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978-0-521-55251-6 - Credibility in Court: Communicative Practices in the
Camorra Trials

Marco Jacquemet

Excerpt

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Introduction: men of honor, men of truth

1.1. The pentiti

From 1973 to 1982 criminal organizations in southern Italy controlled, according to the most prudent estimates, at least one-third of the economic activity in the region. In those years Naples witnessed the spectacular evolution of various criminal groups into a loosely confederated cartel known as the Nuova Camorra Organizzata (NCO). By 1981 the NCO had become, according to Italy's Justice Department, one of the most powerful criminal organizations in the nation, providing a living for at least 200,000 people in the Neapolitan area alone. However, in the winter of 1982, the NCO suffered a fatal blow: the desertion of some of its key men who, once arrested, broke the code of silence (*omertà*), turned against their former associates, and collaborated with the Justice Department. These people came to be known as *pentiti* (or "repenters"). They were the first Italian equivalents of the American Mafia's turncoats or stoolies. Thanks to their collaboration, the Justice Department was able to crack down hard on the underground community. On June 17, 1983 (a day labeled by the Neapolitan press as "the Black Friday of the NCO"), the Neapolitan police arrested 856 people. Overall, more than one thousand would later be indicted on the crime of association with a "Mafia-like organization called NCO." The resulting mass trial (or *maxi-processo* as it was called) lasted three years and required the participation of nine different judges and scores of legal clerks, attorneys, witnesses, and military policemen. The legal records – which included audiotapes of the entire proceedings – filled an entire room at Naples' Hall of Justice.

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Apart from the extraordinary number of people tried and the complexity of the proceedings, the trial derived its significance from the pentiti's presence; people like Giovanni Pandico – allegedly one of the men in command of the NCO – who took the stand to testify against his former associates and provide evidence for the crime of association in the NCO against many defendants. During this unchallenged five-day testimony, Pandico reminisced about the actions of one of his own camorristic “godsons,” Alfredo Guarneri. He testified that Guarneri, who once shared a prison cell with Pandico, had asked at that time to be admitted into the NCO. Prior to an induction, said Pandico, an initiate had to prove his courage by executing a *sgarro*, a test of personal violence. So Pandico assigned to Guarneri the task of murdering Pandico's own sister-in-law, whom he believed guilty of having betrayed the family's honor after the death of her husband. Pandico testified that he asked Guarneri to kill and behead the woman, and place the severed head on the grave of his late brother. Moreover, he wanted Guarneri to cut her head off in a precise way, almost surgically, to create a cover-up for the crime. However, according to Pandico, Guarneri did not possess the necessary skill for this surgical operation. So Pandico taught him how: he bought a dozen rabbits from the prison's canteen and with a sharpened spoon showed Guarneri how to sever their head. He gave the novice some rabbits to practice on and when he was sure that Guarneri knew proper decapitation techniques, he sent him on to behead his sister-in-law (a mission, alas, never fulfilled, see 5.3).

Judges, lawyers, and audience reacted to Pandico's story with interest, shock, horror, and bemused curiosity. But did they believe Pandico? Did they accept this story as “true”? Did it carry enough weight to convict Guarneri? How did the judges accommodate this bizarre tale of initiation ritual, honor, and animal dissection within the legal framework?

Pandico's performance (and its spectacular form) was not an isolated instance. The proceedings of the Camorra maxi-trial are filled with many such spectacular testimonies, and, at least initially, the pentiti's performances carried the day in determining their credibility as government witnesses. In the first set of trials, resulting from the 1983 crackdown, the testimonies of these witnesses – including Pandico's rabbit story – were found reliable and convincing enough

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Giovanni Pandico, the “supercomputer” of the Camorra (photograph by Gianni Fiorito)

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to become a significant factor in the convictions of more than 800 defendants. In the appeal, however, a new set of circumstances demanded harsher re-examination and more stringent questioning of the pentiti. The highly inquisitive and skeptical atmosphere of the appeal proved too much for the pentiti to handle. They broke down, their spectacular testimony was carefully debunked, and the court of appeals reversed the previous opinion. The majority of the people who had been convicted solely on the basis of these witnesses' testimony were found not guilty of the crime of association with the NCO, causing a popular uproar with massive consequences for Italian legal policies.

