

Corruption mitigating policies: the case of Italy*

Abstract One of the circumstances likely to be associated with the intensity of both investigative and legislative efforts designed to curb political and bureaucratic corruption is institutional reform. Since the characteristics of electoral and party systems seem to be associated with variations in the intensity of anti-corruption efforts cross-nationally, it was reasonable to think that changes in the characteristics of these systems in Italy in the 1990s would be reflected in a corresponding change in the efforts of legislators and members of the judiciary to tackle corruption. Prior to the 1990s, Italy's tri-polar party system and its numerous concomitants placed considerable obstacles in the way of the willingness and the ability of judicial investigators and parliamentarians to deal with the corruption emergency. The 1993 electoral-law reform, the eventual emergence of a largely bipolar party system, and the circumstances surrounding these processes, considerably diminished the significance of the aforementioned obstacles, yet there has been little noticeable increase in anti-corruption efforts. This is probably explicable in terms of the electoral effects of such efforts, and suggests that institutional change is at most only one of a number of conditions that must be fulfilled in order for more strenuous efforts to be observed.

Introduction

This article focuses on anti-corruption efforts in Italy, though its purpose is ultimately comparative, Italy being taken as a case study in order to explore the conditions under which we can expect anti-corruption efforts in liberal democracies to be more or less intense. Specifically, we are interested in examining the impact of institutional change on the attempts of governments and judicial authorities to curb political and bureaucratic corruption. With this in mind, the thoroughgoing electoral and party-system changes that took place in that country in the 1990s, suggest that Italy provides the ideal setting for the conduct of a sort of ‘quasi-experiment’ of the ‘before-and-after’ variety. By carrying out this experiment, we hope thereby to link the Italian case to a larger research agenda.

Although corruption, like poverty, has always been with us¹ and, indeed, may always be, there are at least two reasons why it is important to ask about the circumstances that are likely to give rise to government-sponsored attempts to curb corruption. First, corruption has potentially grave and pernicious consequences. It involves the suspension of normatively defined criteria for the allocation of resources, in favour of market exchanges – whose distributive consequences in turn depend on the arbitrary and unequal distribution of money and other resources. By undermining principles of equality and transparency, political and bureaucratic corruption is subversive of liberal democracy. It inflates the costs of public services and perpetuates administrative inefficiency besides being self-reproducing.² Second, how, and, one might add, under what conditions, actions

against corruption take place, can determine the success or failure of those actions themselves.

Recognizing that political corruption has in recent years become a powerful enemy of good governance around the world,³ a growing number of researchers have explored the impact of anti-corruption strategies in an effort to draw conclusions on how best to tackle the phenomenon.⁴ Rather less has been done on the circumstances likely to favour the adoption of these strategies in the first place, and what work has been done has tended to concentrate on the less developed countries. This may have been due to the perception that corruption was largely confined to these countries, together with the perception that developed countries had experienced corruption in earlier phases of their development and then brought it under control through a variety of reforms. Such perceptions would be supported by the broad relationship between levels of corruption and socio-economic development as indicated, for example, by Transparency International's global data.⁵ Under these circumstances, the conditions giving rise to anti-corruption efforts were probably thought of as already known, and thought of as being such factors traditionally associated with economic development as: political democracy, the spread of 'due-process' norms, the pressure of public opinion, and so forth.

Since the early 1990s, there has been an explosion of corruption scandals in developed countries. This has been reflected in sometimes quite dramatic changes in individual countries' Corruption Perceptions Index scores⁶ and a corresponding decline in

the confidence with which the aforementioned beliefs about the conditions favouring anti-corruption efforts were once held. Such declining confidence can be seen in the growing number of conferences, books and journal articles that in recent years have been devoted to the topic of corruption in the advanced industrial nations. The investigation of anti-corruption strategies in these countries is, therefore, extremely timely.

In focusing on the Italian case, this article begins by considering the conditions likely to be associated with greater and lesser efforts to curb corruption. Arguing that there are theoretical and empirical reasons for expecting institutional change to affect authorities' responses to corrupt activity, the article then goes on to describe the ways in which institutional arrangements tended to diminish the commitment to anti-corruption efforts prior to the mid-1990s, as well as the new institutional arrangements that have been put in place since then. Noting that these new arrangements, in particular, the 1993 change to the parliamentary electoral law and the now largely bipolar party system, do not appear to have had the effects expected of them, the final section of the article explores the reasons for this.

Anti-corruption efforts

A useful starting point is to define 'anti-corruption efforts' and to consider what, a priori, appear to be their most proximate causes. In the abstract, anti-corruption efforts would seem to belong to one or the other of two categories: the efforts of the police and judicial

investigators to bring those suspected of corruption to justice, and the efforts of legislators to frame laws designed to prevent corruption taking place to begin with.⁷

Across democratic countries at any one time, and within a single country over time, one would expect the intensity of investigative efforts to vary with at least seven interrelated factors:

- political culture/levels of social capital
- levels of corruption (its relationship with anti-corruption efforts probably taking the form of an inverted ‘U’)
- resources made available to investigate it
- public/political pressure to investigate it
- investigators’ perceptions of the consequences of corruption
- investigators’ perceptions of the consequences of the exposure of corruption
- the power of those who would lose from, and therefore resist, anti-corruption efforts

Across democratic countries at any one time, and within a single country over time, one would expect the intensity of legislative efforts to prevent corruption to vary with a similar set of factors:

- political culture/levels of social capital
- levels of corruption
- public pressure to enact laws to prevent corruption
- legislators’ perceptions of the consequences of corruption

- the power of losers from anti-corruption legislation

All of these variables are in their turn obviously influenced by short-term, macro-political changes. For example, it is often said that a significant factor in explaining the timing of the outbreak of the Tangentopoli ('Bribe City') corruption scandal in Italy in 1992 was the collapse of the Berlin Wall. Investigating magistrates were thus aware that for the first time in forty-five years they could attack the misdeeds of a governing class among which corruption was widespread without thereby enhancing the risk of the large Italian Communist Party coming to power.⁸ Public and political pressures to combat corruption, and therefore the resources made available to investigate it, would also seem to be affected by political changes. For example, in Britain, the change of government in 1997 put the Labour Party under immense pressure to address corruption in local councils. For it was aware of the importance of concerns about public standards in the downfall of the outgoing Conservatives and thus that some well-publicized instances of corruption in Labour-controlled councils made it highly vulnerable to partisan attack.⁹

There are a number of reasons, therefore, for thinking that the intensity of investigative and legislative efforts to combat corruption will be significantly effected by macro-political changes. From the current literature on anti-corruption strategies, it would seem that such changes can be regarded as belonging to a number of distinct categories. First, there are altered pressures and incentives deriving from the international environment. The above-mentioned end of Communism was an example. Another

example is the initiative of the Organization for Economic Co-operation and Development (OECD) in adopting an anti-corruption programme from 1989, probably as a result of US diplomatic pressure.¹⁰ This, it has been suggested, ‘has had a catalytic effect and promoted dramatic policy change over the last ten years’.¹¹ By persuading a number of countries to agree to its 1997 Convention on Combating Bribery of Foreign Public Officials, for example, the OECD also managed to persuade several of the signatories, as a logical corollary of the Convention, to alter their domestic legislation to deny the tax deductibility of bribes in international business transactions.¹² Second, there are the catalysts provided by ‘one-off’ political events taking place in the domestic environment. These include election outcomes and, most obviously, political scandals. The examples are legion and include Watergate and the Foreign and Corrupt Practices Act in the United States, and the oil scandal leading to the 1974 party finance law in Italy. The occurrence of these kinds of dramatic domestic political events is often unpredictable while the nature of their impact is usually straightforward and obvious. Typically, they create sudden and intense public pressure for action, to which the authorities are obliged to respond as the price of retaining power and authority. For these reasons, as causes of anti-corruption activity, they are not particularly interesting.

Far more interesting is a third type of change, namely, institutional change. It is frequently argued that some institutional arrangements are more conducive to high levels of corruption than are others. For example, where, as has traditionally been the case in Italy, administrative procedures are lengthy and complex, public officials acquire a

discretion – arising from their power to help citizens overcome and circumvent bureaucratic obstacles – which they can then deploy in exchange for bribes. Where the public sector is large levels of corruption will be high since the extent to which resources are allocated according to political rather than market criteria is also large.¹³ Likewise, on the face of it, it seems reasonable to assume that some institutional arrangements will be more conducive to a fight against corruption than are others – if for no other reason than that the impact of at least one of the variables listed above (i.e. public pressure) will vary with the institutional arrangements through which it is channelled. Consequently, it seems reasonable to think that when institutional arrangements change, so will the nature and intensity of anti-corruption efforts. The kinds of institutional change we may expect, given earlier investigations, to have an impact, include reform of electoral systems, party-system changes, changes in the distribution of power between central and sub-national units of government. In terms of the focus of our discussion, we give priority to these types of institutional change over changes in the public administration and the relationship between the state and the market because, notwithstanding the fact that the latter have emerged as being particularly relevant in the Italian case, they are, as mentioned, relevant for levels of corruption. In this piece our concern is with efforts to combat corruption.

