm-international-corner/high-council-for-the-judiciary/about-the-council> (accessed 8 Feb. 2022).

operate at the district level (*Direzione Distrettuale Antimafia*, or District Antimafia Directorate) as well as a national organization which coordinates antimafia prosecution (*Direzione Nazionale Antimafia*, or National Antimafia Directorate).⁵⁴ Italy has a unitary police force,⁵⁵ which includes four main divisions: the *Polizia Di Stato*, or national police, is a civil body responsible for providing most ordinary policing functions as well as the security of the highways, water routes, and railways.⁵⁶ The *Guardia di Finanza*, or financial police, which a militarized police force operating under the Ministry of Economics and Finance, is responsible for investigating financial crimes, including crimes of smuggling, money laundering and corruption.⁵⁷ The *carabiniere*, or gendarmerie, are military police, operating under the Ministry of Defense. Though they do police the military, they also serve a nationwide policing function, and are considered the elite of Italian law enforcement.⁵⁸ The *Polizia Penitenziaria*, or penitentiary police, are responsible for prison security as well as the safety and maintenance of prisoners.⁵⁹ Italy also has a specialized multforce agency dedicated to conducting investigations into organized crime known as the *Direzione Investigativa Antimafia* (Antimafia Investigative Directorate).⁶⁰

⁵⁴ *Direzione Nazionale Antimafia e Antiterrorismo*, MINISTERO DELLA GIUSTIZIA (Feb. 3, 2021), https://www.giustizia.it/giustizia/it/mg_2_10_1.page#, (accessed 4 Dec. 2021).

⁵⁵ This discussion of the police is taken from Ch. V of this dissertation.

⁵⁶ *Il Nostro Lavoro*, POLIZIA DI STATO, <https://www.poliziadistato.it/archivio/category/2083> (accessed 23 Jan. 2022).

⁵⁷ *Introduzione*, GUARDIA DI FINANZA: INSIEME PER LA LEGALITÀ, <https://www.gdf.gov.it/chi-siamo/organizzazione/compiti-istituzionali> (accessed 23 Jan. 2022).

⁵⁸ *L'arma dei Carabinieri: Compiti, Funzioni e Dipendenze*, CARABINIERI: POSSIAMO AIUTARVI, <https://www.carabinieri.it/chi-siamo/oggi/organizzazione/in-generale/compiti-funzioni-e-dipendenze> (accessed 23 Feb. 2022).

⁵⁹ *Compiti e Attribuzioni*, CORPO DI POLIZIA PENITENZIARIA, https://poliziapenitenziaria.gov.it/polizia-penitenziaria-site/it/compiti_attribuzioni.page (accessed 2 Mar. 2022).

⁶⁰ *Direzione Nazionale Antimafia e Antiterrorismo*, MINISTERO DELLA GIUSTIZIA (Feb. 3, 2021), https://www.giustizia.it/giustizia/it/mg_2_10_1.page#, (accessed 4 Dec. 2021); *DIA Functions*, DIREZIONE INVESTIGATIVA ANTIMAFIA, <https://direzionecinvestigativaantimafia.interno.gov.it/functions/?lang=en> (accessed 8 Feb. 2022).

g. Japan

Japan is a unitary constitutional parliamentary monarchy.⁶¹ It primarily follows a civil law model and has a system of trials that is formally adversarial, but which maintains significant inquisitorial elements.⁶² The Japanese court system is unitary, with a single nation-wide court hierarchy.⁶³ Prefectural police are the primary investigators of crime, while the National Police Agency is responsible for administration and policymaking.⁶⁴ Prosecutors hold a position of significant power in the Japanese legal system.⁶⁵ They work very closely with police and often direct police investigations.⁶⁶ The Japanese system has been described as one of substantive, rather than procedural, justice.⁶⁷ With a very strong and insulated prosecutorial system and close relationship between prosecutors and judges, Japan is characterized by a near-100% conviction rate.⁶⁸ Cases are closely investigated and very few are brought to trial, but those that are nearly always end in conviction.⁶⁹

⁶¹ *Japan's Parliament and Other Political Institutions*, EUR. PARLIAMENTARY RES. SERV. (Dec. 15, 2020), [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2020\)651951](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2020)651951) (accessed 26 Feb. 2022).

