

## Controlling political corruption in Italy: What did not work, what can be done

Donatella DELLA PORTA and Alberto VANNUCCI

Donatella della Porta is professor of Local Government at the University of Florence. Alberto Vannucci has a post-doctoral grant at the University of Pisa.

Incentives to corruption grow, as they do for any other illegal activity, the less the probability of being discovered and punished.<sup>1</sup> We can distinguish mechanisms of control *internal* to the state apparatus (control bodies, commissions of inquiry) and *external* (the mass media, public opinion, international organizations). Both forms of control are nonetheless problematic. Internal controls suffer from a congenital weakness: the *vulnerability to collusion between controllers and controlled*, to the detriment of the principal (Elster, 1989). External controls also present problems because of the "public good" character of their results: the incentives for citizens to combat illegal behavior may prove insufficient (Benson and Baden, 1985: 401).

In Italy, the control mechanisms were for a long time ineffective. For more than forty years, the history of controlling political corruption in Italy has consisted of political cover-ups and obstruction rather than of successes.<sup>2</sup> Some of the major scandals which have erupted in Italy's recent past have been produced not by control agencies but by the diffusion of compromising information (sometimes originating from the secret services) on the part of politicians with something to gain from implicating others.<sup>3</sup> However, the frequency and magnitude of the scandals through which political corruption has been brought to light (only to be swiftly covered up again in many cases) has noticeably increased in the past twenty-five years, culminating in the recent political upheavals caused by the "*mani pu-*

1 According to the economic theory of crime, besides the probability of being discovered, the decision to undertake a given illegal activity depends on the severity of punishment expected and other variables, such as income to be derived, expectations of gain in other illegal activities and the propensity to unlawful action (Becker, 1968: 169).

2 Corrupt politicians ensured their safety from incrimination by refusing to grant authorization to proceed against parliamentarians under investigation, or by acquitting implicated ministers in the Inquiry Commission, a body itself composed of politicians. It is perhaps not surprising, then, that up to 1987 only 19% of the requests for authorization to proceed made by the magistracy were accepted by Parliament (Cazzola, 1988: 133) and of 400 requests, only one minister was indicted. The cases of the secret funds of the IRI and the *Italcasse*, used for clandestine financing of politicians, provide illuminating examples in this respect.

3 In the scandal which erupted in 1961 over irregularities in the construction of Fiumicino airport, for example, "not even the Minister of the Interior escaped attempts at blackmail, carried out by the secret services using their dossiers and inspired by other Christian-Democrat leaders" (Galli, 1983: 90-1).

*lite*" ("clean hands") investigations of corruption. <sup>4</sup>On February 17th 1992, the most serious political crisis in the history of the Italian Republic began in Milan, the economic capital of the country (and at one time considered its moral capital also), with the first of a long series of arrests of prominent politicians and functionaries, from virtually all the national political parties, accused of committing such serious crimes as extortion, corruption, receipt of stolen goods, criminal conspiracy and association in organized crime. The inquiries of Antonio Di Pietro, and who is now Minister of Public Work, the Milanese Assistant Prosecutor who would become a popular hero in Italy, resulted in the arrest of Mario Chiesa, an administrator belonging to the Socialist Party (PSI) and President of one of the city's public agencies, the *Pio Albergo Trivulzio*. The investigation subsequently mushroomed, laying bare the true nature of public administration in what was to become known as *tangentopoli* (bribe-city). From Milan the investigations spread also to other northern and central cities, and from 1993 reached into the south of the country as well. Initially concentrated on local politics, the investigations quickly extended to the uppermost levels of major private and public enterprises, implicating important government figures as well as the secretaries of the various political parties. In a matter of months, the magistracy had opened a breach on a scene of corruption and political illegality without precedent in the history of the Western democracies, involving the entire political class of the country and broad sectors of its business community. To cite only a few statistics, on May 18th 1993 (just one year after the election of a new parliament) 205 of a total of 630 deputies and 81 of 326 senators were under investigation, albeit not only for offenses against the public administration (*Sapere di non sapere*, 1993a, 1993b). By the end of 1994, the number of suspects involved in the investigations had already reached more than 7,000, against 338 ex-deputies, 100 ex-senators, 331 regional, 122 provincial and 1,525 communal administrators, and 1,373 public functionaries (*L'Unità*, 7 December 1994, p. 4), with about 4,000 preventive custody orders issued by the investigating magistrates (*Samarcanda*, 15 November 1994).

These judicial investigations of corruption, besides sanctioning what both media and politicians have come to describe as the crisis of the "First Republic", provide an enormous amount of material for the analysis of what can be defined - paraphrasing Bachrach and Baratz (1962) - as the "other face of power". In fact, reviewing the information which has emerged from the "*mani pulite*" inquiry since 1992 together with that slowly accumulated in earlier judicial inquiries, it is possible to reconstruct certain aspects of that "invisible" level of Italian politics which has had such an important influence on the "visible" one (Pizzorno, 1993).

As we will see in what follows, an ensemble of clandestine political markets created a structure of invisible norms more powerful than the laws of the state. The latter could be violated with impunity, while anyone who challenged the conventions of the illicit market would meet with certain punishment. Those occupying the principal posts in the state administration moved around easily within this pervasive system of hidden exchange, legislating and directing the affairs of the state and of public entities. At the same time, they acted as guarantors for the functioning of the illegal markets which directed every public action of any eco-

<sup>4</sup> The official statistics, which nonetheless only provide a partial picture of the phenomenon, show a gradual increase in the number of offenses against the public administration (such as corruption, extortion, embezzlement and abuse of office): 466 in 1970, 557 in 1980, 1,111 in 1985 and 1,198 in 1990 (Censis, 1992: 102).

conomic importance. The careers of politicians and public functionaries depended on their ability in creating clandestine contacts and investing politically the proceeds of corruption. On the supply side of the market, the skepticism of citizens and businessmen as to the impartiality and efficiency of public action augmented the demand for purchasing favors. In these circumstances, an equilibrium developed in which the interests of both politicians and businessmen lay in accepting the status quo, receiving or paying bribes, rather than in denouncing the situation of illegality. In this way, individual checks on corruption were weakened, despite the fact that single actors might be aware of the disastrous effects of such behavior for the collectivity.