All other things being equal, democracies where voting takes place by closed-list systems of proportional representation are more likely to witness attempts to fight corruption than are democracies that have open lists. The reason is that in the former case

those who would lose from, and therefore resist, anti-corruption reforms are likely to be less numerous and/or powerful. For, with closed-list systems, the voter simply makes a choice of party, while the identities of the specific candidates elected are determined by the order in which they appear on the party list. Therefore, the individual candidate's chances of being elected are relatively less dependent, than with open-list systems, on satisfying his or her party's nominal supporters and relatively more dependent on the party hierarchy, which determines the order of candidates' list placements. With the open-list system, by contrast, voters have the opportunity not just to select a party, but also to express preferences among their chosen party's candidates. Therefore the candidate's chances of being elected depend at least as much on his or her success in competing with fellow candidates from the same party as on his or her success in competing with candidates from rival parties. Since the degree to which candidates from the same party can compete with each other in terms of (broad-based) policy proposals is limited (because policy divisions undermine the electoral prospects of all candidates to the benefit of those of rival parties) they have an incentive to attempt to outdo each other through the provision, to voters, of patronage benefits – which can easily degenerate into out-and-out corruption. For this reason we would anticipate finding that the numbers of both candidates and voters who stand to lose from clean-up campaigns are higher in democracies that have open-, rather than closed-list proportional representation. Hence, we would expect to find more intense reform campaigns in democracies with closed-, rather than open-list systems of voting.¹⁴ Geddes, who investigated civil service reform in Latin America, argues that in Colombia and Uruguay voting by closed-list proportional

representation facilitated the reform effort – while Brazil and Chile both had open-list systems and failed to reform.¹⁵

Kunicova and Rose-Ackerman have recently advanced a theoretical argument about the effects of electoral rules that is just the reverse of the foregoing.¹⁶ In fact, their argument is about the impact of electoral rules not on anti-corruption efforts, but on the likelihood of candidates and party leaders being corrupt. However, if we make the reasonable assumption that there is likely to be a close inverse correlation between the intensity of legislative anti-corruption efforts and the extent to which those who must initiate them are themselves corrupt, the work of Kunicova and Rose-Ackerman is directly relevant to our present concerns. They argue that with closed lists (CLPR) party candidates will have relatively few opportunities for corrupt gains (which, if they are indulged in, will tend to be monopolized by party leaders) owing to the dependence of the electoral prospects of the former on the latter and thus the relative powerlessness of the former vis-à-vis the latter. With open lists (OLPR), by contrast, candidates have some power to appeal to voters directly, over the heads of party leaders. On the other hand, the opportunity to choose between individual candidates offered by OLPR creates a direct link, not just between re-election and the party's candidates' collective performance, but also between the candidates' individual performances, and their re-election chances. Therefore, assuming that corruption imposes costs on citizens in terms of inflated budgets, low value public projects and so forth, candidates will have an incentive to avoid corruption since voters will punish corrupt politicians by voting against them at the next

election. For these reasons, one expects to find fewer corrupt legislators in systems using OLPR than in systems using CLPR. Of course, the specific expectations one has about one electoral system as compared to another depend very much on the assumptions one makes about the opportunities and incentives to which the relevant actors are subject: the point to note is simply that we have reason to think that electoral systems do make a difference. Later in this article the grounds on which one might reasonably expect the change of electoral system in Italy to have made such a difference are spelt out.¹⁷

That the characteristics of party systems appear to have an impact on anti-corruption efforts is suggested by the examples of nineteenth-century civil-service reform in Britain and the United States. Both had two evenly matched parties able to provide single-party government and to alternate in power. The reason this facilitated reform has to do with the fact that, if reforming parties can gain voting support by advocating change, this has to be set against the loss of votes deriving from the reduction in opportunities for corrupt exchanges. Any given party advocating reform may therefore suffer a loss of votes to rival parties that outweighs any gain deriving from the advocacy of a cleaner system, and this is more likely to be the case where its access to corrupt exchanges is greater than that of rival parties. Moreover, there is a ‘first-mover disadvantage’ in the sense that the party that advocates reform is likely to have to bear higher costs than those that simply go along with the change.¹⁸ Therefore, in multi-party systems with disproportionate access to corrupt exchanges, reforming efforts are likely to be relatively few. On the other hand, in two-party systems with regular alternation in power, parties will be evenly matched in

terms of their access to corrupt exchanges and if they can collaborate to legislate change neither party will lose votes, and both will share in any benefits of reform. For these reasons reform is more likely in party systems with these characteristics than in party systems of the former type.

Finally, that the distribution of power between central and sub-national units of government appears to be a relevant consideration in terms of the likelihood of the occurrence of anti-corruption efforts is suggested by the example of nineteenth-century America. On the one hand, as the efficiency of government services began to loom large in voters' minds, Federal politicians found that the dispensing of patronage – which also consumed much time and energy – eventually became a political cost rather than a benefit. On the other hand, patronage was increasingly controlled by state and local party bosses whose interests were not necessarily congruent with those of Federal politicians. Federal politicians thus supported reform because it was a way for them to reduce the power of rivals at lower levels of government.¹⁹

The institutional profiles of democratic countries are therefore clearly significant in terms of the efforts these countries make to combat corruption. The following section describes those features of the institutional set-up in Italy that acted as a break on anti-corruption efforts and the grounds there were for expecting the institutional changes of the 1990s to bring improvement.

Anti-corruption efforts in Italy

Until the 1990s in Italy, legislative efforts to combat corruption were depressed by the nature of the country's party and electoral systems, investigative efforts by low levels of autonomy of the judiciary from other political institutions.

Between the end of the Second World War and the end of the Cold War, the fundamental determinant of coalition formation, underpinned by the widespread popular acceptance of anti-Communist attitudes, was the so-called conventio ad excludendum. This was the agreement between the remaining parties in the legislature that the second largest party and party furthest to the left, the Italian Communist Party (PCI), was unacceptable as a coalition partner and should never be admitted to government. Likewise, the parliamentary party furthest to the right, the neo-fascist Italian Social Movement, was also excluded, and this led to the permanence in office of the centre-placed Christian Democrats (DC) as the mainstay of all feasible governing coalitions.

This had several significant consequences. First, the DC and its allies knew that their agreement to exclude left and right extremes virtually guaranteed them a place in government regardless of election outcomes, and thus that the collapse of any government (there were over fifty between 1945 and 1992) would be more or less quickly followed by the installation of a new government composed of some more or less altered combination of the same parties. This meant that they were under little or no pressure to

enact coherent legislative programmes and therefore that they were under little pressure to construct governments with any real power vis-à-vis the legislature. Consequently, senior party leaders with the power to impose discipline on their followers tended not themselves to be cabinet ministers but rather to delegate these positions to secondary figures. And the fact that it was not prime ministers, but the powerful party secretaries who chose their cabinet colleagues, quite naturally meant that the former had little authority.

Second, the weakness of prime ministers and executives meant that not only were governments, and the parties staffing them, under little pressure to enact coherent legislative programmes, but that they had little power to do so either. Consequently, whilst the main basis of support for the governing parties in their competition with the main party of opposition was ideological (that is, anti-communism) small-scale distributive measures, allowing them to establish clientele relationships with their followers, became the parties' preferred means of mobilizing and retaining electoral support in competition among themselves. Thus the substance of negotiations leading to the formation of governments essentially concerned how the various ministries and under-secretarial positions were to be distributed among parties anxious to control them for patronage purposes. Thus did the parties penetrate vast areas of the state and society - a state of affairs that came to be dubbed partitocrazia or 'partyocracy'.

Third, knowing that they would always be the mainstay of any feasible governing coalition, the Christian Democrats were highly factionalized, and given partitocrazia, the main basis for factional conflict tended to be the distribution of patronage resources rather than ideology or policy. This was reinforced by the electoral system, which was of the open-list variety described above and which allowed the voter to express up to four preferences among his or her chosen party's list of candidates.