How had this change come about? How had it been possible for the pentiti to be believed in the initial stages of the maxi-trial, only to be rejected later by a different set of judges? How much of the initial assessment of the pentiti's credibility was determined by a tactical alliance between judges and pentiti that produced a referential world assumed to be "true"? What can the pentiti's role as government witnesses tell us about a ruling power's ability to impose its representation of the social world over dominated subjects? What can we learn about the relationship between the environment of courtroom performances, the interpretative frame they create, assessments of credibility, and trial outcomes?

This book, drifting along the imaginary boundary between communication and society, seeks to answer these questions through an ethnographic account of the communicative practices of participants in the two major sets of criminal trials against the NCO (the first maxi-trial and the appeal). It does so by describing in detail communicative structures and procedures used in court in the struggle for control over the representation of evidence.

In this work, I document the shifting relationship between pentiti and the Justice Department – especially trial judges. The confessions the pentiti delivered to law-enforcement agents had to be re-enacted in the courtroom in order to be accepted as judicial evidence for the prosecution's case. In the courtroom the pentiti had to produce a "true" discourse: that is, a discourse recognized as truthful by its recipients. In this quest for credibility, they drew on the communicative strategies available to them – those acquired over the years in everyday interactions within their local networks, which were mainly

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made up of people involved in “state-disapproved”¹ activities. In an unfamiliar role and under stress from close scrutiny, they based their performance on the witness stand upon local communal values – above all, the code of honor. Coming from a moral universe which recognizes credibility on the basis of social reputation rather than on propositional accuracy, they presented themselves as “men of honor” in order to get the Justice Department to acknowledge their credibility not through an examination of the referential content of their testimony, but through the recognition of their high social standing.

However, the combination of their locally based street talk with interactional strategies dictated by the code of honor was ill-suited for successful performance in the courtroom. They came to court with their own epistemological expectations of how to act and react, but these expectations often conflicted with the ones embodied in courtroom communication. The pentiti clashed with the courtroom environment: their presence in the courtroom broke the judicial routine, and everybody, especially the presiding judge, had to readjust and renegotiate his role (since all pentiti and all judges were male, throughout the book I use the masculine form to refer to them). A curious “pas-de-deux” developed between judge and pentito, in which the latter’s credibility came to depend on how a particular judge perceived him, on the pentito’s ability to negotiate the judge’s expectations of his performance, and on the degree of rapport between an individual judge and an individual pentito. These unique interactions between judge and pentito produced a new kind of legal proceeding, where different sets of truth “made sense” only within the framework of this rapport.

The judge–pentito rapport became the determinant axis in the construction of judicial evidence. Depending on the personalities of the participants and the sociopolitical factors underlying this relationship, their rapport was highly subjective and varied over time. In the initial set of trials, the pentiti’s credibility had been jointly produced by the

¹ Since these so called “criminal” activities were not perceived as such by the majority of Neapolitan people, whether they were involved in them or not, I decided to follow a more “emic” description in defining them in opposition to practices approved by the Italian state. Although in other places I will use terms as “illegal”, “illicit”, these qualifiers have been dictated by stylistic concerns and do not portray any personal biases against the work habits of many Neapolitans.

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effective rapport they entertained with the judges. But, in the appeal stage, this credibility was seriously undermined.

Sociopolitical factors undoubtedly played a major role in this change. The judges involved in the initial stages of the 1983 to 1985 maxi-trial (the preliminary hearings and first set of trials), under pressure from an Italian government fearful that southern Italy was on the verge of social chaos, relied excessively on the pentiti's testimony and allowed them great latitude, frequently uncritically accepting their claims. These judges and the pentiti negotiated a common ground from which these government witnesses could comfortably perform, and, as a result, the pentiti's testimonies were relaxed and smooth. Consequently they were more likely to be perceived as reliable witnesses. This perception was then translated into the judgments that construed the pentiti's testimonies as truthful, even in the absence of corroborating evidence. In 1986, on the other hand, the appellate judges, working within a sociopolitical context more concerned with upholding civil rights than fighting crime by any means, established a more antagonistic communicative environment and followed a stricter and sometimes harsher procedure in handling the pentiti. A pentito's unsupported word was judged insufficient evidence to convict a defendant. The appellate judges' careful and more antagonistic scrutiny revealed many distortions and lies in the pentiti's previous testimonies, with the result that the verdicts of the first set of trials were almost completely overturned.

