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**The Italian State against the Riace Utopia. Notes on the “Judicialization of Politics”, the “Politicization of the Judiciary”, and the Gordian knot of Justice in a polarized society**

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**Abstract**

This paper aims to critically reflect on the notorious Italian court case involving former officials of the Municipality of Riace, starting from the aftermath of the September 2021 first instance sentence by the Court of Locri that severely convicted former mayor Domenico Lucano and his associates, as well as in light of the October 2022 appeal verdict by the Court of Reggio Calabria, and the following October 2023 ruling. Under the municipal administration, the small town of Riace, located in the Calabria region of Southern Italy, had been reborn through a virtuous plan to integrate refugee immigrants into the local community. Shortly after gaining international attention and recognition, this contemporary "utopia" faced tremendous backlash from prominent Italian parliamentarians, morbid media attention and judicial surveillance. This essay analyzes the "Riace Case", through the categories of "Judicialization of Politics" and "Politicization of the Judiciary." It questions the “justice” notion having shaped the Italian society as a polarized "ideological battlefield".

Keywords: Justice; Politics; Solidarity; Immigration

## Introduction

Among the multiple contemporary transformations faced by Western liberal-democratic polities, at least since the second half of the XX Century, the ones involving the occurred constitutional and institutional patterns of States' apparatuses, with a strong impact on the same civil societies, are among the most relevant. In the aftermath of the II World War, most of the Western political entities were receptive to the “language of rights” spreading globally after the promulgation of the 1948 Universal Declaration of Human Rights<sup>i</sup>, which functioned at the time as the general international normative framework to which, especially the European Countries under post-war reconstruction (like Italy among others) referred directly as the primary source for their emergent constitutional phase. The “language of rights” had in fact to be constitutionally translated into political inputs commanding the actual reconstruction under the imperative of the responsibility and care-taking on their citizens primarily, as well as on their society as a whole. This led national assemblies to comprise into the rights-imprinting of their constitutions a wide range of matters, including significantly issues like welfare, employment, civil, political and social rights, as well as natural resources, and normative instructions against any possible kind of discrimination.

The vast specter of rights implied a massive broadening of civic participation and the consequent expansion of the “civil society”<sup>ii</sup> concept itself. At the same time, this required a strong commitment by States themselves, which apparatuses had to be adapted according to the new *Zeitgeist*. The “new constitutional State”, evocatively called later the “Providence State”, assumed control of the care-taking of civil societies, expanding its power tools as asked by its duties. At the same time, however, a parallel (and only apparently contradictory trajectory) had been taken: the protection of rights, individual rights in the first place (but collective ones too) opened the door for an unseen citizens' preservation against any eventual State abuse. For this purpose, the long inherited, traditional Western liberal-democratic doctrine of the “separation of powers” had to be implemented, reinforcing each one of them (legislative, executive and judiciary) in its own prerogatives, fostering their independence respectively. Because of this, while a commanding, vertically directive strong executive power was needed to pursue all the new States' duties, an equally strong judiciary would have been serving the rights' conservation demand by the concurrent broadened citizenship (De Sousa Santos, Leitão Marques, Pedroso, Lopes Ferreira, 1996).