Fourth, the Communists' exclusion meant, paradoxically, that their legislative behaviour tended to be 'responsible', where 'responsible' here means an only partly visible tendency to collaborate in the functioning of partitocrazia and in the passage of patronage-based measures. On the one hand, the depth of the ideological divide separating the Communists from other parties meant that the PCI was engaged in a perpetual search for its own legitimacy as the only means of extending its electoral support beyond its heartlands. On the other hand, the precariousness of coalition solidarity often meant that the passage of legislation would come to depend on the support or abstention of one or more of the non-governing parties. Moreover, article 72 of the Constitution enables Parliament with few exceptions to give law-making authority to its committees – except that the 'committee only' route can be overridden at the request of one tenth of the members of the house in question, in which case the bill concerned must be referred back to the plenary session. Both of these features gave the Communist opposition considerable power to block the patronage-based legislation of which it

rhetorically disapproved. Declining to do so gave it a valuable means of providing proof of its 'responsible' intentions.

In this situation, there were at least two reasons why the Italian parties were unable to carry on any really committed legislative offensive against corruption. For one thing, the governing parties' reliance on patronage and small-scale distributive measures as the main basis on which they sought support had the consequence of entrenching a large number of vested interests, each of which had a power of veto whenever policy change was considered. Clientelism and patronage therefore reinforced still further the inability of the system to respond to popular demands through coherent policy making.

For another thing, given the emergence of a number of factors stimulating both the demand for, and the supply of corrupt exchanges from round about the mid-1970s,²⁰ clientelism itself facilitated the spread of political corruption to the point where it eventually became systemic. Since clientelism represents a denial of the value of universalism, namely, 'the principle that all persons should be evaluated in the same way, regardless of who they might be',²¹ those whose power depends on it face lower moral costs in resorting to illegality to defend their positions whenever these are threatened. If they do decide to resort to illegality, then the corrupt exchange presents itself as a possibility that has much in common with the patron-client relationship. The positions that allow their incumbents to patronize clients frequently provide access to the resources that can provide the basis for corrupt exchanges. The acceptance of bribes, in its turn,

offered the means of acquiring even larger clientele followings so that clientelism and corruption tended to be mutually reinforcing. As is often remarked, once networks of corruption have become established, they then tend to spread in a self-generating way. Consequently, by the early 1990s, the parties that had ruled Italy since the War had essentially been transformed into organizations for the carrying on of mutually profitable exchanges and the construction of alliances between economic and political potentates willing to stop at nothing to achieve their objectives. Corrupt parties are not generally known to be the most zealous when it comes to trying to tackle corruption. In such circumstances, anti-corruption laws are a deterrent, not to corruption itself but to attempts to break the silence and the networks of connivance that allow corrupt exchanges to be carried on undisturbed. For in such circumstances, the laws allow the possession of compromising information about one's colleagues to be used as a sword of Damocles whereby 'blackmail becomes one invisible source of cement for a political class condemned to a lengthy and forced cohabitation'.²²

The possibility of any very strenuous investigative efforts being made to combat corruption was compromised by very similar factors. In Italy, when suspicions arise that a criminal act has been committed, the matter is reported to a public prosecutor, who is responsible for gathering and analyzing evidence with the object of ascertaining whether there are sufficient grounds to warrant proceeding to a trial. From one perspective, public prosecutors have considerable power and of course there are plenty of examples of attempts by them to use their power to combat corruption a long time before the famous

Mani pulite ('Clean hands') investigations that led to the Tangentopoli scandal of the early 1990s. Their power derives from three things: first, the considerable independence they have, both from other prosecutors' offices and other branches of the state, to decide what to investigate and what charges, if any, to press.²³ Article 112 of the Constitution obliges them to prosecute all cases that come to their attention, but the volume of work makes this impossible while the article makes it possible for them to initiate investigations, not only on request from external bodies, but also on their own initiative in relation to crimes they think may have been committed.²⁴ Second, public prosecutors belong to the same profession as trial judges – that is, both are part of a single judicial corps administered by the Consiglio Superiore della Magistratura (High Council of the Judiciary, CSM) – and this, it is often suggested, allows for an imperfect separation between the roles of judge and prosecutor. This point requires some explaining.

At the end of his or her investigations – known as the 'instruction phase' – the public prosecutor applies to a judge – the so-called giudice dell'udienza preliminare (literally, 'judge of the preliminary hearing') – with the request either that the case be closed or that it be taken to trial.²⁵ At the trial there is no jury – inadmissible in the Italian legal system 'because the unreasoned verdict of the traditional jury would fail to comply with the constitutional requirement that all judicial decisions must be reasoned'.²⁶ Second, proceedings tend to be dominated by the results of the instruction phase since the main body of evidence on which the court bases its decision is the written evidence emerging from the instruction phase and – so it is often argued – the court may not be in a position

to know what weight to give to the interpretative and filtering processes of the author of that evidence. Hence the claim that there is an imperfect separation between judge and prosecutor. On the one hand, trial proceedings are so overshadowed by the results of the previous phase that they are said to represent little more than its ‘formal confirmation’;²⁷ on the other hand, public prosecutors and trial judges belong to the same body and often work in neighbouring offices.²⁸ This it is argued, often allows members of the judiciary to use their offices for political purposes by virtue of the risk that the perceptions as to guilt or innocence held by the judicial officer in his or her role as prosecutor so influence the view of the case that his or her colleagues take in their roles as judges, that the proceedings are heavily influenced from the outset.

The third feature of the judicial system enhancing the powers of public prosecutors is the room for discretion that is given to them by the sheer number of laws on the statute books and by the vagueness with which some criminal offences are defined.²⁹

Precisely because of their powers, public prosecutors tended to become the target of individual politicians and political parties keen to ‘have friends’ in the judiciary in order to avoid themselves becoming the targets of judicial initiatives.³⁰ Thus it was that politicians were able to establish informal relations of connivance with individual members of the judiciary by exploiting certain hierarchical features of the judiciary’s internal organization. For example, the work of public prosecutors’ offices is directed by judges of the Court of Appeal or the Court of Cassation whose responsibility it is, among

other things, to assign cases to the individual prosecutors working under them. Directors of public prosecutors' offices have the power to remove individual prosecutors from specific cases on grounds of 'grave impediment' or 'significant reasons of service'. Likewise, when cases are ready to be brought to trial, decisions have to be made about the individual judges to whom to assign them (decisions usually made by the Presidents of the courts in question, the Presidents themselves being appointed by the CSM). Each court, and its associated public prosecutor's office, has jurisdiction over a defined geographical area, except that the Court of Cassation can, for example, move trials from a given jurisdiction 'when security or public safety or the freedom of decision-making of the persons involved are prejudiced by serious local circumstances such as to disturb the trial and not otherwise eliminable'.³¹ Prosecutors General associated with the Appeal Court can take over cases from public prosecutors on the grounds that, when requesting that cases be brought to trial or else closed, the public prosecutors have failed to act according to the terms established by law. Such procedures all created a number of points at which political pressures could be brought to bear. Emblematic of such pressures was the epithet that came to be associated with the Rome public prosecutor's office whose capacity to use all kinds of mysterious means to 'bury' politically sensitive cases and prevent them from coming to trial earned it the name of the 'foggy port'. The collusion that took place between individual politicians and members of the judiciary was well symbolized by the case of Claudio Vitalone:

According to the boss of the Roman DC Vittorio Sbardella, the career of Claudio Vitalone, ex-magistrate, senator and DC minister closely associated with Andreotti, resulted from a transaction between the two men: ‘Since Vitalone had no electoral or political support of his own he got Andreotti’s support by performing miracles in order to get him politically advantageous results by judicial means. What I mean is you can do something which will gain the appreciation of a politician either by judicial favours for their friends and supporters or, on the other hand, damaging political personalities who might inconvenience your friend judicially’ ... Claudio Martelli, justice minister in Andreotti’s final government, stated: ‘Claudio Vitalone was a man very close to Andreotti who had, at the same time, considerable influence in Roman judicial circles; not just in the Roman Public Prosecutor’s office but also among judging magistrates and the Court of Cassation. You could say that Vitalone was the ‘long arm’ of Andreotti in judicial circles’.³²

Such relationships should not occasion surprise. Moving in the same social circles; sitting on the same government committees; having the same cultural outlooks, members of parliament and senior members of the judiciary would often be personally acquainted. That this could often give rise to the sense that, cutting across professional distinctions, there were common interests to be defended, was testified to by the membership list of the P2 masonic lodge. Besides those of the heads of the secret services, various army officers, bankers, journalists, ambassadors and members of Parliament, the list also

contained the names of eighteen high-ranking members of the judiciary, including a former vice-President of the CSM.