The judicial investigations have brought into light the main phenomena that increased the rewards of political corruption, and reduced its risks. While in other work we dealt with the former (della Porta, 1992; della Porta and Vannucci, 1994), in this paper we will focus on those mechanisms which "blocked" the instances of control, permitting the development of political corruption.

In what follows, we will start by discussing the reasons why the "external" controls on corruption--by the public opinion, and the political parties--did not work in the Italian case. Attention will thereafter turn to the mechanisms that jeopardized the system of "internal" controls in the public administration, focusing then on the reasons why a single actor--the judiciary--successfully assumed all the burden of control and punishment of administrative misconduct. Finally, we will review some suggestions for the prevention and control of corruption. In our presentation, we will refer, in an illustrative way, to our research on political corruption in Italy, a research based on judicial documents concerning 40 episodes of corruption; the reports of Parliamentary Inquiry Commissions; the requests of judicial action against Members of Parliaments; and the daily and weekly press as well as about fifty interviews with business men and politicians (della Porta e Vannucci, 1994).

### **I. The "external" controls on political corruption: The role of political competition, the media and the public opinion**

In a democratic system, a decisive factor should deter "bad behavior" by politicians in power, limiting the willingness of public agents to indulge in illegal activities: political competition. The competition between different parties and individuals aspiring to govern (in order to realize objectives defined by contending programs), in fact, should help those who are most honest or more willing to denounce the illegal actions of others. Defeated parties and politicians should have a definite interest in exposing the misappropriation of resources on the part of those in government. In this way, citizens can acquire the necessary information to inflict electoral retribution on parties indulging in illegal business at their expense.

The dynamics of the Italian political system, however, have powerfully limited this possibility. For over forty years, the absence of turn over in the national government of the country has represented the principal "anomaly" of Italian democracy (among others, Pasquino, 1985 and 1991). The limited expectation of change in the short term have made the discovery and denunciation of corruption more difficult. The strong ideological identifications of the electorate, moreover, has largely circumscribed its mobility, rendering voting behavior impervious to political scandals. The main opposition party, PCI, was strong enough to challenge the majority effectively, but not to take on direct responsibility for go-

vernment. On the government side, the absence of turn over weakened the capacity for planning, favoring instead the immediate interest in dividing up and occupying public offices for clientelist ends [*lottizzazione*]. The opposition's strength could however not be ignored in either general or distributive political decisions precisely because of the weakness of the government coalitions and the fractio-nating of the parties. Continuous negotiation was necessary to avoid the danger of paralysis through obstructionism and head-on conflict. At the same time, the opposition (with no immediate prospect of winning power) found a way of "go-vernning" from its minority position. Sharp verbal and public dissension was ac-companied, in reality, by a practice of under-the-table negotiations and deals (Piz-zorno, 1993). This related in the first place to legislative activity <sup>5</sup> but, from a cer-tain moment, included also the division of minor government posts. A tenacious "consociational" equilibrium was thus created: formally opposed political forces became part of an hidden network of relationships. In most cases, the opposi-tion exchanged a silence on corruption for political influences, while the various parties of the governmental area actively shared bribes, developing therefore a connivance relating to their respective illicit activities. According to the actual re-sults of the investigations, in a few cases--such as the ENEL (*Ente nazionale per l'energia elettrica*)--also the opposition participated in the distribution of the bri-bes. The consociational agreements eliminated, even inside the elective organs, the normal controls between the majority and the opposition.

In the management of the public and semi-public agencies and in the enter-prises with public capital, members of those very parties that had nominated their protégés inside the administrative bodies were in charge of the political con-trols. As one of them explained, "In practice and beyond the bureaucratic proce-dures that were legally established, the names listed [for the nomination in the administrative body] were those chosen by the party secretaries, that is by those who are the final receivers of the bribes" (AA.VV., 1993: 36). Moreover, in the pu-blic enterprises new employment and fall-back places were created for a profes-sional political class in constant expansion, safeguarded from electoral setbacks by the power of appointment held by the political leadership. <sup>6</sup>

The intrusion of political influence appeared particularly dangerous in the field of the media. Investigative journalism, in fact, constitutes an essential deterrent to corruption. Besides contributing directly to the exposure of illegal practices the media also represents the *filter* through which knowledge of corruption is divulged. The public's idea of the gravity of a scandal (and therefore its possible electoral consequences) depends on the *quantity* and the *kind* of information provided by the media. Links between politicians playing institutional roles and the press and television, whether the result of secret understandings or of prop-rietary pressure, represent a serious contamination of the democratic political

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5 In the first five legislatures of the post-war period, the average percentage vote in favor of laws passed in parliamentary commissions was 91%. The percentage vote in favor in the chamber itself was not unanimous, but nevertheless high at 76.5 per cent (Di Pal-ma, 1978: 85-9). The difference between commissions and chamber is to be explained by the greater publicity of voting in the latter, which would have made clear pre-arranged agreements difficult to justify before the electorate.

6 In Italy, the elected political personnel reaches 160,000 units, the second highest num-ber in Europe (after France). The number of people with an income mainly related to po-litical activities is of about 2,000,000 (Bettin and Magnier, 1991; *Panorama*, 19 July 1992, p. 44).

process (for instance, Rossi, 1993: 107). Case studies on political corruption in Italy showed that, especially at the local level, the press tycoons and the corrupted politicians were linked together by common interests in legal and illegal business (for instance, della Porta, 1992: 272-280). As for the television, for a long time in Italy the monopolistic public channels were under a strict political control, which thwarted any attempt to develop an investigative journalism (Cazzola, 1988). The development of private channels, often under political "tutelage", did not change the situation.