### **1. A brief account of the inherent Italian tension between the Judiciary and “Politics” since the 1960s-1970s**

The just recalled general framework posed the basis for potential institutional conflicts among the above “three powers”, and especially between the executive and the judiciary; that, effectively, would have taken the stage of political and legal disputes across Western Countries, engulfing the “public debate”, with relative specificity regarding each one's particular institutional settings and sociocultural background. The confrontation between the executive and the judiciary powers within the West-European context, so, followed timely different trends. Generally considered, it would have seen the former prevailing over the latter, due to its preeminence according to the above constitutional demands, until the 1960s. Then, especially on the route of the so-called *longue'68* (1968-1977 approximately), civil societies demands shifted from formal recognition and preservation of individual and collective rights (to be assured by the vertical State action) to the performative assertion of actual substantive social rights connected to a wider effective and political participation from social masses. The mixture of political activism and social demands gradually eroded, in this way, centralist executive prerogatives. This, also due to a tremendous upsurge of social conflicts within societies, led to a frontal confrontation between grassroots political extra-parliamentarian actors and the State authority, conducting so to the ascendant protagonist role of the judiciary in the public sphere (Balestrini, Moroni, 2015). In Italy, the conflict between the executive power and the judiciary has a long, quasi-endemic history. Its most striking episodes trace back exactly to the just briefly mentioned period of massive social and political conflict. One of the most famous, which marked the end of the aforementioned era, has taken over the public debates for years to come, radically changing the structure of Italian political and social life. On the 7th of April 1979, a nurtured group of political radical left-wing activists, among which were renowned intellectuals and university researchers, was convicted to a huge amount of imprisonment years, and labeled as “terrorist”. This still nowadays controversial case, soon renowned as the “7 April Case”, sparked the epoch of the “politicization of judiciary” in Italy. Although it is not possible here to account for its details, this episode saw the judiciary taking precise positions within an inflamed context, polarizing the public debate, the civic society and the Italian Parliament (Chiaromonte, 2019).

The other two fundamental occurrences, that are worthy to remind here, are retrievable in the early 1990s. The first concerns the role assumed by the public prosecutor figure in Italy in assessing legality and the “rule of law”, as a consequence of the brutal conflict between the Italian State and one of the most powerful and notorious criminal organization based in Italy, named *Cosa Nostra*. During a horrific season of disseminated violence in the streets of the biggest cities of Sicily, the so-called “Mafia War” (1981-1984), the State took the initiative in raising the stakes, appointing the formation of an “*Antimafia* pool” in the capital city of Palermo (1983-1988), among which magistrates stood out Giovanni Falcone and Paolo Borsellino. Their innovative work led to the very first “maxi-trial” against the most powerful bosses of the time, settling a decisive strike on the criminal organization. The pool investigative action, however, took the prosecutors on the revelation about the existence of an “opaque” liminal zone between State vertices and the *Cosa Nostra* chiefs. The pool was dissolved. Falcone, Borsellino and their colleagues continued their outstanding work on their own until the former two were tragically murdered in 1992.

What appears here notable about this complex happenings, is the standing out of the judiciary, in the form of an innovative prosecution system, as the key player in a military-like dispute between the State and the Mafias on the same portion of national territory, even by pushing the at the time Italian legislative power to formulate an almost totally new normative framework, in order to fight the organized crime more efficiently, filling so an institutional void, which seemed not fillable by both the legislative and the executive ones (Falcone, 1990; see: Ciconte, 2008). The next coeval relevant case regarded the near disruption of the whole Italian republican parliamentary structure, whereas another group of prosecutors, with Antonio Di Pietro in the first line, found almost the majority of political parties and Italian parliamentarians involved in illicit funding activities. This judicial earthquake, called *Tangentopoli* by the media, shook the political parties' system and Parliament's accountability to the core, changing forever the semblance of the Italian political system. This latter event signaled the prominent role of the judiciary in somehow testing Parliament's credentials, undermining potentially its political legitimacy at the basis, in a way to contest executive and legislative prerogatives (Righettini, 2018).

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## **2. Putting the “Riace Case” in context: between the *'Ndrangheta* and the Italian State**

Quite paradoxically, this context worked as the proper humus in which Italian criminal organizations, like the notorious *Cosa Nostra*, *Camorra*, *Sacra Corona Unita* and *'Ndrangheta*, among others (which have usually been considered only as a Southern Italian issue, not a proper national one) have found their nutriment and have grown powerfully, to date. Across a multi-faceted, very puzzling, peripheral and marginalized territory, and almost “in the shadow of the State”, these criminal cartels governed Southern areas through the following main means: a paternalistic conceived, vertical and yet sprawling network of power-relations, comprising patronage and familistic relationships with local institutional, economic and political elites; military-like brutal force, dispossession of lands, exploitation of unwaged, servile or slavery-like manpower mostly in the agricultural field; recruitment of usually unemployed and with low education youth, so to turn them into street laborers engaged in drug trafficking and prostitution management; finally, usurer private loans (Ciconte, 2008).