⁶² Ramsey Fisher, *The Façade of Change: Tracing the Post-War Evolution in Japanese Criminal Procedure*, 20 HIST. PERSP.: SANTA CLARA U. UNDERGRADUATE J. OF HIST., SERIES II 151 (2015); Keisuke Nakao and Masatoshi Tsumagari, *Pseudo-Adversarialism: A Theoretical Comparison Between the U.S. and Japanese Criminal Procedures*, 12 B.E. J. OF ECON. ANALYSIS & POL'Y (2012). Nakao and Trumagari refer to the Japanese system as 'pseudo-adversarial' rather than 'semi-inquisitorial.'

⁶³ Toshiaki Iimura et al, *The Binding Nature of Court Decisions in Japan's Civil Law System*, CHINA GUIDING CASES PROJECT (2015), <https://cgc.law.stanford.edu/commentaries/14-iimura-takabayashi-rademacher/> (accessed 26 Feb. 2022).

⁶⁴ David T. Johnson, *Japan's Prosecution System*, 41 CRIME & JUST. 35 (2012).

⁶⁵ David T. Johnson, *Japan's Prosecution System*, 41 CRIME & JUST. 35 (2012).

⁶⁶ David T. Johnson, *Japan's Prosecution System*, 41 CRIME & JUST. 35 (2012). There are limits to prosecutors' influence over the police. Prosecutors do often defer to police judgment, given the size and political influence of the policing bodies.

⁶⁷ Jean Choi DeSombre, *Comparing the Notions of the Japanese and the U.S. Criminal Justice System: An Examination of Pretrial Rights of the Criminally Accused in Japan and the United States*, 14 PACIFIC BASIN L. J. 103 (1995).

⁶⁸ J. Mark Ramseyer & Eric B. Rasmusen, *Why is the Japanese Conviction Rate So High?*, 30 THE J. OF LEGAL STUD. 53 (2001).

⁶⁹ Mark Ramseyer & Eric B. Rasmusen, *Why is the Japanese Conviction Rate So High?*, 30 THE J. OF LEGAL STUD. 53 (2001); David T. Johnson, *Japan's Prosecution System*, 41 CRIME & JUST. 35 (2012). Historically, plea bargaining was disallowed in Japan, so all cases were brought to trial. However, as of 2018, plea bargains have been introduced into the Japanese legal system. Sakura Murakami, *Japanese-style Plea Bargaining Debuts but Authorities Fear Spread of False Testimony*, THE JAPAN TIMES, May 31, 2018.

h. South Africa

South Africa has a constitutional parliamentary system of government.⁷⁰ Despite a long history of oppressive racially based authoritarianism known as apartheid, the country has been democratic since 1994.⁷¹ South Africa has a quasi-federalist system which recognizes national, provincial, and local spheres of governance, but which has in practice become highly centralized over time.⁷² South Africa's legal system has a mixture of common law and civil law elements, a result of the nation's history of colonization by both the Dutch and the British.⁷³ Trials are adversarial, though there are no juries.⁷⁴ Despite having aspects of federalism, the South African court system is unitary.⁷⁵ Prosecution is organized under a single constitutionally established body, the National Prosecuting Authority (NPA), which was established in 1998.⁷⁶ The NPA has considerable power over the criminal justice system, largely via the exercise of prosecutorial discretion.⁷⁷ The police and prosecution services were established as separate entities in

⁷⁰ *Structure and Functions of the South African Government*, SOUTH AFRICAN GOV'T, <https://www.gov.za/about-government/government-system/structure-and-functions-south-african-government> (accessed 8 Feb. 2022).

⁷¹ *History*, SOUTH AFRICAN GOV'T, https://www.gov.za/about-sa/history#the_rise_of_apartheid (accessed 8 Feb. 2022). For a journalistic account of the end of apartheid, see PATTI WALDMEIR, *ANATOMY OF A MIRACLE: THE END OF APARTHEID AND THE BIRTH OF THE NEW SOUTH AFRICA* (1998).