The control of the public opinion on the functioning of the local administration is, in general, also limited by the attribution of the power to spend money without a corresponding power to collect taxes. In general, this creates a sort of political irresponsibility, with the local administrators who had a vested interest in obtaining as much public resources as possible from the center, even if these resources were bounded on provisions of expenditure which were not needed at the local level. In Italy, "High cost and inefficiencies summed up with a strong fiscal centralization and the mechanical method of retributions. Centralized credits and decentralized expenditure decisions: the fiscal revenues of the state constitutes more than 92% of the total fiscal revenues in the public administration, while 52% of the state current expense (net from interests) is formed by the transfers to all other public agencies (state controlled bodies, regions, provinces, and communes). This brings about a fiscal deresponsabilization of the decentralized bodies, which decide on most of the public expenditure" (Cassese, 1994: 16).

## II. The system of administrative and bureaucratic control

According to Sabino Cassese (1992), ex-Minister for the Public Administration, the prime responsibility for the proliferation of political illegality in Italy rests with the system of administrative controls. Controls inside public organizations have all but fallen into disuse because "they were contrary to the interests of the politicians who should have been leading the administration but who instead were using it to their own advantage". As to the other sources of control, they have been frustrated by a lack of resources and the "piling up" of overlapping controls, without any real verification of their effectiveness, as well as by the politicization of the controlling bodies.

In general, an uncorrupted bureaucracy represents an essential watchdog on, and counterweight to, the activities of politicians. Civil servants are often in a position to denounce the illegitimate actions of politicians, or they can refuse to carry out the measures desired by the latter. For their part, the politicians define the essential lines of the public administration's activity, influencing both the opportunities and risks of bureaucratic corruption. In Italy, several elements of distortion in the relationship between politicians and bureaucrats emerged. First of all, criticisms of the public bureaucracy addressed its limited capacity for an autonomous action. The behavior diffused in the public administration has been defined as "oriented to let it be, postpone to the next day, wait until the others will demand, ready to bargain. Therefore, the antithesis of a weberian model of administration. A type of administration founded not on the legal-rational power, but on the contractual-conventional one" (Cassese, 1994: 17).

To explain the tendency of the public bureaucrats to enter the corrupt market we should consider that the "political culture" of public agents or, in other words, the presence of "*esprit de corp*" and "sense of state", influence the moral costs of illicit activity. If the recognized moral criteria of the public organization to which

the individual belongs are analogous to those of the public authority, the potential *exposure* consequent on involvement in corruption will appear particularly costly. The internalization of norms depends on so-called *pride in position* and the prestige of public service: the more public roles are sought after and socially rewarded, the less desirable will appear the violation of group norms. Compared with the German, British or French public administrations, which have traditionally shown a strong *esprit de corps*, the Italian bureaucracy is characterized by a generalized lack of the sense of the state, related to the importance of political protection (or, in the best of cases, seniority). In a comparative perspective, the Italian bureaucrats emerged as "legalist, illiberal, elitist, hostile to the uses and practices of the pluralistic politics, fundamentally non democratic" (Putnam, 1973), as well as with a mainly juridical formation (Aberbach, Putnam and Rockman, 1981: 2). A limited specialization was combined with the structural exclusion of the administrative leadership from the ruling class, which produced a vicious circle: "a) the high bureaucrats, excluded from the circles of those who take the decisions, take a defensive stance, looking only at increasing their status; b) the 'political class', in the attempt to contrast the deriving situation, adopt inefficient and counterproductive remedies; c) the high bureaucrats, at their turn, seek a refuge in legalism, using it against the 'intrusion' of politicians; d) the political class multiplies the laws in the attempt to lead the administration...; e) at the end of the circle, the result is an increase in the viscosity of the procedures and administrative inefficiency" (Cassese, 1983: 64).

The limited capacity of initiative of the public bureaucracy is therefore combined with a large veto power, exercised through omissions and delays in the application of the law (Mortara, 1974). This veto power was in fact used in several occasions by corrupt bureaucrats in order to impose bribes in exchange for a "faster" response to the needs of the entrepreneurs. To accelerate a "*pratica*" (a dossier), to forget about a control, to sign a payment bill were all "favors" that could (and were) sold on the market of the petty corruption (for several examples, della Porta and Vannucci, 1994: 255-268). The trial records show that the administrators were so aware of their differential power on the different enterprises that they calculated the bribes according to how much the entrepreneurs needed a fast procedure. To provide just an illustration, the managers of the Milanese "Provveditorato alle Opere Pubbliche" demanded 1% of a contract as a bribe to an entrepreneur who had a solid financial position (and could therefore afford the "waiting") and 2,5% to another entrepreneur who instead was in a chronicle deficit, and for whom each delay in the payment meant high passive interests to be paid to the bank (Public Prosecutor's Office in Milan, 1991).

Besides these autonomous spaces for collecting bribes directly from the entrepreneurs, however, the bureaucrats had often the chance to enter into complex-and economically rewarding--negotiations with the politicians. The Italian bureaucracy is, in fact, characterized by a process of *political fragmentation*: "The lack of turn over and the lengthy permanence in power of the same political personnel has led to forms of vertical alliances between politicians and bureaucrats which transcend the traditional separation between political personnel on the one hand and civil servants on the other. Here too, the cement has been provided by corruption, or at least by the use of public resources for private or partial ends" (Pizzorno, 1992: 59).