Collusion between politicians and judicial investigators was encouraged by three further features of the judiciary: first, the lack of prolonged training prior to entry and the lack of any separation in the careers of trial judges and prosecutors. These factors prevented the development of ‘a coherent set of values concerning...professional integrity and ethos’ leading, instead, to ‘a corporatist logic according to which the judiciary...tried to oppose any measure which could reduce...[its] “privileges” and status...’³³ These circumstances in turn made it difficult for members of the judiciary to remain free of the political dynamics of other institutions, notably the political parties whose support they sought in opposing undesired measures.

Second, from round about the early 1970s, the process of generational turnover meant that the conservatism of public prosecutors and judges who had been socialized under Fascism gave way, in a large number of cases, to a new ‘protagonism’ on the part of younger members of the judiciary who, far from seeing their role as being to act as a passive bouche de la loi,³⁴ adopted a far more active stance and – through penal initiatives in the areas of workplace safety, environmental pollution, tax evasion, fraud and so forth – sought to act as problem solvers, attempting to tackle the great social issues of the day.³⁵ In a number of celebrated instances, such initiatives were ‘inconvenient’ or embarrassing for members of the political class. For example, in 1981

judicial investigations surrounding the masonic lodge P2 and the collapse of the Banco Ambrosiano, revealed that the banker and P2 member, Roberto Calvi, had made illegal payments of 7 million dollars to the Socialist Party. In July 1981, Calvi was sentenced to four years in prison for his part in the Banco Ambrosiano collapse. The violent reactions of politicians to Calvi's arrest included calls for political controls over the activities of public prosecutors.

Third, the fact that 20 of the 33 members of the CSM were, from 1975, elected by members of the judiciary as a whole whatever their rank, gave rise to a tendency for it to take decisions according to political, rather than hierarchical, criteria. Thus most members of the judiciary belonged to one of four organized factions each of which had a clearly identifiable location on the left-right spectrum.³⁶ Consequently, though the factions were not formally linked to the parties, matters such as the distribution of resources, disciplinary sanctions and transfers from one judicial office to another became highly political issues on which individual members of the judiciary had an incentive to ally themselves with one party or the other. Given all of this, political parties were often able to influence, through the judicial factions closest to them ideologically, 'the assignment of magistrates to various posts and in particular the choice of the heads of judicial offices'.³⁷ The judiciary, for its part, was so highly politicized, that its members were often willing to turn a blind eye to acts of corruption in order to maintain their privileges. Many prosecutors

tried to break such a system but [were] always blocked during their investigations either by indirect political pressures on high level judges or by the non-cooperation of other colleagues. Thus...not all members of the judiciary [were] inactive, but...it was sufficient to have the key positions ‘covered’ to neutralize most efforts.³⁸

This is not the place to discuss in detail the so-called ‘judges’ revolution’ or the other causes of the 1990s institutional changes that transformed the situation we have described hitherto. Suffice it to say that by the end of the 1980s, judicial activities had come to express the influence of two contradictory forces: on the one hand, judicial assertiveness on the part of younger magistrates who tended to reject the notion that legal interpretation could be reduced ‘to a purely formalistic activity indifferent to the substance and the actual impact of the law on the life of the country’;³⁹ on the other hand, the subjection of such activities to frequent, strenuous and meticulous efforts by the political class to ensure that they were carried on under an informal system of political tutelage that would prevent damage to the interests of the politically powerful. From this point of view, the Tangentopoli scandal is fruitfully interpreted as the outcome of a successful effort to break the system of political tutelage, one whose timing is to be explained by such factors as: the end of the Cold War (meaning that investigating magistrates could now expose the misdeeds of the governing class without the risk that in so doing they would enhance the likelihood of the PCI – which had always made the so-called moral question one of its own great battle cries – coming to power); growing popular discontent with the

incapacity of the governing parties to engage in coherent policy-making (meaning that the power of politicians to manipulate proceedings using their contacts within the judiciary to avoid personally undesirable outcomes was reduced); the emergence of the ‘Maastricht constraint’ (meaning that the cost of bribes could no longer be financed through increases in public indebtedness).

Tangentopoli eventually led to the complete organizational disintegration of all the traditional parties of government. Meanwhile, the early 1990s also saw the emergence of a cross-party movement for reform that sought – successfully – to engineer a change in the electoral law for the two chambers of parliament by exploiting the constitutional provision that allows the holding of referenda on laws and parts of laws when requested by means of a petition of at least half a million electors. By forcing a change from a proportional, to a largely single-member, simple plurality system, thus obliging parties to form electoral coalitions whose leaders would be natural candidates for the premiership, reformers hoped that the new system – which provides for three quarters of the members of each chamber to be elected according to the plurality system, only one quarter, proportionally – would mean voters being presented with a straightforward choice between a coalition of the Left and of the Right.⁴⁰ This would allow them directly to determine both the composition of the government and the identity of the prime minister who, in virtue of the receipt of a popular mandate and competition from the opposition, would enjoy sufficient authority to be able to impose discipline on the governing coalition. Consequently, it was hoped that in place of the old system of governance,

based, as it had been, on unstable coalitions whose composition owed more to ‘behind-the-scenes’ negotiations after the votes had been counted than to the voting choices of citizens, the changed electoral law might bring with it greater governmental stability, responsiveness and popular accountability.

In terms of the most salient characteristics of the party system, the hopes of reformers have been broadly fulfilled. No longer is the centre of the political spectrum occupied by a single party able to exclude left and right extremes; and the party system as a whole has shed its old tri-polar format and been replaced by a bipolar configuration based on two broad electoral coalitions – one of the centre-left, the other of the centre-right – both competing to win absolute majorities of parliamentary seats. While the new electoral law has provided the framework of rules for three general elections (those of 1994, 1996 and 2001), the most recent election has seen the further consolidation of a predominantly majoritarian and bipolar dynamic to party competition. For the first time since the War it resulted in the defeat of an incumbent government seeking re-election, by a pre-constituted opposition coalition that was successful in winning absolute majorities of seats in both chambers of parliament.

Typically in such circumstances, and for as long as alternation in office remains a realistic possibility, the fortunes of the governing majority are dependent on their success in implementing a coherent programme of policies. Meanwhile, the presence of a single opposition coalition seeking to take the government’s place ensures that the prospects of

any one of the governing parties individually are closely bound to the success or failure of the government as a whole. Given this situation, and given the divorce of the judicial and party systems mentioned above, it was reasonable to expect to find much more strenuous efforts being made to combat corruption than was possible prior to the early 1990s. The extent to which this has been the case is considered in the next section.

Italy's anti-corruption efforts in the 1990s

In considering legislative measures to tackle corruption, it will be most relevant to examine what happened from the date of the 1996 election onwards. The legislature inaugurated by this election lasted for the full parliamentary term of five years. The legislature inaugurated by the election prior to that had seen two governments whose time in office and, in the second case, mandate had been too limited for any significant reform to be possible. It is also necessary to bear in mind what is to count as an 'anti-corruption measure'. Some measures are passed with the specific purpose of dealing with corruption; others may have the effect of reducing corruption as an incidental side effect of other intentions.

Della Porta and Vannucci argue that the thirteenth legislature, elected in 1996, was the first parliament to attempt to tackle the corruption emergency in any incisive way.⁴¹ However, given that the authors later remark that the measures adopted were 'few' and

‘ambiguous’,⁴² this must be taken more as a comment on the poor performance of earlier parliaments than an expression of appreciation of the activities of this one.

The first measure, taken by the Chamber of Deputies, was the setting up, in September 1996, of a special Commission with the remit of preparing, for the consideration of the Chamber, new legislative proposals for the prevention and repression of acts of corruption. This considered a number of proposals but was given a limited amount of time within which to fulfil its remit (and the Commission was not revived by the legislature elected in 2001). Consequently, two months after its mandate expired at the end of March 1998, only two new proposals had been approved by the Chamber. Of these, the one concerning ‘The relationship between criminal and disciplinary proceedings against public employees’ was modified by the Senate (the two chambers of Parliament have co-equal legislative powers) and only given final parliamentary approval on 8 March 2001 – the very day the legislature came to the end of its life through the dissolution of Parliament and the calling of fresh elections!⁴³ The other proposal, ‘Measures for the prevention of corruption’, never became law, falling instead victim to lengthy processes of amendment in the two chambers and then finally, it seems, to the decisions of the parliamentary group leaders whose responsibility it is to allot space to proposals within the parliamentary timetable.⁴⁴

Both proposals attempted to reduce the probability of acts of corruption occurring by containing provisions designed to raise the probability of being caught and once caught,

of being punished. Two further proposals (initiated not by the anti-corruption Commission but by the Government) took the opposite approach of reducing the opportunities for corrupt exchanges to begin with by seeking to simplify administrative procedures. These proposals became law in 1997.⁴⁵ Clearly, one would assume that the elimination of bureaucratic complexity would necessarily reduce the scope for officials to enter into corrupt exchanges through the sale of special, ‘fast-track’, modes of access to the processes of public decision-making. However, whatever effects the laws may in fact have had, such effects were probably a secondary consideration insofar as, in passing the laws, the main objectives of legislators (moved by an awareness of the handicap imposed on Italian competitiveness in the European single market by a bureaucratic public sector) were to streamline the public administration rather than to deal with corruption as such.