⁷² Elem Eyricce Tepeciklioğlu, *South African Federalism: Constitution-Making Process and the Decline of the Federalism Debate*, 13 J. OF YAŞAR U. 164 (2018). Debates over federalism were key to the development of the South African constitution. Much of the controversy over federalism is tied to the use of “selective federalism” under apartheid. See also Amanda Barratt et al. UPDATE: Researching South African Law (Mar. 2018) (describing South Africa as a unitary state with aspects of federalism)

⁷³ Amanda Barratt et al., UPDATE: *Researching South African Law*, GLOBALEX (Mar. 2018), https://www.nyulawglobal.org/globalex/South_Africa1.html (accessed 26 Feb. 2022).

⁷⁴ Lawrence Helman & Andréa Pekeur, *Legal Systems in South Africa: Overview*, THOMAS REUTERS PRAC. L. (Apr. 1, 2021), [https://uk.practicallaw.thomsonreuters.com/w-030-7871?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-030-7871?transitionType=Default&contextData=(sc.Default)&firstPage=true) (accessed 26 Feb. 2022).

⁷⁵ S. Afr. Const., Chapter 8, §§ 166-70 (1996); *The South African Judicial System*, THE SOUTH AFRICAN JUDICIARY, <https://www.judiciary.org.za/index.php/the-south-african-judicial-system> (accessed 8 Feb. 2022).

⁷⁶ S. Afr. Const., Chapter 8, §179(1)-(2); JEAN REDPATH, INST. FOR SECURITY STUD., *FAILING TO PROSECUTE? ASSESSING THE STATE OF THE NATIONAL PROSECUTING AUTHORITY IN SOUTH AFRICA* (2012).

⁷⁷ JEAN REDPATH, INST. FOR SECURITY STUD., *FAILING TO PROSECUTE? ASSESSING THE STATE OF THE NATIONAL PROSECUTING AUTHORITY IN SOUTH AFRICA* (2012).

democratic South Africa.⁷⁸ In the wake of apartheid, localized police forces were merged into a unified policing structure, the South African Police Service (SAPS), which encompasses a broad array of policing functions.⁷⁹ Since 1998, municipalities have been able to establish their own police forces as well.⁸⁰ Both police and prosecution in South Africa have been criticized for their institutional weakness and corruption.⁸¹

i. United States

The United States has a constitutional presidential system.⁸² It has a common law legal system, that is adversarial and relies on trial by jury.⁸³ The United States has a federalist system which includes 50 states and 16 territories.⁸⁴ American federalism is quite robust, and the functions of the state and criminal courts are kept distinct and separate.⁸⁵ Though most criminal prosecution occurs at the state level,⁸⁶ prosecution may occur at the federal level where an

⁷⁸ S. Afr. Const., Chapter 8, §179 Chapter 11, §§205-08 (1996); MARTIN SCHÖNTEICH, INST. FOR SECURITY STUD., ASSESSING THE CRIME FIGHTERS: THE ABILITY OF THE CRIMINAL JUSTICE SYSTEM TO SOLVE AND PROSECUTE CRIME (Sept. 1999).

⁷⁹ William R. Pruitt, *The Progress of Democratic Policing in Post-Apartheid South Africa*, 4 AFRICAN J. OF CRIMINOLOGY AND JUST. STUD. 116 (2010).

⁸⁰ JANINE RAUCH ET AL., MUNICIPAL POLICING IN SOUTH AFRICA (2001).

⁸¹ MARTIN SCHÖNTEICH, INST. FOR SECURITY STUD., ASSESSING THE CRIME FIGHTERS: THE ABILITY OF THE CRIMINAL JUSTICE SYSTEM TO SOLVE AND PROSECUTE CRIME (Sept. 1999); Jeremy Kutner, *In South Africa, Corrupt Prosecutors an Ever-Larger Problem*, CHRISTIAN SCI. MONITOR (Jan. 2, 2014); Imelda Cengic, *Report: South African Police the Most Corrupt Servants*, ORGANIZED CRIME & CORRUPTION REPORTING PROJECT (Aug. 28, 2019), <https://www.occrp.org/en/daily/10572-report-south-african-police-the-most-corrupt-servants> (accessed 26 Feb. 2022).

⁸² U.S. CONST., art. II; See also *Branches of the U.S. Government*, USA.GOV (Jan. 31, 2022), <https://www.usa.gov/branches-of-government#item-214495> (accessed 8 Feb. 2022).