The security of a career formally based upon seniority--and therefore automatic (Ferraresi, 1980)--did not allow to reward efficacy and loyalty to the institution. At the same time, political affiliation became a precondition for enjoying a series of privileges. The intervention of the political parties on public bureau-

cacy did not take the form of a visible "spoils system" based on ideological congruence--which should help policy implementation--but of a, very pragmatic, "*lottizzazione*" (or party allocation of public positions), within clientelistic relationships: "on the one side, the bureaucracy accepted a 'low profile' and a scarce external visibility. There is a kind of 'yes, minister' bureaucrat Italian style. But, differently than in the English model, the Italian administration accepted a diminishment in its own role. Instead then administering the country, it ended up administering itself" (Cassese, 1994: 14). The relationship between bureaucratic and political elites are therefore characterized by a clientelistic exchange: the contacts between them "in most cases refers not to policy elaboration, but instead to administrative decision of a limited range, sponsored by politicians for clientelistic, or at least particularistic reasons" (Guarnieri, 1989: 227). To understand to which extent the public administration formed a privileged field for clientelistic practices, it suffices to recall that the entrance through temporary contracts, followed by the so-called "*titolarizzazione*" (that is, the assignment of tenured positions, without regular competitions), involved 60% of the public employees (Cassese, 1994: 15).

An intermediary class of bureaucrat-politicians, whose first loyalty lies with the political parties that promoted their careers, has thus developed and expanded: as Cassese noticed, "In the local structures, there was the development and consolidation of an intermediary class, a mix of political-bureaucrats, of bureaucrats loyal to a politician, of unionists-politicians-public administrators etc. that do politics, govern and administrate: that it, a class that exercises three powers that should be kept separate.... it is non clear anymore where politics ends, and where administration starts" (1992). These "political-bureaucrats" have generated a dense exchange network with leading political figures in the public administration. In order to obtain easier career advancement, greater decision-making power or to collect bribes and other private advantages, bureaucrats require the protection, or at least the abstention from supervision, of their political superiors. In return, they can offer the services of their office to particular private actors or divide the proceeds of illegal activities with their political protector. In fact, the Italian bureaucracy has traditionally demonstrated a conspicuous permeability to interest and pressure groups where these have close links with the governing political parties (La Palombara and Poggi, 1975). The politician, for his part, can devote himself to illegal activities with a high probability of immunity thanks to the complicity of the bureaucrat.

Our research indicated in fact that politicians and bureaucrats cohabited in the corrupted market. As a Milanese entrepreneur explained: "The aldermen, who are politically nominated, deal with the big business; and, on purpose, they leave to the top bureaucrats the smaller business so that all of them can work without troubles in its own field" (Fipe, 1992: 13-4). However, corrupt politicians and corrupt bureaucrats also collaborate on the market of the "big illegal business". On this market, the bureaucrat is a necessary ally for the corrupt politician: in fact, its help is necessary for the implementation of the political decision that have been paid through bribes. According to the trial records of the "Mani Pulite" investigations, the politicians acknowledged "the need to have 'reliable' administrative managers that can implement the political desires of those who have the majority in the Administrative Committee" (AA. VV., 1993: 52). If the party leaders decide upon the attribution of public contracts, they however need the administrative structures in order to implement their decisions. In particular, by reducing or abolishing altogether the internal controls, the corrupted bureaucrats allow for the formation of the political rents from which the bribes are drawn.

Besides that, thanks to the stability of his position, the bureaucrat can offer to the politicians additional favors, reducing the risks of the illegal exchange by taking care of the contacts with the entrepreneurs as well as of the "coordination" of the distribution of the bribes to the various public actors. To take just an example, an employee of the local administration in Bari efficiently worked as brokers between the entrepreneurs, other bureaucrats, and the politicians of different parties. According to the judges, he invited the entrepreneurs to take part in the competitions for public contracts, and even organized the participation of fake competitors in order to manipulate the procedures. He was also the only one who was entitled to collect the bribes, and administered them with "absolute precision". In fact, each illegal payment was distributed to the members of the local council respecting the proportional weight of each party: 50% to the Christian Democrats; 34% to the Socialist Party; and 16% to the Social-Democrats (Tribunal of Bari 1985a and 1985b; for other illustrations, della Porta and Vannucci, 1994: 268-284).

The consequence of the political influence on administrative controls were all the more pathological in the case of the Regional Control Committees (CORECO), responsible for the administrative control on the local administration. Their members, the majority of whom are nominated by political organs, have frequently revealed a greater propensity to collude with the politicians to whom they owe their nomination than to control them. As the Prefect of Milan Carmelo Mancuso noticed, "the negative experience of the CORECO, which are heavily conditioned by politics, and the extreme fragmentation of procedures and decisional centers created a thousand occasions for corruption and diluted, and even dispersed, the moment of responsibility" (*L'Espresso*, 14 October 1990, p. 10).<sup>7</sup> *At the same time, there was a growth in the power of the politicians upon the private agents, who could not rely upon impartial controls in their legal conflicts with public agencies led by party-appointees.*

Internal controls are made even more difficult by two other characteristics of the Italian administration. The first one derives from the rapidity and extent of the growth of public spending. If we assume a certain rigidity in adapting to new conditions on the part of public organizations, procedures and control agencies, rapid growth in the volume of resources offers public agents greater opportunities for illegal appropriation. Given the rapid extension of the "territory" to be covered, administrative and legal controls become more difficult (Becker, 1968; Stigler, 1970). If the resources to be spent exceed the structural capacity of administration of a public body, the discretionary powers of functionaries increase considerably due to the perpetual "emergency" situation with which they are confronted. Such "administrative traffic jams", and the ensuing increase in "exceptional" discretionary power in decision making, have occurred frequently in Italy (della Porta and Vannucci, 1994). They can be explained, at least to a certain extent, by the fact that Italy is among the principal democracies which presents the highest relative increase in levels of public spending (Rose, 1988: 318).

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7 The former mayor of Reggio Calabria, Agatino Licandro, condemned for corruption, provides some illustration of these mechanisms: "Somebody at the CORECO prepared and manufactured the acts for the entrepreneurs-corrupters, then passed them to this or that town councilors, so that they could be approved by the city council.... Corruption is the norm.... eventually the political bosses arranged things in order to send to the CORECO people who could play their game" (Licandro and Varano, 1993: 68).



