DEPARTMENT OF POLITICAL SCIENCE

THE LAW OF CORRUPTION

Exploring Potentials for State Transformation Using Insights from Italy

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Abstract

Until recently, it has been taken for granted that laws play an important role in the fight against corruption. However, a recent debate casts doubt on the influence of laws to curb corruption in societies with systemic corruption, i.e. where such laws are most needed. Without a strong rule of law, an efficient bureaucracy, and trustworthy and legitimate politicians, legislation with sanctions will have a limited effect on changing behavior. Rather, given corruption as a collective action problem, it is the empirical and normative expectations of others' behavior that impedes societies from breaking the vicious cycle (Persson et al. 2013). Against this backdrop, this essay asks: what is the role of laws in the fight against systemic corruption? Through a comparative historical analysis of the North-South gap of corruption in Italy since the national unification in 1861, this study finds that the role of law in societies with systemic corruption is to generate focal points for coordinating desirable behavior. However, as the case of Italy reveals, a credible commitment by the state needs to be in place in order for laws to manifest its focal power. In other words, the state can use the law to signal an alternative to the corrupt equilibrium, but if the state lacks credibility, the signal is not likely to be received as desired. Thus, for exploring the role of formal laws in anticorruption, this essay raises the important interaction between legal content, actors, institutions, and contextual circumstances.

Keywords: Corruption; Anticorruption law; Focal points; Italy; Historical institutionalism; Credible commitments

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Introduction

There is a specter haunting democracy in the world today.

It is bad governance – governance that serves only in the interests of a narrow ruling elite.

Larry Diamond (2007: 119)

Huntington's (1991) observation of the 'third wave of democratization' culminated in 1989 with the fall of the Soviet Union and the birth of promising democracies in Sub-Saharan Africa, which led Fukuyama (1992) to evoke the Hegelian rhetoric of *the end of history*: liberal democratic ideology had prevailed globally as the best political system. Yet, as Diamond's quote suggests, societies need other arrangements to ensure successful transitions than merely elections, political parties, and constitutions (cf. Fukuyama 2005; Fortin 2012; D'Arcy & Nistotskaya 2017). First, societies need state capacity; that is, states need to maintain order, be efficiently administered, and be able to extract revenue from its citizens (Skocpol 1985: 16). In Huntington's (1968: 7) words, "men may have order without liberty, but they cannot have liberty without order", or according to Durkheim, "liberty is the fruit of regulation" (1961: 54). Second, states need quality of government (QoG), which concerns *what* and *how* states are performing (Rothstein 2011b). Arriving at the goals of state capacity and QoG is easier said than done, but should be given more attention if the main objective is to improve human welfare, or if we 'only' want to make functioning democracies throughout the world. Corruption, defined here as *the abuse of public power for private gain*, is the biggest obstacle to QoG, which raises the relevance to study remedies against it (Holmberg et al. 2009).

The aim of this study is to explore the role of formal laws in the fight against corruption.[1] Principal-agent theory, which has been the dominant theory to explain the prevalence of corruption, has advocated for preventing measures of punishment, monitoring, and sanctions. Instead of locating its root cause, corruption is argued to be controlled by incentives. However,

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[1] The concept of law bears several meanings. Hart (1961) claims that laws are humanly devised rules based on its social practices and not necessarily moral convictions. These can then be divided into primary and secondary rules, where the first connotes laws that imply legal obligations and consequences when disobeyed, and the other signifies rules that legitimizes and strengthen the primary rules through three different mechanisms (rules of recognition; rules of change; and rules of adjudication). In this respect, laws denote governmental social control. But as Fuller (1969: 106) argues, "the enterprise of subjecting human conduct to the governance of rules" is not merely a governmental business. Families, conventions, norms, and so forth, can have the same function as government laws. Friedman and Hayden (2016) summarizes laws into four categories: formal and public (e.g. a constitution), informal and public (e.g. the "real" speed limits), formal and private (e.g. grievance procedures), and informal and private (e.g. rules within a family). In this study, the use of "formal law" or "legislation" refers to the first category.