⁸³ John C. Henegan et al., *Legal System in the United States: Overview*, THOMAS REUTERS PRAC. L. (Jan. 1, 2021), [https://uk.practicallaw.thomsonreuters.com/w-019-5918?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-019-5918?transitionType=Default&contextData=(sc.Default)&firstPage=true) (accessed 26 Feb. 2022). One state, Louisiana, utilizes a civil law rather than a common law system.

⁸⁴ *United States Territories 2022*, WORLD POPULATION REV., <https://worldpopulationreview.com/country-rankings/united-states-territories> (accessed 8 Feb. 2022).

⁸⁵ *Comparing Federal & State Courts*, U.S.CTS., <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts> (accessed 8 Feb. 2022).

⁸⁶ *Comparing Federal & State Courts*, U.S.CTS., <https://www.uscourts.gov/about-federal-courts/court-role-and-structure/comparing-federal-state-courts> (accessed 8 Feb. 2022).

individual is accused of committing a federal offense.⁸⁷ Federal prosecutors are part of the executive branch, and prosecutors work under the Department of Justice.⁸⁸ Prosecutors exercise considerable discretion, and may choose whether or not to charge individual crimes as well as whether or not to accept plea bargains with individual defendants.⁸⁹ Policing in the United States is highly decentralized, largely as a result of American fears of a national police force.⁹⁰ It includes federal law enforcement bodies such as the Federal Bureau of Investigation (FBI) and Drug Enforcement Agency (DEA), as well as state, county, and municipal departments.⁹¹

⁸⁷ 9-27.000 - *Principles of Federal Prosecution*, U.S. DEP'T OF JUST. (Feb. 2018), <https://www.justice.gov/jm/jm-9-27000-principles-federal-prosecution> (accessed 8 Feb. 2022).

⁸⁸ Alexander Heinze, *Prosecutors and Trials*, in THE OXFORD HANDBOOK OF PROSECUTORS & PROSECUTION 117, 144 (Ronald F. Wright et al. eds., 2021).

⁸⁹ Rebecca Kraus, *The Theory of Prosecutorial Discretion in Federal Law: Origins and Developments*, 6 SETON HALL CIR. REV. 1 (2012).

⁹⁰ Jean-Paul Brodeur, *Decentralized Police Organizations*, BRITANNICA, <https://www.britannica.com/topic/police/Decentralized-police-organizations> (accessed 8 Feb. 2022); Daniel C. Richman & Sarah Seo, *How Federalism Built the FBI, Sustained Local Police, and Left Out the States* (Colum. Pub. L. Res. Paper No. 14-679, 2020).

⁹¹ Jean-Paul Brodeur, *Decentralized Police Organizations*, BRITANNICA, <https://www.britannica.com/topic/police/Decentralized-police-organizations> (accessed 8 Feb. 2022).

Table A.1: Summary of National Characteristics

	Region	Government Structure	Federalism	Legal System	Trial System	Main Criminal Organizations	Final Outcome
Australia	Oceania	Parliamentary	Federalist	Common Law	Adversarial	Ethnic Gangs and Motorcycle Gangs	Strong Reform
Canada	North America	Parliamentary	Federalist	Mixed Common and Civil Law	Adversarial	Mafia Groups and Motorcycle Gangs	Strong Reform
Colombia	South America	Presidential	Unitary	Civil Law	Inquisitorial	Drug Trafficking Organizations	Strong Reform, with Temporary Rollback
Germany	Europe	Parliamentary	Federalist	Civil Law	Inquisitorial	Ethnic Gangs	Moderate Reform
India	South Asia	Parliamentary	Federalist	Common Law	Mixed Adversarial and Inquisitorial	Localized Gangs	Weak Reform
Italy	Europe	Parliamentary	Unitary	Civil Law	Historically Inquisitorial, Now Mixed	Mafia Groups	Strong Reform

Table A.1: Summary of National Characteristics (continued)

Japan	East Asia	Parliamentary	Unitary	Civil Law	Mixed Adversarial and Inquisitorial	Yakuza (Mafia Group)	Strong Reform
South Africa	Africa	Parliamentary	Quasi-Federalist	Mixed Common and Civil Law	Adversarial	Local Gangs and Some Foreign Trafficking Organizations	Strong Reform with Rollback
United States	North America	Presidential	Federalist	Common Law	Adversarial	Mafia Groups (Historical)	Strong Reform