We should add that, compared with France, the United Kingdom, Sweden and Ireland, the Italian legislation presents a lower level of *importance*, as measured by the number of persons affected, the resources distributed and the kind of redistribution involved. The legislative initiatives regarding decisions of limited significance are those more likely to acquire a notable *exchange value* in the corrupt market, since they have "to satisfy a multitude of extremely sectorial and clientelistic demands" (Di Palma, 1978: 107).<sup>8</sup> Sectional and micro-sectional initiatives prevail, and so-called "mini-laws" proliferate, allocating particularistic benefits to groups of small dimensions while spreading widely the external costs.<sup>9</sup>

In evaluating occasions for corruption a further, decisive condition must be considered: the nature of the restraints and controls on political and administrative activity. Systems of *civil law*, such as the Italian one, are characterized by a strong suspicion of discretionary power, which is harshly limited by a series of intersecting *procedural controls*, that is to say by a rigid and extensive predisposition of norms for putting into practice and verifying each individual action. These controls are mainly formal ones, addressing the respect of procedural rules, while there is a lack of substantial controls on the costs and quality of the product. In Italy, in fact, "Preventive controls occupy too large a sphere, and ask for a drastic amputation. At the present stage, they are suffocating, formalistic, and to a good extent insufficient to insure a 'good administration'.... Successive controls are few and ill-organized" (D'Auria, 1993: 233). Moreover, "as far as the local finance is concerned, a model of preventive controls remains intact, without any possibility of controls ex-post" (Guccione, 1993: 28). To summarize, "The controls that are exercised on the administration are the so called 'conformity controls', that aim at controlling if a certain action was initiated and developed in the respect of predetermined parameters, and not that that action reached the expected aim (in other words, it is taken for granted that, if the technical norms are respected, the realization of the aim follows automatically)" (Freddi, 1992: 225).

This might seem an effective model of controlling corruption. However, it presents a weakness which has been manifested with particular evidence precisely in Italy. The existence of a complex system of prescriptions for and constraints on the behavior of public agents, and the resulting uncertainty on the norms to be applied, can end up by aggravating inefficiencies and delays, favoring the factual reintroduction of discretionary power. As the former Italian Premier Giuliano Amato observed, "The procedures that govern public behaviors remained based on the alternative between a formalist warranty and a derogatory discretio-

8 Moreover, the wider the distribution of benefits expected from a given measure--the closer, that is, it approximates to the general interest--the greater the difficulties faced by potential beneficiaries in exerting pressure on the power that decides. In other words, a correlation exists between the distribution of public resources and the individual convenience of corruption. In fact, public action allocating individual benefits is more easily translated into monetary terms. In the opposite case, those who wish to corrupt are confronted with the problems of collective action described by Olson (1983). Individually, it is more reasonable for each to wait until others, more eager to corrupt, take the initiative thus relieving them of the costs, given that the benefits of the measure "purchased" will fall indiscriminately to all.

9 For instance, 88% of the bills presented in the Italian Parliament have positive effects on direct receivers that, in 45.5% of the cases, are members of homogeneous and small groups of individuals (Di Palma, 1978: 119-123).

nality, two faces of the same coin" (Amato, 1980: 95). The existing regulations foresee a multiplicity of controls *ex ante*, with a merely formal character, that enormously increase the time of the procedures, justifying the recourse to discretionary, "emergency" mechanisms, that at their turn hamper substantial controls and facilitate corruption. This *vicious circle of guarantees* (Pizzorno, 1992: 55) has been encouraged by the traditional failings of Italian administration. Lengthy delays weighing on citizens using public services end up by legitimating *ex post* a greater discretionary power of public agents. In this area of decision making, opportunities for illegalities will be greater because *extraordinary* discretionary power, not foreseen by the regulations, is more difficult to control.

### III. The changing role of the magistracy in Italy

Given that illegalities committed by public agents are often also breaches of the criminal law, the "natural" adversary of corrupted and corrupters is the magistracy. The latter performs, in fact, a decisive function in the control of corruption: any eventual punishment of corrupted politicians in political terms is tightly bound up with the existence and visibility of a criminal prosecution. The efficiency of the magistracy marks the degree to which indulging in political corruption is dangerous.

A first characteristic that influences the effectiveness of the magistracy intervention is the *quality of the legislative production*. In Italy about 150,000 laws are currently in force, compared to little more than 7,000 in France. The average number of laws passed annually in Italy is 588, compared with 93 in France, 148 in Great Britain and 452 in the United States (Rose, 1988: 20).<sup>10</sup> The *inertial force* of laws remaining in force for an indefinite period after their emanation increases exponentially the quantity of legally binding regulations to be obeyed. This creates an escalation in the number of contacts between individual citizens and public entities as a result of the extended range of pertinence of laws and regulations. As a consequence, there is a proportional increase in friction, confrontation and contention between citizens and the public apparatus. The statistics on the demands for administrative justice confirm this trend: in 1992, more than 85,000 appeals were presented at the regional administrative courts, the TAR (*Tribunale Amministrativo Regionale*), with an increase of 169% on 1977. This overload of demands was addressed towards institutions which were not prepared to sustain it: the difference between appeals and decisions increased of three times in the last fifteen years, with an average duration of the proceedings of 3,077 days (Arabbia e Giammusso, 1994: 283-4). At the same time, the risk increases of normative overlaps, assimilation, partial abrogation, exceptions and contradictions needing to be resolved at judicial level increases. In such a context, the rules of the game predisposed and guaranteed by the state lose their role as a stable institutional framework within which transactions can take place. Instead, they become a point of departure for successive rounds of negotiation between centers of political and economic power, from which the rules themselves emerge altered (Fipe, 1992: 64-5). Uncertainty thus grows regarding the effective extent of individual property rights and, in consequence, regarding the content of mar-

<sup>10</sup> These data refer to the seventies; according to more recent revelations, the average number of laws passed annually in Italy from 1987 to 1992 is 295 (Arabbia e Giammusso, 1994: 272).

ket relations (Sgubbi, 1990: 61). This high uncertainty makes the tasks of the judiciary more and more difficult.