Despite the appearances, these organizations, far from being conceivable as a mere feudal residue, have though been constantly revealed their “modern” character, even an “advanced” one: since their huge incomes have almost always been invested through “dirty laundries” into the main Northern-Italian financial-industrial assets. A quite dramatic, yet ironical *fil rouge* seems so to connect the so-called “Mafias” to the State, i.e. their supposed ultimate “enemy”: the economic interest to maintain the discrepancy between the North and the South of Italy, for profit-driven reasons (above). The dominating Calabrian “mafia”, the *'Ndrangheta*, for instance, has recently become the most powerful one, thanks to relevant profit assets starting from drug-dealing in strict connection to Central and Latin American narco-trafficking cartels. Those incomes are continuously reinvested mainly in Northern Italy, Continental Europe, Eastern Europe, Russia and U.S.A. Despite its worldwide expansion, the *'Ndrangheta* headquarters remain drastically attached to the peripheries of Calabria, with the constant detriment of already ruptured territories (Ciconte, 2008).

The Riace village is among one of these latter. This still dramatic situation is further aggravated by yearly aggressive seasonal massive tourism, based almost only on mass-seaside holiday staying: which deepens the distance between heavily gentrified coasts

and phantasm-like boroughs. But in Riace case, among few significant others, the immigration from the Middle East and Africa, since 1997, but especially after the so-called “Arab-Springs” crises, have represented an opportunity to conciliate grassroots ethical-driven humanitarian action with the necessity to revivify local communal and territorial life. Local associations like the "Città Futura" in the Calabrese Municipality which was created by the at the time future (and now former) Riace mayor, Domenico Lucano, along with a vast associative of local and regional collaborators, served exactly the above goal. Still at the end of the 1990s, and during almost the entire first half of the 2000s, this experience has been reiterating and producing beneficial effects on the Riace's social texture. The immigrants who landed in Riace have been integrating harmoniously into the communal life of the borough, through the duly legal means and in accordance with the main institutional references, as well as in concert with the local "Città Futura" Association. This decade-long fruitful experience has granted the Association's work relevant international acknowledgment, which has recognized the Riace experience as a “model” for fruitful social integration of immigrants. Riace communal life was reborn then, with the consequent relaunch of the “traditional” local artisan and agricultural economies, with the due respect of their legacies and especially of the specific territorial vocation, without gross ecological impact within the scope of a really “sustainable development” (i.e. not based on a merely extractive and destructive pattern) (Giglio, 2019; Ranci, 2020). The same experience also gave Domenico Lucano the possibility to continue this work on a proper institutional level, since his service at the Municipality of Riace as municipal assessor in 2004, and then as mayor of the village (above). Until about 2016, he fostered this reality with his collaborators, within and outside the strict institutional frame, in strict connection with Riace's “civil society”. Around the same period, however, a strong recrudescence of anti-immigration discourses, populist political propaganda, if not utterly racist rhetoric, at international, national and regional levels, put the “Riace Utopia” in serious jeopardy. This, while the omnipresent *'Ndrangheta* (which the Riace administration have since the very beginning of the experience fought on both institutional and associative terms) had started long in trying to intimidate and gradually annihilate the “Model”. Her interest in undermining the “Riace Futura” experience was detectable, in fact, in the objective of perpetuating the victimization of vulnerable immigrant subjects, to be turned into slave-like unwaged labor force useful for its trafficking, as well as for servile labor in

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the agricultural fields (like the *caporalato* phenomena, in Calabria like elsewhere in the deep South of Continental and Insular Italy, has shown) (Panico, 2018).

Through a sort of low-intensity terrorist warfare, the most powerful Italian mafia struggled to assassinate the “Riace Utopia” slowly. The Italian State, on the route of a wide European and global racist upsurge (which in Italy has been crossing transversal the political and institutional horizon, locally and nationally speaking, from the Far-Right to the “moderate Left”) has done the rest, to assure the Riace experience a very short lasted life (above; see: Peroni, Fabini, 2018).