Table A.2: Summary of Institutional Development

	Threat Perception Shifting Incident	Timing	First Legal Institution	Type of Institution	Timing of Institution	Later Institutions	Rollback
Australia	Costigan Commission Findings Released	Early 1980s	National Crime Authority (Replaced By Australian Crime Commission)	Specialized Policing	1984	Proceeds of Organized Crime Act (asset forfeiture); Serious and Organised Crime Act (membership liability)	
Canada	War on Drugs; Biker Wars and Desrochers Murder	1988; 1995	Bill C-61; Bill C-95 (Replaced by Bill C-24)	Permissive Law (asset forfeiture); Permissive Law (membership liability)	1997	RCMP anti-organized crime units	
Colombia	Lara Bonilla Assassination	1985	Extradition Treaty	Permissive Law (membership liability)	Passed in 1979, but not enforced until 1985	Jungla Commandos; Special Assets Society (specialized policing); asset forfeiture legislation	Extradition Treaty revoked in 1991, reinstated in 1997

Table A.2: Summary of Institutional Development (continued)

Germany	Crime Wave Following Reunification	1990	Organized Crime Control Act	Permissive Law (asset forfeiture)	1992	Police/prosecutor powers further enhanced; Organised and General Crime Division (now the Serious and Organised Crime Division)
India	Mumbai Bombing	1993	Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act	Permissive Law (asset forfeiture)	1976	The Narcotic Drugs & Psychotropic Substances Act (asset forfeiture)
Italy	Dalla Chiesa Assassination	1982	Rognoni-La Torre Law	Permissive Law (membership liability and asset forfeiture)	1982	Direzione Investigativa Antimafia, Direzione Nazionale Antimafia/Direzioni Distrettuali Antimafia, various specialized policing units (competent enforcement)
Japan	Yakuza Wars	1985-1990	Boryokudan Countermeasures Law (Strengthened by Later Revisions)	Permissive Law (membership liability and asset forfeiture)	1992	Organized Crime Exclusion Laws (permissive laws); Specialized policing units

Table A.2: Summary of Institutional Development (continued)

South Africa	Crime Wave Following End of Apartheid	1994	Proceeds of Organised Crime Act ; (replaced by Prevention of Organised Crime Act)	Permissive Law (membership liability and asset forfeiture)	1998	Directorate of Special Operations ("the Scorpions"); replaced by Directorate for Priority Crime Investigation ("the Hawks") (specialized policing); Asset Forfeiture Unit; Organised Crime Intelligence Units (established in 1991, prior to democratization)	Dismantling of the Scorpions
United States	Apalachin Meeting	1957	Organized Crime and Racketeering Section	Competent Enforcement	1961	Organized Crime Control Act (permissive law); Organized Crime Strike Forces	Dismantling of the Strike Forces

Appendix B: Medium-N Case Timelines

Table B.1: Australia Timeline

Date	Event
1973	Moffit Commission
1977	Woodward Commission
1977	Williams Commission
1977	First civil forfeiture regime developed
1980	Costigan Commission
1981	Stewart Commission
June 1984	National Crime Authority established (Competent Enforcement)
Sept 1984	Milperra Massacre
1987	Proceeds of Crime Act passed (Permissive Law)
2002	Proceeds of Crime Act passed (Permissive Law)
2003	Australian Crime Commission replaces National Crime Authority
2009	Sydney Airport killings
2010	Serious and Organised Crime Act (No. 2) passed (Permissive Law)
2016	Australian Criminal Intelligence Commission replaces Australian Crime Commission

Table B.2: Canada Timeline

Date	Event
1963	Roach Royal Commission
1967	Federal–Provincial Conference of Attorneys General on Organized Crime report released
1970	Criminal Intelligence Services Canada founded (Institutional Tweak)
1973	Report of the Royal Commission on Certain Sectors of the Building Economy
1984	Proceeds of Crime legislation proposed, dies in Parliament
1986	Drugs declared an epidemic
1988	Bill C-61 passed (Permissive Law)
Aug. 13, 1995	Daniel Desrochers killed
1997	Bill C-95 passed (Permissive-Law)
2001	Bill C-24 passed (Strengthening of Permissive Law)