As far as political crimes are concerned, the efficacy of the magistracy is also, to a large extent, determined by its degree of independence from political authority. If at the formal level the magistracy is a separate power, with a neutral attitude towards politics, in practice most democracies tried to produce mechanisms of political interference in the activities of the magistrates. This interference may be oriented in two directions: the repression of the political opposition, and the tolerance of administrative misconduct. In the Italian case, two apparently contradictory peculiarities emerge in the relationship between the judges and the political sphere: on the one hand, a very high formal degree of independence; on the other, a high level of "politicization" of the judges.

Some institutional and normative features can be quoted to explain both characteristics. The formal independence from the political system is due to the implementation of constitutional principles that had to avoid that the magistracy could again become, as during the fascist regime, a "long arm of the government". In particular, since 1959, the Consiglio Superiore della Magistratura (CSM, the Supreme Council of Judges) took over several tasks which once had been assigned to the bureaucratic élite, in particular career and disciplinary decisions. A system of promotion based mainly on years of services reduced the possibility to blackmail the most "troublesome" judges. In many occasions, the CSM worked as a corporatist actor to defend and increase the autonomy, status, and wages of the judges. We should add that, since both judges and prosecutors are part of the same profession, and may freely interchange roles, the latter enjoy the same degree of autonomy from the government of the former. Another principle that limited the political interference was the formal rule of compulsory prosecution for all reported offenses. Since the law imposes to the Italian judges to prosecute any crime, "the doctrine of compulsory prosecution prevented the government from raising consideration of public interest even when the investigations came to involve leading government figures and the Minister of Justice himself" (Nelken, 1996: 196). Differently than in common law countries, the recruitment in the magistracy-based on competitive examinations open to all those who have a university degree in Law--also increases the autonomy of the judges.

The formal independence is combined however with "a strong tendency to the development of contacts and connections between the magistracy and the political environment, between judges and the political environment, between judges and parties, between judicial fractions and party, or party fractions" (Guarnieri, 1991: 25-6). If the above mentioned characteristics explain why, in a cross-national comparison, the Italian magistracy enjoys very high levels of formal independence (Guarnieri, 1992), others help to understand the "politicization" of the Italian judges. First of all, the CSM is a body composed for two-thirds of representatives elected by the judges and for one-third from politically appointed representatives. This composition brought to the formation of semi-party lists for the election of the judges-based in the beginning on a first past the post electoral system, and since 1975 on a proportional system. Several matters, such as the nomination of the General Prosecutors in the most important cities, the distribution of scarce resources, and the punishment of politically "rebel" judges, became highly political issues on which the judges and lay representatives split on a left-right cleavage. The same kind of alliances were then maintained even for decisions referring to the careers of individual judges, that had therefore an incentive to align with one party or the other. An additional factor which made the judges more sensitive to external pressure was the availability of (rich) economic

compensations for "extra-judicial" arbitration that were used to settle conflicts among entrepreneurs or between entrepreneurs and the public administration, a mechanism that often replaced the inefficient system of the Civil courts. We should add that the principle of the "obligatory prosecution of crime" could never be really implemented.

In the history of the Italian Republic, these institutional characteristics interacted with broad social and cultural changes producing different results in different phases. In the fifties, the magistracy aligned with the government. A sort of "class collusion" (Pizzorno, 1992: 61-65) pushed the judges, who were mainly drawn from the upper class, to sympathize with conservative positions. Not only, in fact, most of the "request for the permission to proceed" presented in Parliament referred to the opposition (Cazzola, 1988: 130), but they were oriented more against "opinion crime" than against "appropriation crimes" (Cazzola and Morisi, 1995: 87). Occupying the top hierarchical positions, the senior judges, socialized during the fascist regime, had the power to punish any deviation from their standards. In fact, until the 1960s, the activity of the magistracy seems to have followed prevalently the interests of the political forces in government.

Only in the sixties, the implementation of the CSM reduced the power of the high hierarchy, paving the way for the political splits of the seventies. In the seventies, in fact, a different "type" of judge entered the magistracy. While mass education opened the way into the university also to the lower classes, and the protest cycle of the late sixties influenced the political attitudes of a generation, the magistracy lost status in comparison with the economically more rewarding private professions, losing also attractiveness for a part of the upper class. In a climate which had been polarized by a wave of social and political conflict, also the judges "split" on different ideological positions. Some of them openly supported right-wing positions, contributing--according to their critics--to the "insabbiamento" of the trials against the illegal behavior of politicians and secret service agents.<sup>11</sup> However, the left-wing component became stronger and more and more audible. In the judiciary system, the so-called "*pretori d'assalto*" often took anti-governmental stances on labor and environmental issues. At the same time, especially in the fight against terrorism and the Mafia, the magistracy exercised a proactive power, which "surrogated" for a weak political power. The abnegation of many judges, who often paid with their lives their defense of the Italian democracy, was contrasted with the collusion of a divided political class, and the magistracy won a sort of direct legitimacy by the public opinion.

In the late eighties and the nineties, there was also a weakening in the attitude of complicity of some judges with political forces which had hindered in part the activity of the magistracy. A new generation of so-called "*giudici ragazzini*" (young kids-judges), lacking any sense of deference towards the political power (and conscious instead of the levels of collusion between politicians and the organized crime) began a series of investigation into administrative and political misconduct. In the beginning, various strategies based upon intimidation were adopted

<sup>11</sup> The word *insabbiamento* (literally, covering with sand) started to indicate the several cases in which delicate investigations - among others, those on 243 billions liras illegally paid by the public enterprise IRI to political parties, politicians and newspapers - had been taken away from their natural judges, and advocated by the Tribunal of Rome (known for a long period as the "foggy harbor"), ending up with the acquittance of all defendants (Galli, 1991: 255).