a competing comprehension of corruption as a collective action dilemma raises doubts on the role of the incentive structures emphasized in principal-agent theory. More precisely, the collective action framework criticizes the assumption that systemically corrupt contexts have 'principled principals'. This is the case since, in such settings, even if a majority condemns corruption, either morally or socially, it is irrational not to play by the rules as everyone else does it. More penalties will not change corrupt activities, and such societies are stuck in social traps wherein low interpersonal and institutional trust dominate (Rothstein 2005). In turn, the scholarship on regulation of corruption has reached a point where it is uncertain what we need laws for. Several contributions have pointed on the limited power of laws to incentivize 'good' behavior, that international transplantation of law does not work, and, not least, that there is no 'principled principal' to guard the anticorruption efforts (cf. Persson et al. 2013). In addition, most countries have adopted the United Nations Convention Against Corruption (UNCAC), which contains numerous concrete policy reforms countries ought to undertake to effectively combat corruption. But, as measured by the Global Integrity Report (GIR), the effects of possessing 'the right' legislations appear to be small or non-existent. For example, Uganda is ranked as one of the most corrupt countries in the world, but scores, according to GIR, 98 out of 100, where 100 equals perfect anticorruption legislation (Rothstein & Persson 2015: 241). Against this, there are both empirical and theoretical reasons to question the power of laws to curb systemic corruption. A preliminary conjecture is that laws indeed have limited powers in corrupt societies, but that scholars and policymakers often simplify the power spectrum of laws. Legal compliance is not merely determined by *deterrence* and *legitimacy*, but also by *expression*, and my aim is to explore the role of the latter form of law in the fight against corruption.

The research question guiding this study is: "*what is the role, if any, of formal laws in the fight against systemic corruption?*", which is an open-ended question, contributing to the scholarship of interactions between formal and informal institutions (cf. Helmke & Levitsky 2004). The first sub-question is to explore whether formal laws play *any* role, and the second, *if so, how*? I find that laws play a role in anticorruption, namely to provide a focal point for the desired behavior. In other words, an alternative to the corrupt equilibrium. However, in my empirical examination of Italy, I find that the focal power of law is dependent on the level of state credibility. Thus, the study of anticorruption law ought to move beyond merely the *content* of law and take into account interactions with actors, informal institutions and contextual circumstances. Such an analysis is well-suited for the case of Italy. Despite being under the same formal institutions for 150 years, the South is remarkably more corrupt than the North.

By tracing the trajectory of the discrepancy, I find that the national unification of 1861 is the root factor to why the South is disproportionally corrupt, and it explains why Northerners and Southerners respond differently to the same legislation (Bigoni et al. 2018).

The study is designed with the logic of comparative historical analysis (Lieberman 2001; Capoccia & Ziblatt 2010; Mahoney & Thelen 2015). Drawing on Rustow's (1970) exposition of causal explanations, I motivate the historical research design by rejecting (i) that social transformations occur uniformly around the world, always involving the same actors, the same political issues, and so forth; and (ii) that transformations occur in a steady and linear process over time. Instead, a causal theory must acknowledge temporal and spatial dimensions and examine the context just before after the transformation. By contextualizing the transitions in a few cases, a theoretical model or ideal type may be derived. Corruption, as a political system, is a typical 'sticky' one. One cannot assume to locate its causes in contemporary cross-country statistics. Similarly, 'getting to QoG' is not expected to happen by a single factor. It is important to not mix up correlation with causation, and rather take into account the development of the sticky institutions. There is enough evidence to assume that corruption was as prevalent in the North as in the South of Italy during the formative moments in 1861. Since then, the trajectories have dispersed into two very distinct differences, despite being under the same government institutions. To explore the causes of this development, it is crucial to examine the historical events before and after the divergence.

According to the literature, laws can serve both as incentive structures and as norm-generating institutions for how people will form their behavior (McAdams 2000a, 2015; Carbonara 2017; Sen 2006; Brennan et al. 2013; Sunstein 1996, Posner 1998, 2000; Hardin 2001). I develop a theoretical framework of legal compliance, emphasizing the *expressive* function of law as in contrast to *deterrence* and *legitimacy* theories. Deterrence theory assumes that actor A convinces actor B to conform based on a credible threat, while legitimacy theory assumes A's conformity to be based on his perception of the legitimacy in B's inclination. Expressive theory, instead, holds that law influences behavior by what it expresses. Based on institutional theory, corruption is the equilibrium of an informal institution, reinforced through time and space, and thus difficult to change. Still, as individuals constantly seek order and social belonging (Fukuyama 2011, 2014; Colombo & Steinmo 2015), they often need to reconsider their alternatives to which norms they should embrace. Individuals coordinate themselves in accordance with focal points (Schelling 1960). Laws are by definition universal (for the population of interest) and have the power to express its message, and thus guide people to

coordinate desired behavior according to the law. Instead of fearing legal sanctions, individuals will change behavior and maximize its outcomes in accordance to what others are likely to do.