The trials against the NCO allow me to investigate the living connection between communication, culture, and social organization. In so doing, I venture into different fields and tap into various theoretical resources. Anthropological studies of the legal process, sociocultural studies of southern Italy, and communicative studies of courtroom interactions and conflict talk are blended into a single paradigm to explore the role of power, truth, and credibility in courtroom communication. This paradigm provides the basis for the fundamental claim of this work: the judicial determination of truth is a representational construct imposed publicly by groups in positions of dominance to secure control over the production and reproduction of their social power. Although culturally different, the social procedures and goals of judicial mechanisms all around the world are ultimately decided by communicative strategies able to impose themselves over competing claims. Control over the representation of truth is thus achieved in

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public spaces through communicative performances that define the veridical status of conflicting and competing statements, and determine the credibility of antagonistic participants. More broadly, by suggesting that truth is a field of communicative practices, I hope this work will shed new light on the dynamic tension between communicative practices and social structure, a relationship that is here revealed to have an essentially interactive and cyclical nature.

1.2. The judicial zone as public and veridical discourse

Although judicial systems around the world offer great procedural variations, the regulation of justice everywhere revolves around two key features: publicness and truth allocation. The judicial space where words are exchanged and wills are displayed is a public space where norms are applied to conduct and communicative behaviors are judged truthful or unsound. In the hierarchy of coercive mechanisms, publicness has almost the same degree of importance as reciprocity: social control is exercised by all individuals publicly, openly, and in concert.

Among the Trobrianders studied by Malinowski, the public dimension was the single most important factor in conflict resolution. For instance, incest and other forbidden behaviors were viewed as crimes only when they attained a public dimension: only then did the prohibition become operative and the norms applicable. In fact Trobrianders settled their quarrels with an “exchange of public expostulation (called *yakala*) in which the two parties assisted by relatives and friends meet, harangue one another, hurl and hurl back recrimination” (Malinowski 1926: 60).²

² Malinowski mentioned the case of a young Trobriander who had broken the rules of exogamy, committing incest with his maternal cousin, the daughter of his mother’s sister. The girl’s discarded lover decided to vindicate himself: “one evening he insulted the culprit in public, accusing him in the hearing of the whole community of incest and hurling at him certain expressions intolerable to a native” (1926: 79). This led the guilty man to commit suicide. Malinowski observed that “public opinion was neither outraged by the knowledge of the crime to any extent, nor did it react directly – it had to be mobilized by a public statement of the crime and by insults being hurled at the culprit by an interested party” (1926: 79). And he concluded: “If the affair is carried on sub-rosa with a certain amount of decorum, and if no one in particular stirs up trouble, public opinion will gossip, but not demand any harsh punishment. If, on the contrary, scandal breaks out, every one turns against the guilty pair and by ostracism and insults one or the other may be driven to suicide” (1926: 80).

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Publicness constitutes the original domain of justice. Village assemblies and courtrooms are the historical result of this public dimension, in which redressing wrong is no longer an individual's or group's concern, but a communitary effort in a communitarian space. In this public space, profane but nevertheless highly ritualized, conflicting wills clash and confront each other, and competing talk builds public access to information. In all of the descriptions of judicial mechanisms, from the yakala to the Italian courtroom, the judicial space is always filled with words, speeches, stories, even songs.³ People express conflictual wills through communicative performances uttered in public spaces, thus creating public opinion. The multi layered, negotiated voice of the community becomes the voice of justice.

Conflict resolution is a public practice carried out through highly visible discourse, and it is the public, represented by an audience, a jury, or a judge, who gives the final opinion. What is most important in conflict resolution is the public re-establishment of a social order disrupted by the conflict at hand, not necessarily an agreement on the factual origin of the conflict.