to stop those magistrates who pierced the circle of political illegality: pressure by superiors more sensitive to "political needs", marginalization or transferal. Inquiries were removed as quickly as possible from the magistrates responsible for the initiative and transferred to judicial seats more inclined to suppress the matter.<sup>12</sup> As David Nelken observed, "Those, such as Judge Carlo Palermo, who initiated investigations which brought them too close to centrally organized plots involving networks of politicians, masons and organized criminals met fierce resistance; the case would be taken from their hands to be given to a colleague or taken over by another court. Just as in the fight against 'Organized Crime', troublesome judges could find themselves moved by disciplinary proceedings to other parts of Italy and the policemen working with them could be transferred even more easily at the will of their respective Ministries; they became targets for defamation or even assassination" (Nelken, 1996: 198). Part of the political class—in particular, the socialist party—reacted with several attempts at reducing the independence of the judges (Neppi Modona, 1993: 15). These attacks probably strengthened the internal cohesion in the magistracy. In this period in fact, we assist, at the same time, at a weakening of the politicization of the magistracy as far as deference towards the politicians is concerned, and at an increasing intervention of the judges in the political process, with the development of an autonomous strategy of communication with the citizens (Righettini, 1995).

Only with the development of the "Mani Pulite" investigations, the fight against political corruption became a primary task for many judges and, although with internal resistance, judges who had been considered as "troublesome" by the governmental parties, were appointed to lead the most important Public Procurators Offices. The investigations of these judges went as far as exposing the activities of their corrupted colleagues, which in a few cases have already received administrative and penal punishments. Especially after the election of 1994, the conflict between the magistracy and part of the political class—in particular, Forza Italia, whose leader, the media tycoon Silvio Berlusconi, is currently under investigation—escalated. The involved politicians attempted at delegitimizing the magistracy, by denouncing an alleged "ideological stance" of the investigating judges or the political exploitation of their activity as well as by claiming the "superiority" of the political power upon the judiciary power, the latter lacking the electoral legitimization of the former.

#### IV. Perspectives of reform in the control on political corruption

The setting in motion of this "virtuous circle" is significantly modifying the Italian political system, rendering imperative long-delayed reforms. For some time now, the debate on the legislative changes required to cut down the endemic illegality existing within the state has been intensifying. Looking, either explicitly or implicitly, to the variables influencing individual calculations of the costs and benefits of participation in corrupt exchange, many of the solutions proposed in Italy, as elsewhere, aim to transform the utility function of corruption. The probable costs of corruption can be raised by increasing the penalties and impro-

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12 For instance, the judge who indicted, in 1983, the socialist "boss" Alberto Teardo was invited by other judges, in higher hierarchical positions, to abandon the case, and was emarginated when he did not (Del Gaudio, 1992). A similar destiny had another judge, Carlo Palermo, who had mentioned in his investigation about the illegal traffic of fire arms the then prime minister Bettino Craxi.

ving controls on the public administration. A series of proposals have been made in different countries in this area: the creation of commissions of inquiry independent of the parties (Pinto-Duschinski, 1977); the reduction of the discretionary powers of the public administration (Gardiner and Olsen, 1974); an increased coordination between its various branches (Banfield, 1975). In a comparative analysis the opportunity of "a change in the rules of the game between politicians and bureaucrats," has also been suggested, "[in such a way that] bureaucratic elites offset the power of politicians, the bureaucratic structures becomes more independent of political intrusion and party politics, with the consequent withdrawal of bureaucratic resources from the political context" (Etzioni-Halevi, 1989: 302; on the same theme, see Pippig, 1990). An increase in the - at present extremely low - salaries of local administrators might raise the level of "professional competence" of aspiring candidates, their social status and, at the same time, the costs of illegal activity. The risks of being implicated in judicial proceedings would then include the loss of a greater income and more prestigious social position. Containing the cost of politics, particularly through controlling the level of electoral expenses, might lower the propensity of politicians to seek (sometimes illegal) financing. The introduction of competition between different bureaucratic structures would allow curbs on the monopolistic power which public agents usually exercise (Rose Ackerman, 1986).

However, it seems necessary to go beyond the single causes of political corruption to consider the complex interconnections running between political illegality and other phenomena. The research on political corruption in Italy and elsewhere (della Porta and Mény, 1994) has indicated that, alongside measures influencing individual costs and benefits, it is necessary to act on those macro-phenomena which favor the spread of corrupt practices. The control of corruption will be all the more difficult if, at the same time, the problems connected with administrative inefficiency, an electoral system favoring the buying and selling of votes and political protection of organized crime are not also confronted. The completion of the "virtuous circle" which leads to the overcoming of a system of generalized corruption demands not only specific remedies but also profound institutional reforms.

For this motive, the public debate on controls has concentrated on the institutional reforms necessary to avoid a return to illegality. Among the changes to the "rules of the democratic game" which can favor competition within and between different centers of power and render more transparent public decision-making procedures are those relative to the division of tasks, with precise government responsibilities for those who win the elections and control responsibilities for those who go in the opposition<sup>13</sup>, a more rigorous separation between political functions and administrative functions, the reduction of the parasitic rents related with state intervention, the conditions for a real competition among the enterprises present in the public market. A profound reform of the public admini-

13 The main institutional changes after the "mani pulite" investigation were those brought about by the new electoral laws for the national elections, passed in 1993 (n. 276 and 177), that introduced several elements of the "first-past-the-post" model. The reform of the local electoral system went in the same direction. The instability and growing conflictuality at the national level indicated however the limits of an electoral reform which could not suffice to change deeply rooted political behaviors. As Lijphart observed, in ideologically dishomogeneous societies the majoritarian model has negative effects when the minorities feel excluded, and loose confidence in the political regime (Lijphart, 1988: 32).

nistration appears equally necessary, leading to a greater accountability of the public bureaucracy, the fixing of strict temporal limits for the fulfilling of administrative tasks, an increase in the technical and professional competence of functionaries and the introduction of serious controls on their efficiency. In a perspective of reform, the controls on the public procedures should untie the knot that link illicit activities and administrative inefficiency.