My results imply that the role of formal laws in the fight against corruption is to provide a focal point of behavior and work as a sustaining factor (Rustow 1970). After two decades of fascism, Italy was traumatized, destructed and lacked social order. A new national constitution was established in 1947 which set the path of the new Republic. The constitution had a focal power in the North but less in the South, mostly because of the low levels of state credibility in the latter. During this period, and on the aggregate level of Italy, corruption fell from 0.5 to a record-low 0.2 on a 0-1 scale. This level persisted for over 30 years (Coppedge et al. 2018).[2] Decades later, anticorruption law reforms with emphasis on monitoring corruption were implemented and its effects remain to be seen, but given the institutionalized corruption in all of Italy, one should not be too optimistic. Moreover, the genesis of Italy [1861], where the historical traditions of feudalism versus pre-modern state experience steered its development, was the fundamental factor for the North-South gap of the level of corruption. The new state, annexed by force and centralized from Turin, failed to credibly commit in the South, and at the same time, implemented market-liberal reforms in the South which brought new actors to the arena. In turn, corruption became *part* of the institutional culture in the North, and a *replacement* for the institutional culture in the South.

One implication of the study is the important function of state credibility, commonly known as 'credible commitments' (North & Weingast 1989). For reducing the disproportionate levels of corruption in the South, the state needs to be the credible enforcer of property institutions. In other words, it needs to throw competing social organizations, e.g. the mafia, out (cf. Migdal 2001). Moreover, I find that history matters and that easy legal solutions will not work to curb corruption. Instead, the role of law is to signal an alternative to the corrupt equilibrium. This happened in the North but never in the South and the explanation lies not in the legal formulation, but in the perceived credibility of the state.

The remainder of the study is organized as follows. I first discuss the literature on anticorruption suggestions and legal remedies in a critical review. Thereafter, I construct the theoretical framework, followed by a discussion of the research design. The frameworks are then applied in the empirical section, which ends with a conclusion and suggests ideas for future research projects.

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[2] I use V-Dem's *Political corruption index.*

Previous Research

Corruption research has recently gained quite some attention. Since seminal works of Heidenheimer (1970) and Scott (1972), scholars have attempted to explore the meaning of corruption (Rose 2017; Rothstein & Varraich 2017; Rothstein 2014; Rothstein & Torsello 2014), the causes of corruption (Treisman 2002, 2007, 2014; La Porta et al. 1999; Montinola & Jackman 2002; Lambsdorff 2005; Ades & di Tella 1999; Svensson 2005), the nature of corruption (Persson et al. 2013; Mungiu-Pippidi 2013), the consequences of corruption (Holmberg et al. 2009), and the variations of corruption (Mungiu-Pippidi 2006; Bauhr 2017; Bussell 2015). What now lies ahead are theories on how to break the vicious circles of corruption (Rothstein 2011b; Mungiu-Pippidi & Johnston 2017; Mungiu-Pippidi 2015). This section aims to review the current state of anticorruption suggestions. I find that there are some recurring anticorruption policies that perceives corruption to be solved effortless, disregarding the sticky nature of corruption as emphasized in collective action theory. For example, scholars have shown historical, cultural, and geographical roots to corruption which suggest that the solutions lie elsewhere than by crafting a 'quick fix' (cf. Acemoglu et al. 2001, 2002; Easterly & Levine 2003; Nunn & Puga 2010; Guiso et al. 2006, 2015; Becker et al. 2016; Blaydes & Chaney 2013; Nunn 2009; Leite & Weidmann 1999; Alghan & Cahuc 2010; Bisin & Verdier 2001; Dohmen et al. 2012; Aghion et al. 2010; Spolaore & Wacziarg 2013). Furthermore, as argued by Khan (2006: 21), one must identify critical institutions on country-by-country basis to identify the social transformation and reinforcement of institutions, and not expect a one-size-fit-all model of anticorruption. Lastly, systemically corrupt contexts ought to be seen from the lens of non-ideal theory (cf. Rawls 1971) for taking into account the fundamental resistance of anticorruption in most contexts.