### **3. The Italian State against the “Riace Utopia”**

The Italian State has started its crusade against Riace as part of a broader general anti-immigration design, at least since 2016, during the “Gentiloni Government” (2016-2018) when the at the time Minister of Interior Minniti had severely restricted the already not-so-large previous institutional and legal measures at the disposal of “foreign” immigrants to enter and cross Italy (or eventually stay and obtain a “resident permit”)(above; see also: Caprioglio, Ferri, Gennari, 2021). At the same time, transnational arrangements between Italy and Nord-African partner governments, especially Libya, have been put into place in order to restrict the same crossing possibility of the Mediterranean passage for African and "middle-eastern" migrants. A firstly subterranean, and then more evident, wake of xenophobia and racism malcontent was meanwhile increasing within Italian (white and bourgeois) “society”. The specter of the “invasion” has been constantly agitated by both the Center-Left and the Center-Right mainstream political poles, with slightly different nuances. All this rhetoric propaganda has been probably instrumental in avoiding facing the failures of decades of Neo-liberal policies, working so as a governmental tool to steer any possible social conflict “outside” the Italian “civil society” itself. It nevertheless served the scope of preparing the public debate, the Italians stomachs, and the institutional and legal terrains overall, for a massive “criminalization of solidarity” public campaign (above; Donnarumma, 2021; see also: Ceccorulli, 2021). In the aftermath of the debacle of the above “Gentiloni Government”, the following “first Conte Government” (2018-2019) had taken over the already precarious scene, with the at the time new-come Minister of Interior Salvini (which “Lega” party, once named *Lega Nord*, has a quite openly racist

legacy) riding the xenophobia-populist propaganda horse and leading the campaign against migration, transnational and trans-borders solidarity. Legal procedures for admission to “refugee” status have been then further exacerbated, while the “crusade” has also been conducted (even literally) to the Mediterranean Sea waters, with several cases of renowned NGOs rescue ships being forcefully prevented from landing in Sicily and Continental Southern-Italian coasts (above). Although it is not possible here to fully account for a hugely intricate and divided public context, it is nevertheless useful to note that the backlash faced by the above “Riace Utopia” is to be located in this frame. During the above “Governo Gentiloni”, the Municipality of Riace faced multiple institutional and legal aggression, fostered also by vehemently factious main media, and the never exhausting *Ndrangheta* violence. The Italian State channeled the battle against Riace first through the multiple inspections by the Reggio Calabria Prefecture, since 2016, and then by the Locri Tribunal since 2018 (above; especially: Giglio, 2019; Donnarumma, 2021; Caprioglio, Ferri, Gennari, 2021). The successful solidarity and integration institutional experience had already been caught in the intricate links of the Italian State's legal, bureaucratic and institutional machinery, working through the cumbersome mechanism of seeking institutional funding for economic resources (2014–2017). State legal apparatuses, as power balance devices, have always been pending, at least since the second half of XXth Century, between modestly progressive change and fierce repression of social conflict and social innovation altogether. In the case of Riace, this latter feature gained the upper hand. In this perspective, the above-mentioned, always more heavily politicized role of the judicial power has functioned as the pivotal tool to destroy the “Riace Utopia”, due to his serving as merely as *bouche de la loi*, whereas the law as such has been used in turn as a conservative tool, if not a reactionary one (Guarnieri, 1994).<sup>iii</sup>

The outcome of the war waged against the “Riace Utopia” marks, unfortunately, no big difference from this perspective. Once the Locri Tribunal had contested several crimes to the at the time municipal compage of the Riace Municipality and the “Città Futura” Association alike, the sentence (which happened to be in September 2021 and then in December 2021)<sup>iv</sup> seemed already written. Although the major number and especially the most pernicious accusations forming the probationary frame (like the infamous stigmatizing label of *associazione per delinquere*, “criminal association,” attached to “Città Futura” and the fraud one) had decayed, the remaining charges about administrative irregularities had led to a huge amount of imprisonment for years to