If the legislative activity described hitherto is not, then, evocative of an idea that parliamentarians were particularly enthusiastic about fighting corruption, it is possible, in addition, to cite initiatives that if anything evoke the opposite impression. Among these, della Porta and Vannucci mention:

- proposals discussed in the anti-corruption Commission to decriminalize financial contributions made by individuals to political parties but not declared in the parties’ accounts;
- proposals discussed in the anti-corruption Commission to circumscribe the law on false accounting rendering punishable only acts of ‘gross’ falsification;

- the reduction, in July 1997, in the penalties attaching to cases of abuse of office for financial gain and the contemporaneous abolition of the offence altogether where the purpose is other than financial gain;
- the reform, in August 1997, of article 513 of the penal code in such a way as to render inadmissible as evidence, defendants' statements incriminating others in the course of criminal investigations, where the defendants subsequently refuse to confirm the statements in court.⁴⁶

Of the above four initiatives, a variant of the second actually became law a few months after the election of 2001. This election brought to office a prime minister who, with five criminal proceedings underway against him when he was elected, obtained and has since attempted to use, legislative power to change criminal law and procedure to which, as a citizen, he is subject. Far from stemming corruption, the resulting proposals and enactments seem likely to feed it both by virtue of their attack on principles of universalism and even-handedness in the service of the Prime Minister's own personal interests, and by the way in which several of them add to the severe handicaps of the Italian judicial system in its efforts to bring to justice criminals of all types owing to the slowness of investigation and trial procedures. Such slowness derives, first, from the so-called 'obbligo d'azione penale' (the obligation to initiate penal action) embodied in the aforementioned article 112 of the Constitution and which means that a huge weight of cases are under consideration at any one time;⁴⁷ and, second, from the existence of two layers of appeal to which defendants may have recourse as of right.⁴⁸ As a consequence,

many cases have simply to be dropped because they cannot be completed before the statute of limitations takes effect. This has led Piercamillo Davigo, one of the most high-profile prosecutors involved in the Mani pulite investigations, to go as far as to claim, in relation to corruption, that ‘the concrete probability of a criminal facing conviction, is risible’.⁴⁹

The proposals introduced, and the measures passed by Parliament since the 2001 election include:

- the passage of a law (law no. 366/01) , on 3 October 2001, authorising the government to introduce secondary legislation substantially decriminalizing a range of types of false accounting of which the Prime Minister himself stood accused.
- the passage, on 5 October 2001, of retroactive legislation (law no. 367/01) whereby the conditions that would have to be met for evidence gathered abroad to be admissible in Italian criminal proceedings, were considerably tightened. It was widely predicted that this would assist a number of high-profile defendants in corruption trials, including the Prime Minister’s lawyer, Cesare Previti (who was, however, found guilty in the Imi-Sir case in April 2003), by so lengthening trials that charges would eventually have to be dropped under the statute of limitations as explained above.
- At the end of February 2002 the Chamber of Deputies agreed to proposed legislation supposedly to deal with the conflict of interests involved in Berlusconi’s position as

Prime Minister and owner of a controlling stake in Italy's three largest private television stations – but widely seen as bogus.⁵⁰

- On 1 August 2002, the Senate agreed to the so-called 'Cirami Bill' (after its original sponsor Melchiorre Cirami) allowing a defendant to ask the Court of Cassation to transfer proceedings against them to another court on grounds of 'legitimate suspicion' concerning the impartiality of the judges involved in trying the case. Rushed through Parliament, which gave its final approval in November (law no. 248/02), the Bill was widely suspected of being driven by the desire to allow Berlusconi's lawyers to delay proceedings against him in the Sme-Ariosto corruption trial whose judges were expected to give a verdict shortly thereafter. Nando dalla Chiesa, son of the Carabinieri chief, General Carlo Alberto dalla Chiesa, murdered by the Mafia in 1982, has argued that in organised crime trials (often empirically linked with corruption and which often have tens, if not hundreds of defendants) the effects of Cirami will be particularly devastating, allowing the presentation of multiple transfer requests one after the other, thus reducing trials to a state of paralysis.⁵¹
- 12 August 2002 saw the publication of a Bill, sponsored by Forza Italia (FI) Deputy Giancarlo Pittelli. This envisaged, among other things, obliging investigating magistrates to inform a suspect that they were under investigation as soon as a file was opened on them – a provision which, prominent members of the judiciary argued, would, if the measure were passed, allow suspects to destroy evidence because it removed the secrecy from investigations.

- When, in February 2003, the Court of Cassation rejected Berlusconi's appeal under the Cirami Law to have his trial moved from Milan, the Prime Minister launched a virulent attack on the judiciary insisting that he would press on with sweeping reforms of the justice system. Shortly afterwards the government published proposals giving immunity from prosecution for any type of offence to the President of the Republic, the President of the Constitutional Court, the presidents of the two chambers of Parliament and the Prime Minister for the duration of their terms of office – proposals that were approved by Parliament on 20 June (law no. 140/03).

It may be safely suggested that if passed, the Pittelli proposal in particular would make more difficult the efforts of judicial investigators seeking to tackle corruption – already made difficult by the fact that the relevant legislation is characterised by an excessively large number of different species of crime, distinguishing, for example, between the crimes of corruption and extortion; between corruption committed on one's own behalf or on behalf of others; between corruption involving a public official and that involving persons engaged in public services, and so forth – with the result that judicial investigators are obliged to invest considerable amounts of time in trying to establish under which laws they can bring their intended prosecutions. Moreover, the existing legislation fails to cover situations in which bribes are paid, not for a specific service, but rather, as a form of 'protection' paid as a general retainer for the corrupt services of public officials. Nor does it take account of the fact that the corrupt relationship between an entrepreneur and a public official is often not a direct one, but rather is entered into via

a party functionary who then undertakes to ‘insure’ the entrepreneur in his multiple dealings with the state. It is a reasonable supposition therefore, that proposals such as those of Pittelli not only undermine the effectiveness of judicial action but also the enthusiasm for it in the first place precisely because the achievement of a ‘successful outcome’ (meaning the conviction of suspects in this case) is so difficult. Therefore, the large number of initiatives, taken since Tangentopoli, whose effects, perceived or real, intended or unintended, act in the direction of making the work of judicial investigators more difficult, suggests that the strenuousness, not only of legislative efforts, but also of judicial/investigative efforts, may have failed to increase in the wake of the institutional changes of the mid-1990s.⁵²

A further piece of evidence pointing in this direction concerns the growing campaign of denigration of the activities of the judiciary, by politicians of the centre right, since the outbreak of Tangentopoli. As we have seen, a concatenation of events in the early 1990s led judicial investigators to break free of the political constraints that had until then frequently conditioned their work. One of the reasons why they were successful in initiating investigations into so many individuals at the time of Tangentopoli was because they were able to use preventative custody laws to create for suspects a kind of ‘prisoner’s dilemma’ – leading to a veritable rush on the part of politicians, administrators and entrepreneurs, to confess the part they had played in networks of corrupt exchange.⁵³ In these circumstances the judiciary’s new-found independence must have seemed, to not a few politicians, a particularly threatening development. It is

undoubtedly this that explains the increasingly shrill reactions of politicians whenever, in the period since Tangentopoli, the news of some new investigation, or progress in an existing investigation, has broken into the public domain. Politicians' reactions have centred around the idea that judicial investigators are politically motivated, using their powers to damage politicians with whom they disagree. The Prime Minister himself has been especially shrill in his denunciation of investigations into allegations against him, as the work of communist sympathisers who have been using the judicial system 'to eliminate political adversaries, riding rough-shod over the law, due process and reality itself, by means of contrived investigations, witnesses invented ad hoc, contradictory accusations, farcical trials and monstrous sentences'.⁵⁴ The constant repetition of these sorts of claims has had a significant effect on public opinion – at the time of Tangentopoli almost unanimous in its support for what the judiciary was doing, now much more divided, and in a significant proportion of cases definitely hostile, in its attitudes towards the institution – thus confirming that public support for the judiciary has always been fragile and highly changeable (largely because, in terms of the stratagem it makes available to those with the resources to sustain long trials as compared to those of more modest means, the legal system frequently does fall short of the obligation to ensure equality before the law). Most importantly, the centre-right politicians' allegations have deprived the judiciary of an important public-opinion ally, something whose effects on morale would appear to have been significant. Members of the judiciary have felt besieged by the criticisms levelled against them – so much so that in 2002 and 2003, the ceremonial openings of the judicial year were marked by judges' protests against

government proposals for judicial reform (the senior Milan public prosecutor, Francesco Saverio Borelli, calling on the judiciary to ‘resist, resist, resist’).