Anticorruption: The limits of principal-agent theory

There are numerous ideas on how to curb corruption and at least ten of them are constantly recurring. I will call these the *ten commandments of anticorruption*. The *first* commandment says that countries need to fix the technology. For example, broadcasting public debates on anticorruption fosters 'political will' (Stapenhurst and Kpundeh 1999: 240), or by introducing e-government, provided that there is a high-quality public bureaucracy. This high-quality bureaucracy is achieved by having well qualified and competent public officials and by an

appropriate use of communication and information technologies (Kim 2014: 395). How to achieve this high-quality public bureaucracy is however problematic. Corruption cannot root out corruption.

The rise of social media in the last decade has given anticorruption idealists new hope. Klitgaard (2015: 44) is optimistic and argues that social media can improve the transparency, and therefore, social commitments. This has happened in India, Romania, Russia, and Kenya, to name some cases. Similarly, a recent World Bank report (2017: 79) holds much promise to the rising technology for transparency and popular empowerment. What these ideas tend to forget is, however, the fundamental question of power. Who controls the internet? As Fisman and Golden (2017: 250) write, that "technological fixes require ongoing human oversight and vigilance to ensure that no one sabotages their operation, or simply presses the "off" button". Countries would thus need either strong transparency, a strong rule of law, or severe international sanctions to ensure that the citizens are empowered on the internet and not controlled by the corrupt government.

The *second* commandment regards the concept of 'political will' (Brinkerhoff 2000). It suggests that leaders and politicians must have a certain willpower (Kpundeh 1998: 79), show honesty and zero tolerance of corruption (Tanzi 1998: 34), have commitment at all levels of government (Stapenhurst & Kpundeh 1999: 238; Heilbrunn 2004: 15; Manion 2004: 207), and have commitment before assuming public office (Atuobi 2007: 21) to name a few (see also Zhang & Lavena 2015: 252; Malena 2009; Quah 2013: 239; Jones 2017: 220). The biggest defender of political will is Rotberg. He argues that leaders have an immense capacity to guide the people in forming norms (Rotberg 2017: 225). The question is then how to get leaders to have the 'right' will, and to be willing and able to signal that will. As Persson and Sjöstedt (2012: 618) point out, the discourse on political will is lacking a fundamental understanding of leadership behavior. To begin with, it is retrospective and circular post-hoc, and simplistically asserts leaders with unsuccessful policy reforms to not have had a genuine political will. Furthermore, it assumes a voluntaristic leadership, which is not likely to be the case in most contexts (cf. Geddes 1994).

The *third* commandment is to fix democracy. It has been argued to be a crucial factor for curbing corruption in Africa, particularly in Botswana (Holm 2000: 288). The biggest defender of this view comes from Johnston (2005, 2012, 2013). He argues that countries need to involve deep democratization, that is, not only competitive elections but rather "enabling citizens to pursue and defend their values and interests freely, and to settle upon acceptable institutions and ways of using wealth and power", if they are to effectively curb corruption (Johnston 2005:

218). Furthermore, he advocates for the publishing of government performance to demonstrate government credibility (2012: 496), which is problematic by the obvious question of who, in a thoroughly corrupt system, would publish such indicators?

The *fourth* commandment is to fix the incentives. Assuming actors as rent-seekers, their behavior can be moderated by incentives, i.e. making it costlier of being corrupt. Tanzi (1998: 34) is in favor of this view. He suggests that "reducing the supply of corruption by increasing public sector wages, by increasing incentives toward honest behavior, and by instituting effective controls and penalties on the public servants" can reduce corruption. Vian et al. (2012: 61) similarly argue that incentives are key to motive health system actors to fulfil their roles. Neither of them suggest *how* these incentives are implemented in the first place. Moreover, the World Bank (2017: 79) and Quah (2013: 251) recommend incentives but only in favorable political contexts with strong political will, which brings us back to the atheoretical concept of political will.

The *fifth* commandment regards the framing of corruption. There are two different positions. The first is whether we should eliminate the 'bad of corruption' or promote the 'good of integrity'. As Heywood and Rose (2015: 103) argue, the common way of talking about corruption is to rely on the former framing, which inevitably leads to measures of punishments and prohibits. Secondly, it is common to use a pathological language of corruption, calling it 'a disease' or 'cancer' in society, calling for a prophylaxis. This might be misleading for at least three reasons. First, it assumes corrupt activities to be manifested in a similar way; second, that there is one magic antidote to corruption; and three, that corruption is a temporal problem that easily can be fixed.