Another proposal, which has been recently formulated in the Italian case, is the creation of a special body of fiscal inspectors, that should work on two different fronts. The first one is the internal control in the public fiscal administration, with the creation of a data bank on the patrimonial situation of public officers, that could allow to monitor suspect movements of capital. The second one is that of external controls, with an increase in the investigators' power on private capital, in order to investigate the mechanisms that allow for the creation of the "black reserves" necessary to finance bribes (*La Repubblica*, 27 January 1995, p. 3).

In this context, the "*mani pulite*" inquiry, which has temporarily halted the perverse ascending spiral of corruption and inefficiency, undoubtedly had beneficial effects. Nonetheless, the prospects for the future remain uncertain. In fact, the action of the magistrates has broken only one of the two rings in the chain of reciprocal causation by increasing enormously the risks involved in corruption. Exasperating slowness, unjustified delays, normative complexity and the procedural quagmire - in other words, the components of structural inefficiency in public activity - continue to be present.

These considerations have been fully confirmed by the recent reform of the public contract system, which had revealed itself among the most vulnerable to illegalities. Approved on 11 February 1994, law 109/94 fully took on board the requirement for transparency: procedures with a greater level of discretionary power were drastically limited, while the preparation of projects, the direction of the work and the activities of supervision and control were given, in the first instance, to the internal technical divisions of local administrations, with the object of reducing recourse to modifications and amalgamations of the original projects. On the basis of the considerations developed in the present essay, a reform of this kind represents a strong bastion against corrupt practices, drastically reducing the opportunities for committing abuses and illegalities. However, the law confronted only one aspect of the problem, the need to combat corruption, without considering the inefficiency and the scarce qualitative and quantitative resources of the administrative structure. This created the undesired effect of a complete "standstill" in public contracts, caused by the inability of public agencies to handle the responsibilities foreseen by the legislation. It is significant that Berlusconi's government, rather than trying to intervene to deal with these structural variables, safeguarding the requirement for transparency, has chosen, with decree 31 of May 1994, to suspend the application of the new law, thus reinstating the earlier state of affairs. The result is that the procedures governing public works already underway, worth 84,656 billion over the next two years, will be regulated by the old norms, whose vulnerability to corruption and exponential growth in costs has been "historically" proven (*La Repubblica*, 29 May 1994, p. 7). It remains to be seen whether bureaucratic and political personnel (notwithstanding the drastic renewal of the latter) will be capable of radically reforming public procedures and behavior, relinquishing the incomes, power and privileges they have acquired.

## V. A summary, and some comparative remarks

The paper dealt with the control on political corruption in Italy, in particular with the reasons why most of the control mechanisms did not work for a long time, allowing for the development of "tangentopoli".

First of all, we briefly discussed the reasons why the controls "from below"-that is, from citizens or electors--did not function in Italy: the pervasive occupation of the administration and the civil society by the political parties, as well as "secret" agreements between political parties in order to avoid political scandals were discussed.

We continued by analyzing two types of institutional control: the administrative controls and the judiciary controls. In the second part, we presented some main characteristics of the Italian public administration that hampered internal controls: a complex system of formal controls combined with the lack of substantial controls; the difficult "access" to the public administration by the citizens, that are therefore pushed to look for personal "protection"; the lack of technical skills inside the bureaucracy, with the related tendency to delegate a lot of tasks to private actors outside the bureaucracy; the presence of representatives of the political parties in the administrative control bodies, with the related overlapping between controllers and controlled; the informal control of parties over the bureaucrats through clientelism and complicity in corruption.

In the third part, we focused on the peculiar characteristics of a magistracy that enjoyed of a very high degree of formal autonomy from the political power, but was "pushed" towards politics for reasons as different as complicity in corruption and the need to "substitute" for the weak policy making capacity of political parties. The analysis addressed some institutional features of the judiciary--the presence of a common career pattern for public prosecutors and judges, the characteristics of the Consiglio Superiore della Magistratura as a self-governing body, the obligatory persecution of crimes, etc.--singling out their effects on the interactions between judges and politicians in different historical phases.

A comparison of the Italian and Belgian cases allows to single out a few similarity, but also several differences. Lack of personnel and infrastructures as well as little interest in the development of a criminal policy appears problems common to both countries. Relevant *differences* referred instead to several indicators of "politicization" of the magistracy: the patterns of recruitment (in Italy, public, open competition between young people); the pattern of career (all inside the magistracy in Italy, with no intervention by the political level); the self-government of the magistracy (with a self-governing body and a lower influence of the "higher ranks" in the Italian case); and the distinction between the public prosecutors and the "judging" magistracy (with, in Italy, the public prosecutors who have the same careers of the judges, the same organism of self-government, and therefore the same autonomy from the political system). It may be not too risky to hypothesized that these differences had an impact on the results of the investigations on political corruption. It is in fact not by chance that public perceptions on the judges seems to be different in the two countries: accused of being "near to the Left", in Italy, and instead too conservative in Belgium; too "aggressive" against the politicians in Italy, and too "shy" in Belgium.

In the fourth part, we reviewed some (implemented of planned) reform bills to deal with the control of political corruption.



### *Abstract*

*The paper dealt with the control on political corruption in Italy, in particular with the reasons why most of the control mechanisms did not work for a long time, allowing for the development of "tangentopoli". First of all, we briefly discussed the reasons why the controls "from below"--that is, from citizens or electors--did not function in Italy: the pervasive occupation of the administration and the civil society by the political parties, as well as "secret" agreements between political parties in order to avoid political scandals were discussed. The paper continued by analyzing two types of institutional control: the administrative controls and the judiciary controls. In the second part, we presented some main characteristics of the Italian public administration that hampered internal controls, the informal control of parties over the bureaucrats through clientelism and complicity in corruption being one among them. In the third part, we focused on the peculiar characteristics of a magistracy that enjoyed of a very high degree of formal autonomy from the political power, but was "pushed" towards politics for reasons as different as complicity in corruption and the need to "substitute" for the weak policy making capacity of political parties. In the fourth part, we reviewed some (implemented or planned) reform bills to deal with the control of political corruption.*