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come (as well as heavy pecuniary fines to pay) for Lucano and his fellow collaborators (Caprioglio, Ferri, Gennari, 2021). The whole sentence, as well as the prosecutor’s allegations, seemed aimed at depicting a supposed awful “moral character” of Lucano and his associated, having led them to utilize their institutional roles for power accumulation, more than profit. In fact, no evidence of illicit profit-driven appropriation of institutional funds has been found during the investigation. The whole court case seemed so to be built on the re-framing of Lucano’s and his entourage’s moral attitude, in a way to destroy their public profiles and their credibility, rather than on contesting actual unlawful conducts. (see: Procacci, Rizzuti, Vassallo Paleologo, 2023).

## **Conclusion**

In October 2022, the prosecutors' request at the Appeal Court of Reggio Calabria slightly downgraded the previous sentence. The Municipality of Riace and the “Città Futura” Association, have probably tried to compel the rigid normative-administrative apparatus at their disposal, and that they did so consciously. This simple fact could have at least justified the prosecutors' request for conviction due to administrative irregularities. The “Città Futura” actions were in fact put into the frame as a response to a structural obstruction from the institutional partners of both the Calabria Regional Government and the Italian Minister of Interior (which had started to collaborate with Lucano and his staff, as recalled, around 2014). The institutional partnerships had started since long to assume the shapes of both normative, bureaucratic, and administrative rigidity and the more or less tacit blackmailing regarding the possibility of getting modest and slow institutional funding (Peroni, Fabini, 2018; Giglio, 2019; Caprioglio, Ferri, Gennari, 2021; Donnarumma, 2021). This just recalled “administrative rigidity”, ultimately, probably stemmed from the peculiar Italian framework made by the constant overlapping executive, legislative, administrative and judicial institutional actions, which are more indicative of their continuous conflict and (paradoxically enough) of their mutual dependency, rather than their respective independence.

All the staff of the “Riace Futura” association, along with the former mayor, has claimed their actions compelling the actual administrative and legal framework to have been justified as an act of “civil disobedience”: which aim was directed to the higher ethical scope of saving lives, making them worth living, and saving a since long

condemned territory, along with its isolated community, which had also been fighting organized crime at her own terms and with her own means (there). The above just outlined long tradition inherent to the repressive Italian State machinery, which appears to be coextensive with its general overlapping administrative-legal apparatus, has broken this possibility. In this perspective, the Judiciary has played a major role by simply acting like the enforcer of mere “legality”. It is though a posture, since this “judicialization of politics” has been really a tremendous “politicization of the judiciary”, i.e: it has been just a symptom of the long history of non-episodic, but systemic, mutual invasion of the Judiciary and the Executive respective prerogatives in the shadow of an already poisoned “public discourse”, inherent to the Italian State system in relation with Italian society.

Which, in turn, could be described as an example of the already mentioned “macro-politics”, i.e.: the puzzling ensemble of uncontrolled and/or properly staged public humors, cynic institutional propaganda, and prejudicial moral concern, along with aggressive political ideology, having informed the Judiciary role through the inscription into laws of the same ratio for their repressive-like interpretation (Hirschl, 2008; Faria, 2021). Instead of working as the supposed *super-partes* legality enforcer and thus as the presumed ultimate “neutral” ethical authority ordering a structurally (historically, geographically, ethically, and politically) multi-polarized society like the “Italian” one, the Judiciary in Italy has seemed, to date, to work as a neutralizing social conflicts' device: i.e, by acting according to a time-by-time concurring mainstream, state-driven political, and even “moral” agenda. A path that, as in the Riace case, has constantly been able to lead to more and more exorbitant outcomes.