The *sixth* commandment is to fix the civil society, which the United Nations Office Against Drugs and Crime (UNODC: 19) argue is key for corruption control. The question is how to make the civil society evolve to that high capacity monitoring function. Furthermore, since social trust is expected to be low in systemically corrupt settings, we cannot expect citizens to collaborate and create joint actions against corruption. Moreover, it presumes that citizens have knowledge of corruption (Klitgaard 2015: 42). And as Peiffer and Alvarez (2016: 365) write, citizens' participation in anticorruption is highly determined by their commitment to the state.

The *seventh* commandment is to fix the morality. Collins (2012: 4) argues for more reflexivity and critical thinking in the public sector. Similarly, Webb (2012: 107) argues for introducing ethical instruments in the public sector. Sanctions and rewards, the argument goes, are key for creating an ethical culture which will reduce the level of misconduct. Another argument is that corruption is not a failure of institutions but a "weakness of humankind" (de

Speville 2010: 66). Yet, another argument is that the cure against corruption requires moral renovation (Klitgaard 2005: 303), which is transmitted by leaders with 'political will' (Klitgaard 2015: 39).

The *eighth* commandment is to fix the transparency. The rationale is that more visibility over governments will make corrupts actors refrain misconduct (Shah 2007; Kühn & Sherman 2014). But as Winters and Weitz-Shapiro (2013: 431) write, it is precisely in corrupt settings that we would not expect trustworthy transparency mechanisms. In such settings, it is against the logic of the political elites to establish auditing institutions, and citizens and journalist refrain from it because of fear of repercussions.

The *ninth* commandment is to fix the 'international will'. This commandment is often recommended by the international community itself. They claim that good governance can be exported by the so called 'governance aids', which has received considerable criticisms. For example, Brown and Cloke (2004) criticizes the neoliberal stance of World Bank that corruption is only explained by the rent-seeking behavior of public servants.

The *last* commandment is to fix the 'institutions', which is the theme of this essay. Acemoglu et al. (2003: 113) argue that Botswana was able to create 'good governance' because it "possessed the right institutions and got good policies in place". Several authors advocate for anticorruption agencies, investigative capacities and strong law enforcement (Choi 2009; Fombad 1999). Klitgaard (2015) argues that the whole institutional culture must change. Manion (2004) argues that laws can curb corruption by its ability to effectively investigate large scale corruption. This has been proven wrong in e.g. Nigeria (Suberu 2009: 277) because of the corrupt political class, and in Ethiopia (Tamyalew 2010: 39) because of lacking human capacity to carry out that law. The idea that anticorruption can be designed is certainly interesting but it has been rather simplistic, and overlooked many of the big obstacles to curbing corruption such as interests to maintain the status quo.

World Bank's "Writing an Effective Anticorruption Law" (2001: 57) holds that countries first need to deter corruption. Ironically, they write that "however, law enforcement measures are not the first or necessarily the preferred method of defense. An informed citizenry, a government imbued with a service ethic, and other measures can be more effective in combating corruption. But achieving those objectives take time, while enacting an anticorruption law is a relatively speedy, inexpensive way to start addressing the problem". Their reform package has, most presumably, a limited potential to reduce corruption, but is most likely a new channel for further institutionalization of corruption as a system. This approach is to a large extent grounded on the ideas of Rose-Ackerman (1978), that corruption can be solved by incentives.

Some scholars argue for exogenous remedies against corruption (Davis 2010; Davis et al. 2015). Foreign countries can impel corrupt countries to follow certain policies in order to continue cooperation. Examples are the Foreign Corrupt Practices Act (FCPA) and the UNCAC. The suggested approach is, not surprisingly, to deter corruption. These suggested reforms will probably spread around the world as globalization means more shared markets, and thus more shared criminal law (Rose-Ackerman & Carrington 2013; Salbu 2001; Spalding 2010, 2012; Karhunen & Ledyaeva 2012). This has at least two major problems, the first being that such reforms will most likely not work, and second that it will probably hinder countries from adopting a broad and genuine legislation to truly cope with the socio-institutional issues of corruption. Moreover, internationally formulated corruption laws are not likely to work where corruption is praxis, unless less corrupt countries, typically situated in the industrialized part of the world, show a strong *moral* position of anticorruption. Instead of abolishing more anticorruption laws, countries should implement whistleblowing legislation and indirect anticorruption norms through education (Thompson 2013). Lastly, a recent paper has tested whether the most common legislation (anticorruption toolkit by UNCAC) work to reduce corruption, and if this varies in specific contexts. Their finding is that some of the anticorruption tools only work where a strong rule of law already exists, while some other tools are completely insignificant in the fight against corruption (Mungiu-Pippidi & Dadašov 2017). Against that backdrop, one should be rather skeptic of the power of laws to curb corruption (Davis 2012).