Finally, a third piece of evidence relevant to the strenuousness of judicial anti-corruption efforts concerns the numbers of judicial investigators who are themselves caught up in allegations of corruption. The judiciary may be thought of as the ‘natural adversary’ of those involved in corrupt exchanges – but of course it itself is exposed to the danger of corruption as its power to apply sanctions gives it a resource that is one of the kinds most frequently sold for bribes. The involvement of its members in corrupt exchanges will have a negative impact on its ability to prosecute suspects. Therefore figures showing the numbers of magistrates who are themselves under investigation for acts of corruption and related crimes can stand as an additional indicator of the strenuousness of judicial anti-corruption efforts. We have no evidence that these numbers have significantly decreased in recent years.⁵⁵

In short, the institutional changes of the mid-1990s have not been reflected in any noticeable change in the amount of effort the authorities are able or willing to make to curb the extent of corruption in Italy. True, the evidence for this conclusion is largely impressionistic and we lack robust indicators with which to quantify it. Nevertheless, indicators of a sort do exist. Transparency International’s Corruption Perceptions Index is compiled by combining the results of multiple surveys of business people, academics and financial analysts who are asked to rank countries according to how corrupt they perceive

them to be. The resulting index ranges from zero to ten where the closer to ten a country's score is, the 'cleaner' it is presumed to be.⁵⁶ Since this is a corruption perceptions index, had a determined effort to fight corruption been made following the institutional changes of the mid-1990s, we might reasonably have expected to find a significant improvement in Italy's score by virtue of this fact alone. Since they run from 4.86 in 1980-85 to 5.2 in 2002 – an increase of just 0.34 – the scores provide precious little evidence of this. The final section considers what might explain the failure of the mid-1990s institutional and party-system changes to have the effects expected of them.

Explaining the lack of improvement in anti-corruption efforts

We expect party systems of the kind Italy had prior to the 1990s to result in efforts to tackle the problem of corruption less strenuous than those that are made in bipolar systems of the kind Italy now has. The reason is that in tri-polar systems, with bilateral oppositions, the oppositions may gain by advocating anti-corruption measures, but in order for one or other of them to succeed in displacing the governing parties by so doing, the shift of votes will have to be large and predominantly in one direction. In bipolar systems, on the other hand, a governing majority's failure to tackle corruption directly increases the probability of its being displaced by the opposition while its commitment to doing so reduces such probability. However, this is only true if the numbers of corrupt individuals and those who in some way benefit from corrupt exchanges (whose votes may be lost by anti-corruption measures) are outweighed by the votes to be gained by

advocating such measures. Moreover, even if this is the case, the advocacy of anti-corruption measures may still have electoral costs. For the time and resources they require necessarily detract from the time and resources the authorities are able to devote to other activities whose impact on votes may be even greater. This suggests that the reason why there have been few significant improvements in the seriousness with which corruption is dealt with despite Italy's party-system change is that the net impact on votes of attempts to deal with it is either negative or at least not very largely positive. Several pieces of evidence point in the direction of the latter possibility.

First, in aggregate, the Italian electorate has a rather low propensity to shift the distribution of its vote between the two coalitions of centre left and centre right from one election to the next. Both the 1996 victory of the centre left and the 2001 victory of the centre right were essentially a consequence of the effectiveness of the party-alliance strategies pursued by the two coalitions rather than of any significant changes in the proportion of votes won by each.⁵⁷ This aggregate stability is underpinned by stability at the individual level.⁵⁸ A question therefore remains about whether there is a sufficiently large number of voters able and willing to switch their votes to make alternation between coalitions of the centre left and centre right a realistic possibility in most ordinary circumstances. If this is not the case, then the fundamental assumption underlying expectations of a beneficial effect of bipolar systems, namely, that governments are obliged to behave in certain ways by the dynamics of party competition, thereby loses its validity.

Second, even if voters are able and willing to switch their votes, a bipolar system may not have the beneficial effects expected of it if voters' choices are not an exogenous variable. That is, the assumption that public opinion places governments under pressure to attack corruption is not a valid one if, instead of responding to public demands, parties have the power to change or 'manipulate' public opinion in such a way that a response is unnecessary. As we have seen, there is evidence of this having been the case in Italy, the change in opinion having been the consequence, it would seem, of the aforementioned attacks on the judiciary on the part of politicians. For example, della Porta and Vannucci cite the results of a survey, carried out in 1998. While 34.1 per cent of respondents expressed the belief that the conflict between magistrates and politicians was due to politicians' desire to escape punishment for acts of wrong-doing, 29.1 per cent thought it had to do with a desire on the part of the judiciary to interfere with the sphere of politics. Moreover, 42.5 per cent thought that the judiciary treated with undue favour those belonging to particular social groups, while 43.5 per cent felt that the administration of justice depended on the professionalism and the personality of individual judges – who were, however, often dishonest or incompetent.⁵⁹ Politicians' attempts to change public opinion might have been less successful had their attacks on the judges all come from just one of the two main coalitions, with representatives of the other coalition offering a strenuous defence of the judiciary's attempts to tackle corruption. This is, however, far from having been the case. While criticisms of the judiciary have come principally from the current Prime Minister and his governing party, FI, some of the opposition parties

have been distinctly ambiguous in their attitudes (principally, it would seem, because they are the ‘heirs’ of parties whose leading spokespersons were high-profile defendants at the time of Tangentopoli).

Third, at the time of the 2001 election, there were significant numbers of voters for whom corruption and allegations of corruption apparently cut little or no ice. Though there is evidence that the opposition parties gained votes by ‘demonising’ him,⁶⁰ impressionistically, Silvio Berlusconi’s quest to become Prime Minister was hardly damaged at all by the allegations of tax fraud, false accounting and links with the Mafia that were frequently levelled against him. This may have something to do with a significant feature of Italian political culture, namely, a more or less deeply rooted feeling of diffidence and mistrust towards the institutions of the state – something that is underpinned by low levels of interpersonal trust in general. The results of the 2001 Italian National Election Study confirmed the findings of surveys carried out over a period of 30 years when they revealed that 74.1 per cent of respondents believed that ‘One can never be too cautious in one’s dealings with other people’ – as compared to only 24.2 per cent prepared to endorse the view, ‘One can trust most people’.⁶¹ Italy therefore enjoys relatively low levels of social capital and in such circumstances it is reasonable to assume that individuals will be less scandalized by revelations of corruption than will be the case where levels of social capital are higher. And where the sense of moral outrage provoked by given acts is relatively weak, so there may we expect levels of public pressure to do something about them to be correspondingly weak.

Conclusion

We are left to conclude, therefore, that while institutional change is not a necessary condition for the initiation of vigorous anti-corruption efforts in liberal democracies, it is not a sufficient condition either. If our findings from the Italian case have any relevance for liberal democracies generally, then they suggest that electoral- and party-system changes can only have the effects expected of them given the simultaneous presence of other factors, which make up a sufficient condition together with the changes. These other factors include a number of those we identified in the second section of this article, especially public pressure (in the form of a degree of electoral ‘mobility’) and an ‘appropriate’ political culture. In relation to the Italian case itself, however, while our findings incline us towards a pessimistic view of the future of anti-corruption efforts in that country, we should be wary of accepting such a view too easily. After less than ten years and only three elections, the new bipolar party system is hardly consolidated and competing coalitions with stable party memberships and regular alternation in office have not yet had a chance to emerge as enduring features of Italy’s political system. If, with time, such features do emerge, then it may be that they will favour anti-corruption efforts in the longer run. This suggests that it will be worth keeping the Italian case under observation, and that the future may at some stage oblige us to revise our conclusions about the impact of institutional change.

Notes

* The author would like to thank for their helpful comments on earlier versions of this article, Mark Donovan; Susan Rose-Ackerman; three anonymous referees; participants in the Fourth Colloquium on Cross-border Crime held at the University of Ljubljana in October 2002, and contributors to the Political Studies Association panel, 'Political Corruption and Organised Crime in Italy', held at the University of Leicester, in April 2003.

¹ Robert Williams, 'Introduction', in Robert Williams and Alan Doig (eds), Controlling Corruption, Edward Elgar, Cheltenham and Northampton (Mass.), 2000, p. xii.