Despite all the above depicted circumstances, and especially the above structurally entangled and confusing administrative-legal framework notwithstanding, on the 12 October 2023 the last pronouncement by the Appeal Court of Reggio Calabria overturned the previous first instance judgment, and nullified most of the previous charged against Lucano and his associates, by acknowledging, somehow, the fact they acted according to a higher ethical purpose. (see: Camilli, 2023). This last sentence has been receptive, ultimately, of the Article 62 of the Italian Penal Code, having in fact recognized the due mitigating factors concerning acts of civil disobedience perpetrated “for reasons of particular moral or social value” (see again: Ferrajoli, 2023; see also the Article 62 of the Penal Code, available online on the Italian Republic Gazette website). Only few administrative irregularities remained charged. It seems so, that Justice had lastly been

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## Notas

<sup>i</sup> United Nations (1948), *Universal Declaration of Human Rights*. <https://www.un.org/en/about-us/universal-declaration-of-human-rights>. Consulted on 04. 01. 2024.

<sup>ii</sup> We mean here by “Civil Society” the relational sphere within the Western liberal-democratic cultural horizon, in which human, social, civil and political rights are mutually recognized among its members, and guaranteed by the State. For an account on its stratification, see: De Sousa Santos, B (2005), “The counter-hegemonic use of Law in the struggle for a globalization from below”, *Anales de la Cátedra Francisco Suárez*, 39 (2005), 421-474. For a history of the concept of “Society” within the Western Hemisphere, see also: Chignola, S (2004), *Fragile cristallo. Per la storia del concetto di società*. Editoriale scientifica: Napoli.

<sup>iii</sup> The legal-administrative apparatus mobilized against the Riace Utopia, during the so-called “Xenia Process”, are to be found, for what concerns its primary sources, in the Law Decrees no. 113 of 4 October 2018 and no. 53 of 14 June 2019, promulgated from the above Governo Gentiloni and Governo Conte, respectively. See: Procacci, G, Rizzuti, D, Vassallo Paleologo, F (eds.) (2023) *Processo alla solidarietà. La Giustizia e il caso Riace*. Roma: Castelvechi. See especially the “Prologue” and the “Introduction” by Ferrajoli and Vassallo Paleologo respectively (there) on the same subject, available online in English on “Statewatch”: Ferrajoli, L (2023), “A political guilty verdict for the purpose of criminalizing hospitality towards migrants”; Vassallo Paleologo, F (2023), “A trial that brings us all into play: why it is a ‘political trial’”, in Procacci, G, Rizzuti, D, Vassallo Paleologo, F (eds) (2023). *Processo alla solidarietà. La Giustizia e il caso Riace*. Roma: Castelvechi. (Statewatch: “Prosecuting solidarity: extracts from a new book on the Riace case”. <https://www.statewatch.org/analyses/2023/prosecuting-solidarity-extracts-from-a-new-book-on-the-riace-case/>, 05. 04. 2023. Consulted on 04. 01. 2024. These decrees are substantial to the above general political, moral and media framework of “criminalization” concerning the public discourse about immigration. It needs to be remarked here that, according to the Italian Constitution, local Prefectures across the Peninsula territory depend directly on the Minister of the Interior (i.e., stemming from the Executive Power), while cooperating and often competing with local Tribunals, regarding administrative competencies (see the dedicated section on the Italian Minister of Interior website: <https://www.interno.gov.it/it/temi/territorio/governo-sul-territorio-prefetture>). Through their actions, they often generate bureaucratic confusion, whereas administrative and judicial prerogatives overlap constantly. In this specific case, while the fact local prefectures had been merely receptive in relation to the Executive is not surprising, that the Locri Tribunal, as a Judiciary local entity, acted basically the same way, is notable. Furthermore, it needs to be stressed here that, at least since the Berlusconi Era, “Law Decrees” had often been used for decades by the respective Governments as tools

aimed at avoiding any proper legislative discussion by the Parliament. In these sense, they are to be regarded, more properly, as executive acts, rather than legislative ones.

<sup>iv</sup> The text of the Locri Tribunal First Degree ruling is available here:  
[https://www.giurisprudenzapenale.com/wp-content/uploads/2021/12/Sentenza-607\\_21-LUCANO.pdf](https://www.giurisprudenzapenale.com/wp-content/uploads/2021/12/Sentenza-607_21-LUCANO.pdf)

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