Rethinking the role of anticorruption laws

On the basis of the above discussion, an influential scholarship has presumed that laws simply not matter in the fight against systemic corruption. However, an alternative scholarship argues that laws are not only punishment, and that their power to transform states and societies can thus not only be evaluated on the basis on their ability to generate deterrence. For example, Batory (2012) reviews 20 years of anticorruption legislation in Hungary and concludes that incentives entail non-compliance. Rather than increasing penalties, legislation should be better communicated, and the targets – such as civil servants – should be actively informed by the government, media, and other civil society organizations. Anticorruption laws fail because they are not communicated and thus not effectively implemented (Michael 2010). Nuijten and Anders (2007 adopt a critical position to formal laws in their anthropological study of the interaction between law and corruption. Rather than relying on the power of formal law, which

inevitably is captured by elite interests, the authors underline the power of social norms. In accordance with Žižek (1996), they argue that corruption survives because the cost of violating the unwritten rules are much higher than violating the written rules. In his comparative study of anticorruption in Malaysia and Singapore, Nichols (2012) finds that people internalize corruption laws to different degrees, which suggests that the 'psychic costs' of acting corruption differs between contexts. As predicted by theory, the author finds that Singapore, the less corrupt country, has significantly higher 'psychic costs' of acting corrupt.

Fisman and Miguel (2007) have in a nuanced model highlighted some serious caveats in formal legislation. In their model, they examine whether United Nations diplomats comply with the parking rules in New York. These diplomats had diplomatic immunity to any legal sanctions for parking violations. Their finding is striking: the greater the corruption in a diplomat's home country, the greater the parking violations. It suggests that the more corruption, the less legitimacy, and accordingly less legal compliance. That legitimacy guides legal compliance goes back to Max Weber and has become almost an iron law ever since.

Yet, most societies with systemic corruption lack the Weberian legitimacy ideal. In such societies, the interaction between formal laws and norms of non-corruption is more interesting. Norm change means changing the equilibrium, and changing the equilibrium means solving a coordination problem of ensuring that people believe others will conform to the new norm. Some argue that laws can express values and work as a horizontal social contract (e.g. McAdams 2015; Hardin 2001). In other words, a law has the power to express the value that a society has or *should have*, and works as a generator for individuals' assumptions that others will also adhere to the value. However, new values often conflict with old values, and it goes without saying that introducing a new value is not always a painless arrangement. A growing field of legal research examines the interaction between formal laws and social norms, but has not quite entered the wider social science domain, and especially not in the study of anticorruption laws. Hence, bearing in mind the severe limitations of law in corrupt settings, a gap in the literature exists in the nature and function of law in such contexts. Leading from that, it is my intention to explore if and how formal laws can enhance the fight against corruption.

The Law of Corruption

Corruptissima republica, plurimae leges

[The more numerous the laws, the more corrupt the government]

Tacitus, Annals, III, 27

This section constructs a theory on how law can change behavior through an expressive power. It is elaborated on the framework of collective action and institutional theory. Contrasting with the two dominant theories of legal compliance – deterrence theory and legitimacy theory – I take use of expressive theory (McAdams 2015) and present a model on how social norms and 'standard operating procedures' (Rothstein 2011b) can emerge as an effect of laws by coordination, information, and focal points (Schelling 1960).