Table B.3: Colombia Timeline

Date	Event
1979	Extradition treaty signed (Permissive Law)
1982	Betancur becomes president
April 30, 1984	Assassination of Rodrigo Lara Bonilla
Jan. 1985	Extradition begins
1987	Search Bloc established (Institutional Tweak)
1989	Junglas established (Competent Enforcement)
1987	Supreme Court overturns extradition treaty (Institutional Rollback)
1991	Extradition outlawed in Colombian Constitution, Escobar surrenders (Institutional Rollback)
1993	Escobar is killed
1994	Ernesto Samper is elected
1996-1997	US decertifies Colombia
1996	Asset forfeiture law (Permissive Law)
Sept. 1996	Ban on extradition reversed (Permissive Law)
2002	Alvaro Uribe elected
2004-2005	Extradition of Rodriguez Orejuela brothers
2011	Dissolution of National Narcotics Directorate begins
2014	Special Assets Society takes responsibility for asset forfeiture (Competent Enforcement)

Table B.4: Germany Timeline

Date	Event
1986	First definition of organized crime
Nov. 9 1989	Fall of the Berlin Wall
1992	Organized Crime Control Act passed (Permissive Law)
Nov. 1994	Antidrug Division merges with Organised and General Crime Division (Competent Enforcement)
1998	Electronic surveillance legalized
2002	Act to Improve the Combat of Money Laundering and Terrorist Financing establishes new Financial Intelligence Unit
Aug 15 2007	Duisberg Massacre
2017	Anti-Money Laundering Act passed establishes new Financial Intelligence Unit

Table B.5: India Timeline

Date	Event
1965	CBI's Special Crimes Division gains competency for organized crime
1976	Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act passed (Permissive Law)
1985	Narcotic Drugs & Psychotropic Substances Act passed (Permissive Law)
March 12, 1993	Bombay Bombing
1999	Maharashtra Control of Organised Crime Act passed (Institutional Tweak)

Table B.6: Japan Timeline

Date	Event
1984-90	Yakuza wars
1989	Kaifu Toshiki becomes Prime Minister
1991	Boryokudan Countermeasures Law enacted (Permissive Law)
2004	Specialized police units formed (Competent Enforcement)
2007	Yakuza decides to support DPJ
2007	Revision of Boryokudan Countermeasures Law (Strengthening of Permissive Law)
2009	DPJ wins election over LDP
2009	Takaharu Ando declares war on organized crime
2011	Organized Crime Exclusion Laws enacted (Permissive Law)
2012	Revision of Boryokudan Countermeasures Law (Strengthening of Permissive Law)

Table B.7: South Africa Timeline

Date	Event
1991	Organised Crime Intelligence Units formed (Competent Enforcement)
1994	End of apartheid
1996	Proceeds of Organised Crime Act passed (Permissive Law)
1998	Prevention of Organised Crime Act passed (Permissive Law)
May 1999	Asset Forfeiture Unit established (Competent Enforcement)
1999	Directorate of Special Operations (Scorpions) established (Competent Enforcement)
2006	Khampepe Report released
2008	Parliament dissolves the Scorpions and establishes the Hawks
Jan 2009	Scorpions disband

Appendix C: Excellent Cadavers September 1970-July 1992

Below is a list of the “excellent cadavers” killed by Cosa Nostra between 1970 and the summer of 1992 who are discussed in this dissertation. This list includes state officials such as magistrates, police officers, and politicians killed in targeted attacks. It also includes non-government public figures, particularly journalists and activists. This list is not a complete list of mafia victims, as it does not include civilian victims, mafiosi, or police officers killed outside the context of a targeted assassination.