The rupture of the social contract is restored by the institution of a ritualized communicative exchange that goes beyond the establishment of the truth of the initial offense. These conflict-solving interactions require that a successful contestant, beyond tapping the system of truth-values ideally in place, must understand the contextualized social positions of all members of the community – that is, their past inter-relations, their structural positions, and their expected relative positioning in the conflict at hand – and be able to represent them in his/her communicative performance. The possibility of selecting from the ample range of social positions those pertinent to the conflict at hand provides individual or communal options which usually preempt the

³ Among the Eskimos, for instance, conflicts are often resolved by song duels, in which the singers insult one another. In order to win one must have the wit to produce a song that is constructed according to the rules of the game and that is more insulting than the one delivered by the opponent. These song duels regulated any kind of conflicts, except homicides. The duel could go on for hours, some times even for years: "the successful singer uses the traditional patterns of composition which he attempts to deliver with such finesse as to delight the audience to enthusiastic applause. He who is most heartily applauded is 'winner'. To win a song contest brings no restitution in its train. The sole advantage is in prestige" (Hoebel 1954: 93). See also Bloch 1975, Brenneis and Meyers (eds.) 1984, Just 1988, Watson-Gegeo and White (eds.) 1990, for a more recent discussion on conflict-solving discourse.

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recourse to tougher mechanisms of control, such as decisions implemented through raw force.

Conflict talk, even the more formal type found in the courtroom, is not regulated so much by legal norms and rules as by concerns for social relationships. The regulation of justice must not be perceived in terms of a static structure leading to a rational truth, but as a field of social practice in which rules and procedures are followed and manipulated, used and negotiated, and, if necessary for the restoration of order, suspended. As Just put it: “the representation of the truth is not necessarily congruent with phenomenal events, but is an accurate portrayal of the relevant social relationships, communal interests, and moral principles” (1988: 48).

Truth is a negotiated practice worked out through interactions in which participants – plaintiffs, defendants, judges and juries, and the wider community – by bracketing factual evidence install a truth-believing contract, or, in Greimas’ (1982) words, a “believing-to-be-true” contract. The proper functioning of this contract depends, in the last analysis, on the community’s will to solve the conflict. The community does not solve the conflict by evaluating competing claims as “true” or “false,” but by evaluating them as effective or ineffective in restoring social order. Effective discourses are then “believed as true” by the community. Competing claims are not true – or false – discourses, only discourses having different truth-building effects.

The discourse practices of judicial ritual are the bases upon which the apparent contradiction between rational truth and effective communication are resolved. Public speakers – lawyers, orators, mediators, disputants, and so on – apply such practices, recognizing that courtroom questioning techniques are primarily used to win, not to help the court to discover facts.⁴

Truth is always assessed in a negotiated process carried out mainly through talk. Participants’ ability to deploy the proper communicative devices depends on the play of social interactions between them, on their relative relationship with each other, and on their structural

⁴ A single quotation will be sufficient: “The process of reducing human events to structure, vocabulary and detail is to inevitably distort those events. As long as they will be distorted anyway, you might as well try to distort them in favor of your client. All of this may seem very far from the notion of trial as a search of truth. But your job is to advocate for your client; let the factfinder discover where the truth lies” (Bergman 1982: 227).

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position within the community as determined by their social status and relative power.

1.3. Truth and power in communicative performances

In institutional settings, people converse in a context full of conditions and procedures that govern the establishment of the truth-believing contract and attach to it specific effects of power. This context is always a fighting arena where people struggle to establish what is believed true and what is believed false, gaining power through their ability to evoke and use relevant domains of knowledge to attain an authoritative voice (Bourdieu 1977a, Foucault 1981).

Conflict talk in institutional settings calls into question any theoretical paradigm solely based on communicative cohesion and cooperation, and forces us to look at how participants undermine conversational flows and intentionally breakdown conversational coherence. While the participants' communicative involvement is maintained in conflict talk by communicative cooperation, these same participants use conversational strategies that recognize the antagonistic nature of communicative exchanges in institutional contexts. In these settings, the social and linguistic force of the various participants is usually asymmetrically distributed. Disputants deploy procedures that endow them with better opportunities to talk, establish certain regions of knowledge as authentic and meaningful at the expenses of others, and link this authenticity with systems of power that produce, sustain, and reproduce this control over knowledge. As Foucault (1981) pointed out, this will to truth is part of the local technology of power that sets up the conditions for the communicative battlefield where the social order is produced, tested, and manipulated. Thus, our preceding discussion on truth has to be merged with a discussion of power, to allow for a unified interrogation of the dynamics of the representation of the world in moral terms.

The practices that govern the judicial process emerge through veridical discourses that restore social order in keeping with the needs of the ruling powers. The legitimacy of these veridical discourses is then authenticated through representations of the social order as "true" and "natural." Thus the process of hegemony and control over the representation of truth is not fought over specific "facts," but over the criteria for reaching a judgment. These representations do not