² James L. Newell and Martin J. Bull, 'Introduction', in Martin J. Bull and James L. Newell (eds), Corruption in Contemporary Politics, London and Basingstoke, Palgrave Macmillan, pp. 1-6.

³ Peter Eigen, 'Combating Corruption Around the World', Journal of Democracy, 7, 1, January 1996, pp. 158-168.

⁴ Some of the most authoritative contributions to date have been gathered together in the volume edited by Williams and Doig, Controlling Corruption.

⁵ For example, the correlation between countries' scores on Transparency International's Corruption Perceptions Index for 1996

(<http://www.transparency.org/cpi/1996/cpi1996.pdf>) and their GDP per capita (Alan Heston, Robert Summers and Bettina Aten, Penn World Table Version 6.1, Center for International Comparisons at the University of Pennsylvania (CICUP), October 2002, <http://pwt.econ.upenn.edu/>) works out at 0.82.

⁶ For example, between 1980-85 and 1999, in terms of Transparency International's Corruption Perceptions Index (whose values range from 10 (= totally 'clean') to 0 (=totally corrupt)) the scores for France and Belgium declined from 8.41 and 8.28 to 5.2 and 6.8 respectively, while those for Spain and Italy went down from 6.82 and 4.86 to 5.3 and 3.7 respectively (<http://www.transparency.org/surveys/index.html>).

⁷ To these one might add associational initiatives, both by professional interest groups and by universal pressure groups such as Transparency International. The focus here is on politico-legislative and judicial-investigative efforts since it is these efforts that would appear most likely to be affected by institutional change and because ultimately, it is by means of their impact on such efforts that associational initiatives by and large have their effect, if any. Such initiatives belong to the category of public pressure.

⁸ James L. Newell, Parties and Democracy in Italy, Aldershot, Ashgate, p. 60. See also Gianfranco Pasquino, Il sistema politico italiano, Bologna, Bononia University Press.

⁹ Alan Doig, 'Political Corruption in the United Kingdom', in Martin J. Bull and James L. Newell (eds), Corruption in Contemporary Politics, London and Basingstoke, Palgrave Macmillan, p. 188.

¹⁰ Thomes L. Delare, 'A Sea Change in Anti-corruption Efforts', in OECD, No Longer Business as Usual: Fighting Bribery and Corruption, Paris, OECD, 2000, pp. 93-100.

¹¹ Mark Pieth, 'From Ideal to Reality: Making the New Global Standard Stick', in OECD, No Longer Business as Usual, pp. 51-65.

¹² Martine Millet-Einbinder, 'No More Tax Breaks for Bribes', in OECD, No Longer Business as Usual, pp. 67-76.

¹³ On the other hand, it is sometimes suggested that privatization programmes are conducive to corruption since they tend to undermine the strength of norms emphasising the importance of universalism and due process in the delivery of public services.

¹⁴ Although, as Rose-Ackerman points out, the contrast between closed- and open-list systems, is about necessary, not sufficient conditions. 'If the party leadership is corrupt, it will want a closed-list system as a means of controlling members through control of positions on the list'. Susan Rose-Ackerman, Corruption and Government: Causes, Consequences and Reform, Cambridge, Cambridge University Press, 1999, p. 202.

¹⁵ Barbara Geddes, 'A Game-Theoretic Model of Reform in Latin American Democracies', American Political Science Review, 85, 2, June 1991, pp. 371-392. Barbara Geddes, Politician's Dilemma: Building State Capacity in Latin America, Berkeley, University of California Press, 1994.

¹⁶ Jana Kunicova and Susan Rose-Ackerman, 'Electoral rules and constitutional structures as constraints on corruption', mimeo, Department of Political Science, Yale University, 4 June 2003.

¹⁷ The field of research into the impact of electoral rules on corruption and corruption-related issues is a growing one. See, for example, Susan Rose-Ackerman, 'Political corruption and democratic structures', in Arvind K. Jain (ed.), The Political Economy of Corruption, London and New York, Routledge, pp. 35-62; Torsten Persson, Guido Tabellini and Francesco Trebbi, 'Electoral rules and corruption', mimeo, <ftp://ftp.igier.uni-bocconi.it/homepages/tabellini/tp001213.pdf>, June 2001.

¹⁸ Rose-Ackerman, Corruption and Government, p. 201.

¹⁹ Rose-Ackerman, Corruption and Government, p. 206.

²⁰ For details see James L. Newell and Martin J. Bull, 'Political Corruption in Italy', in Martin J. Bull and James L. Newell (eds), Corruption in Contemporary Politics, London and Basingstoke, Palgrave Macmillan, pp. 37-49.

²¹ W. W. Sharrock, 'The Problem of Order', in Peter Worsley (ed.), Introducing Sociology, second edition, Harmondsworth, Penguin, 1977, p. 507.

²² Donatella della Porta and Alberto Vannucci, 'The resources of corruption: Some reflections from the Italian case', Crime, Law and Social Change, 27, 3-4, 1997, pp. 231-254; quoted by Rose Ackerman, Corruption and Government, p. 209.

²³ Silvia Colazingari and Susan Rose-Ackerman (1998), 'Corruption in a Paternalistic Democracy: Lessons from Italy for Latin America', Political Science Quarterly, 113, 3, 1998, pp. 447-470.

²⁴ It is essentially this article which, on the one hand, has allowed politicians in recent years to condemn members of the judiciary for supposedly abusing their powers to carry out a political witch-hunt against them, but on the other hand, has allowed members of the judiciary to argue that for politicians to dispute their motives in this way is subversive of the Constitution.

²⁵ Carlo Guarnieri, La giustizia in Italia, Bologna, il Mulino, p. 64.

²⁶ G. Leroy Certoma, The Italian Legal System, London, Butterworths, 1985, pp. 225-6.

²⁷ Certoma, The Italian Legal System, p. 243.

²⁸ G. di Federico, 'The Crisis of the Justice System and the Referendum on the Judiciary', in Robert Leonardi and Piergiorgio Corbetta (eds), Italian Politics: A Review, vol. 3, London and New York, Pinter, 1989, p. 31.

²⁹ Carlo Guarnieri, 'The Judiciary in the Italian Political Crisis', in Martin J. Bull and Martin Rhodes (eds), Crisis and Transition in Italian Politics, Portland OR and London, Frank Cass, 1997, p. 167.

³⁰ Adriana Alberti, 'Political corruption and the role of public prosecutors in Italy', Crime, Law and Social Change, 24, 4, 1996, pp. 273-292.

³¹ Article 45 of the Code of Criminal Procedure, quoted by Alessandro Pizzorusso, L'organizzazione della giustizia in Italia: La magistratura nel sistema politico e istituzionale, Torino, Einaudi, 1990, p. 144, my translation.

³² Donatella della Porta, 'A Judges' Revolution? Political Corruption and the Judiciary in Italy', paper presented to the workshop on 'Italy: Changes, Constraints and Choices' of the Joint Sessions of Workshops of the European Consortium for Political Research, University of Warwick, 23-28 March 1998, p. 10.

³³ Alberti, 'Political corruption', p. 285.

³⁴ Guarnieri, 'The Judiciary', p. 158.

³⁵ di Federico, 'The Crisis of the Justice System', p. 33.

³⁶ These factions, operating within the professional association for members of the judiciary, the Associazione Nazionale Magistrati, were: the left-leaning Magistratura Democratica; the conservatively oriented Magistratura Indipendente, and, in the centre of the political spectrum, Terzo Potere and Unità per la Costituzione.

³⁷ di Federico, 'The Crisis of the Justice System', p. 35; quoted by Alberti, 'Political corruption', p. 287.

³⁸ Alberti, 'Political corruption', p. 287.

³⁹ Quoted by Pizzorusso, L'organizzazione della giustizia, pp. 51-2, my translation.

⁴⁰ Three quarters of the seats in both chambers of Parliament are distributed according to the single-member, simple plurality system, one quarter proportionally. In the case of the Senate, the country is divided into 237 single-seat colleges within which the voter chooses his or her preferred candidate. The candidate winning the most votes is elected. The remaining seventy-eight seats are distributed among the country's twenty regions according to size and are allocated proportionally according to the d'Hondt highest average formula. Within each region, the parties' vote totals are calculated and then discounted by the votes received by candidates that have been elected outright in the single-member colleges. This is the so-called scorporo (or 'deduction of votes'). Seats are then given to the (not already elected) candidates of parties entitled to receive seats in accordance with the size of such candidates' vote shares.