Table C.1: Excellent Cadavers September 1970-July 1992

Name	Position	Date of Murder
Mauro de Mauro	Journalist	September 16, 1970 (date of disappearance)
Pietro Scaglione	Magistrate	May 5, 1971
Giovanni Spampinato	Journalist	October 27, 1972
Giuseppe Russo	Carabiniere	August 20, 1977
Giuseppe "Peppino" Impastato	Journalist and Activist	May 9, 1978
Mario Francese	Journalist	January 26, 1979
Michele Reina	Politician (DC)	March 9, 1979
Giorgio “Boris” Giuliano	Police Officer	July 21, 1979
Cesare Terranova	Magistrate	September 25, 1979
Piersanti Mattarella	Politician (DC)	January 6, 1980
Emanuele Basile	Carabiniere	May 4, 1980
Gaetano Costa	Magistrate	August 6, 1980
Pio La Torre	Politician (PCI)	April 30, 1982
Carlo Alberto Dalla Chiesa	Carabiniere	September 3, 1982
Domenico Russo	Police Officer	September 15, 1982
Calogero Zucchetto	Police Officer	November 14, 1982
Carmelo Cerruto	Penitentiary Police Officer	November 24, 1982

Table C.1: Excellent Cadavers September 1970-July 1992 (continued)

Giangiaco- mo "Ciaccio" Montalto	Magistrate	January 25, 1983
Mario D'Aleo	Carabiniere	June 13, 1983
Giuseppe Bommarito	Carabiniere	June 13, 1983
Pietro Morici	Carabiniere	June 13, 1983
Rocco Chinicci	Magistrate	July 29, 1983
Mario Trapassi	Carabiniere	July 29, 1983
Salvatore Bartolotta	Carabiniere	July 29, 1983
Giuseppe Fava	Journalist and Activist	January 5, 1984
Giuseppe "Beppe" Montana	Police Officer	July 28, 1985
Antonino "Ninni" Cassarà	Police Officer	August 6, 1985
Roberto Antiochia	Police Officer	August 6, 1985
Giuseppe Insalaco	Politician	January 12, 1988
Natale Mondo	Politician	January 14, 1988
Alberto Giacomelli	Magistrate	September 14, 1988
Antonino Sietta	Magistrate	September 25, 1988
Mauro Rostagno	Journalist and Activist	September 26, 1988
Giovanni Bonsignore	Government Official	May 9, 1990
Rosario Livatino	Magistrate	September 21, 1990
Antonino Scopelliti	Magistrate	August 9, 1991
Libero Grassi*	Businessman	August 29, 1991
Salvo Lima**	Politician (DC)	March 12, 1992
Giuliano Guazzelli	Carabiniere	April 4, 1992
Giovanni Falcone	Magistrate	May 23, 1992
Francesca Morvillo	Magistrate	May 23, 1992

Table C.1: Excellent Cadavers September 1970-July 1992 (continued)

Rocco Dicillo	Police Officer	May 23, 1992
Antonio Montinaro	Police Officer	May 23, 1992
Vito Schifani	Police Officer	May 23, 1992
Paolo Borsellino	Magistrate	July 19, 1992
Agostino Catalano	Police Officer	July 19, 1992
Walter Cosina	Police Officer	July 19, 1992
Emanuela Loi	Police Officer	July 19, 1992
Vincenzo Li Muli	Police Officer	July 19, 1992
Claudio Traina	Police Officer	July 19, 1992
Giovanni Lizzio	Police Officer	July 27, 1992

Sources: ALISON JAMIESON, THE ANTIMAFIA (1999); *Cronologia su Mafia e Antimafia*, COMMISSIONE PARLAMENTARE ANTIMAFIA, <https://web.camera.it/bicamerale/leg15/commbicantimafia/cronologiamafieantimafia/schedabas.e.asp> (accessed 28 Feb. 2022). For a full list of mafia victims, see *Nomi da non Dimenticare*, VIVI.LIBERA, https://vivi.libera.it/it-ricerca_nomi (accessed 28 Feb. 2022); *Vittime Mafia – Per Non Dimenticare*, VITTIME MAFIA (Nov. 28, 2018), <https://vittimemafia.it/vittime/> (accessed 22 Feb. 2022).

*Grassi was a businessman rather than a state official or journalist. However, given his uniquely public refusal to pay extortion money and his national prominence, I include him in this list.

**Lima is the only public official on this list who is believed to have been killed because of his connection to the Mafia, rather than his opposition.

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¹ The works cited includes all secondary sources cited in the dissertation, as well as laws, cases, published speeches, and government reports. News sources, archival records, author interviews, and legislative hearings/debates are not included in this section. They can be found in the chapter footnotes and are available from the author upon request.

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