In the case of the Chamber, twenty-seven constituencies are sub-divided into 475 single-member colleges within which the voter makes a choice of candidate and the candidate winning the most votes is elected. Candidates in the single member colleges must be supported by at least one of the party (or party coalition) lists presented at constituency level for the distribution of the remaining 155 seats. The voter has a second ballot with which to make his or her choice among these lists. The proportionally distributed seats are allocated only to those lists that receive at least four per cent of the

national total of valid list votes cast. Seats are then allocated to lists in three steps. First, in each constituency, each qualifying list's 'electoral total' is calculated. This is its vote total minus, for each of the party's candidates elected in single-member colleges in the constituency, a sum of votes equal to the total obtained by the second-placed candidate. Again, this is known as the scorporo. Second, the sum of all qualifying lists' electoral totals are divided by the number of proportional seats allocated to the constituency to obtain the constituency electoral quotient. Third, each party's electoral total is then divided by the quotient to determine the number of seats to which it is entitled.

⁴¹ Donatella della Porta and Alberto Vannucci, Un paese anormale: Come la classe politica ha perso l'occasione di Mani Pulite, Rome and Bari, Laterza, 1999, p. 40.

⁴² della Porta and Vannucci, Un paese anormale, p. 45.

⁴³ Briefly, what the law did was to remove the anomaly whereby public officials, despite having been convicted of gross acts of corruption, were nevertheless able to remain in their posts. The point is that in Italy, everything governing the public employee's relationship with his or her employer has the status of law, meaning that nothing can be done on either side unless there is a specific law sanctioning it. Therefore, it was not possible to take account, in disciplinary proceedings against the corrupt employee, of evidence arising in criminal proceedings for the offence of which they stood accused. Nor was it possible to transfer or dismiss employees on the basis of the outcome of criminal proceedings. The new law rectifies this.

⁴⁴ The proposal provided for

-
- the appointment of an independent ‘Authority for the legality and transparency of the activities of the public administration’, with powers to inspect the activities of public bodies and to investigate the financial circumstances of a range of public officials in the event of suspicions arising concerning the violation of principles of legality and transparency;
 - the setting up of a register of the financial interests of a range of elected and non-elected public officials from university professors to prime ministers;
 - the setting up of a register of the lobbying activities of individuals, companies and associations;
 - the publication of an official Bulletin making public the details of all sales, acquisitions and tendering activities carried out by public bodies.

⁴⁵ The first of them, law 59/97, sought to give effect to a range of administrative reforms including the delegation, to the regions and local authorities, of a number of administrative functions via a process of legislative decree. It empowered the government, within nine months, to pass legislative decrees conferring upon the regions and local authorities administrative responsibilities in all areas ‘related to the protection of the interests and the promotion of the development of their respective communities’ except those areas listed in the law itself. (James L. Newell, ‘At the Start of a Journey: Steps on the Road to Decentralization’, in Luciano Bardi and Martin Rhodes (eds), Italian Politics: Mapping the Future, Boulder CO, Westview Press, pp. 149-167). In doing this, it sought to initiate a process of bureaucratic rationalization that would eliminate all duplication of functions between different levels of government and administration. For

details see Mark Gilbert, 'Le leggi Bassanini: una tappa intermedia nella riforma del governo locale', in David Hine and Salvatore Vassallo (eds), Politica in Italia: I fatti dell'anno e le interpretazioni, 1999 edition, Bologna, il Mulino, pp. 161-80. The second, law no. 127/97, sought to continue the attempt to simplify administration in a number of areas of public life initiated by law no. 59/97, by improving the efficiency of decision-making and reducing the extent of bureaucratic control procedures.

⁴⁶ della Porta and Vannucci, Un paese anormale, p. 39.

⁴⁷ The typical criminal trial takes over four years to complete and there are currently nearly six million cases pending. Anne McNess, 'The Italian Judicial System and its Reform', mimeo, British Embassy, Rome, 17 March 2003, p. 3.

⁴⁸ Once a trial has been concluded and judgement passed, any party can ask for the case to be reviewed by the next grade of court i.e. the corte d'appello for cases heard in the first instance by a tribunal, or the corte d'assise d'appello, for cases heard in the first instance by the Assize Court. On conclusion of the second grade of justice, the losing party may appeal to the Corte di Cassazione or Supreme Court on the grounds of wrong interpretation or application of the law by the judge. McNess, 'The Italian Judicial System', p. 2.

⁴⁹ Piercamillo Davigo, 'I limiti del controllo penale sulla corruzione e i necessari rimedi preventivi', in Marco D'Alberti and Renato Finocchi (eds), Corruzione e sistema istituzionale, Bologna, Il Mulino, 1994, p. 44, my translation.

⁵⁰ This is the so-called 'Frattoni Bill'. For details see: David Hine, 'Silvio Berlusconi, i media e il conflitto di interesse', in Paolo Bellucci and Martin Bull (eds), Politica in Italia:

i fatti dell'anno e le interpretazioni, 2002 edition, Bologna, il Mulino, 2002, pp. 291-307;

Giovanni Sartori, 'Conflitto d'interessi', in Francesco Tuccari (ed.), Il governo

Berlusconi: le parole, i fatti, i rischi, Rome and Bari, Laterza, 2002, pp. 21-33.

Essentially, it was proposed to set up an anti-trust authority, nominated by the presidents of the two chambers of Parliament, with the task of investigating alleged conflict-of-interest cases and proposing solutions for them. As an answer to the Prime Minister's conflict of interests, the proposals were widely seen as bogus for they specifically excluded 'the mere ownership of an individual enterprise or parts of companies or shares' from the list of activities deemed incompatible with government office. In other words, a 'conflict of interest' was to be held to exist, not in virtue of 'structural' factors arising from the ownership of given assets while occupying given public offices, but only when certain actions were undertaken. Second, an act of government directly affecting the property of ministers would be insufficient to establish the existence of a conflict of interests: it would also be necessary to show that the act was against 'the public interest'. And third, the anti-trust authority was not to be able to apply any legal sanctions at the end of its deliberations but merely to report to Parliament.

⁵¹ Nando dalla Chiesa, 'Mafia, le due tolleranze', Omnicon/38 Osservatorio Milanese sulla Criminalità Organizzata al Nord, 6, 3, www.omniconweb.it

⁵² These initiatives have been linked to the hostility towards the judiciary on the part of numbers of politicians, discussed in the following paragraph. They include the attempt, in 1994, to restrict by government decree, the preventive custody powers of prosecutors; the attempt, in 1998, to establish a parliamentary commission of enquiry into the activities of

the Mani pulite investigators; periodic ministerial inspections of the important Milan public prosecutor's office, and most recently, proposals to replace the constitutional obligation on prosecutors to pursue all cases of suspected wrongdoing of which they are aware, with a degree of political influence over the cases to be pursued.

⁵³ What seems to have happened is that suspects, held incommunicado, would be offered the choice of remaining in prison or else release if they confessed. Accomplices, knowing that they too would be picked up in the event of a confession but not knowing exactly how much had been revealed, thus had an incentive to tell 'their side of the story' as soon as possible, before the confessions of those in prison had gone 'too far'.

⁵⁴ Vittorio Testa, "Ecco le mie condizioni". Il ritorno di Berlusconi. Intervista al leader di FI: Indagine su Tangentopoli o sono risibili le proposte della maggioranza sulla giustizia', la Repubblica, 5 September 1998; quoted by della Porta and Vannucci, Un paese anormale, p. 56, my translation.

⁵⁵ della Porta and Vannucci cite Ministry of Justice figures showing that on 31 May 1998, 203 magistrates were under investigation for crimes ranging from extortion and corruption to abuse of office, slander, ideological falsity and collusion with the Mafia (della Porta and Vannucci, Un paese anormale, p. 54). Unfortunately, we do not, for the time being, have figures for earlier years.

⁵⁶ For further details concerning Transparency International and the Corruption Perceptions Index see Thomas D. Lancaster and Gabriella R. Montinola, 'Toward a methodology for the comparative study of political corruption', Crime, Law and Social

Change, 27, 3-4, 1997, pp. 185-206, and Transparency International's Web site:

www.transparency.org.

⁵⁷ Electoral details can be found in James L. Newell, The Italian General Election of 2001: Berlusconi's Victory, Manchester, Manchester University Press.

⁵⁸ For example, Italian National Election Study data show that between 1994 and 1996, only 5.5 per cent of those voting at both elections switched allegiance between the two main coalitions, and between 1996 and 2001, only 7.6 per cent did so. ITANES [Italian National Election Study], Perché ha vinto il centro-destra, Bologna, il Mulino, 2001, p. 93.

⁵⁹ della Porta and Vannucci, Un paese anormale, p. 57.

⁶⁰ Luca Ricolfi, 'Demonizzazione e aritmetica dell'autoinganno', Micromeaga, 3, 2001, pp. 63-70.

⁶¹ ITANES, Perché ha vinto il centro-destra, p. 72.