The nature of corruption

Persson et al. (2013) argue that anticorruption efforts generally fail because they mischaracterize the nature of systemic corruption. They criticize the mainstream conception of corruption as a principal-agent problem (cf. Rose-Ackerman 1978). It is assumed to persist because of information asymmetries between principals and actors, which rise when the benefits of corrupt transactions outweigh the transaction costs. Individuals motivate behavior not only by e.g. loyalty, but also by self-interest. To illustrate, take a police officer's role to report a crime just witnessed. To stop the police officer from reporting the crime, the law-breaker offers him a sum of 500 U.S. dollars. The police officer weighs the cost of taking the bribe to being loyal to the principal (i.e. the government) and rationally decides that he will accept the bribe and not report the crime. Corruption is maintained in society by rational calculations of transaction costs. If this is the case, then policies should aim at changing the preferences of the agents, i.e. to incentivize away corruption. The theory assumes that agents are the real obstacles to corruption control, and on top of the hierarchy stands a principal whose rational self-interest is assumed to coincide with a public non-corrupt character independently of context. Arguably, we cannot assume that principals are not motivated by the same forces as agents, i.e. by rational calculations of cost and benefits of certain actions. This is where the theory fails at explain what corruption is, why corruption occur, and prescribing anticorruption reforms. Think of the example with the police officer. His principal, the police commissioner,

is assumed to be driven by the best for the public. But what, in both theory and practice, stops him from taking a bribe? And what if his superior, the minister of justice, reasons in the same way, and so forth. In the end, there is no institution working for the public without self-interest and we should not expect either monitoring or punishments be able to root out systemic corruption. Against that backdrop, citizens, police officers, ministers, heads of states, and so forth, will partake in corrupt activities because they expect others to do so. This 'collective action' view is radically different from the principal-agent framework of corruption. This mechanism – the expectance of others behavior – is central in the rational choice doctrine of collective action (Ostrom 1998). But what lies behind this expectance of others and can it change? Institutional theory makes better sense of it (cf. Persson et al. 2012).

An institution is a "stable, valued, recurring pattern of behavior" (Huntington 1968: 9). It can be as formal as a government constitution and as informal as ways of shaking hands. The institutionalist approach is largely initiated by North (1990) and Ostrom (1990), and has been an increasingly popular tool of studying the past and the present (cf. Steinmo 2010; Greif & Kingston 2011) Corruption is an informal institution – it is not legitimized in any legal framework around the world but remain a 'second level of order' (Ostrom 1998). The level of corruption is an equilibrium where people act according to beliefs of others, even though they morally reject it. In addition, most actors in the 'game' knows that it would beneficial if the equilibrium was changed to a state of non-corruption, but breaking the equilibrium without support from others is risky and could lead to non-legal sanctions such as alienation, shame, and to not being accepted in the 'game' (which could connote all economic activity of a society). As argued by Persson et al. (2012), any rational individual will continue to choose corrupt alternatives before non-corrupt ones as they avoid being a 'sucker', i.e. the only one not playing by the rules. In addition, once an equilibrium is established, it will continue to be reinforced by several mechanisms, such as legitimization, imitation, and internalization. An institution will receive 'feedback effects' and be highly path dependent (Pierson 2000a).

To illustrate, a real-life example exposes how the deportation of Crimean Tatars in 1944 has affected trust and general opinions towards Russia among descendants of those that suffered the most. The result shows that the low level of trust and anti-Russia attitudes are still current (Lupu & Peisakhin 2017). The mechanism is that the anti-trust institution was established and exerted by force, will, or any other rational enforcement. Thereafter, the repetition creates imitation, and imitation creates internalization, which lastly creates legitimization. People then transmit their beliefs of what is legitimate to their offspring, which makes the institution alive long after its establishment. Breaking the equilibrium of anti-Russia comes with a cost as it

opposes the imitated, internalized, and legitimized institution. This idea can be translated to the issue of corruption. As Tabellini (2010) demonstrates, European regions that had high constraints on executives during the pre-modern world (from 16th century and forward) have higher QoG today. The accountability practices created more social trust, which then became path dependent and partly explain current levels of corruption. In other words, once the equilibrium of corruption is created, it receives feedback effects and is dependent to the initial genesis (Posner 1996; Mahoney & Sanchirico 2000; Benabou & Tirole 2011; Sunstein 1996).

How institutions change is disputed. A central idea is that critical junctures are both the creating force of the institution as well as the mechanism of change. Simply put, critical junctures are periods where societies face two or more options to change significantly (Mahoney 2000: 513). For example, at the threat of war, societies can either respond by attacking, defending, or surrendering; each option is likely to change the society considerably. Another idea is that institutions change endogenously in an incremental manner. Pierson (2000b, 2004) argue that institutions change slowly but incrementally through e.g. cumulative causes, threshold effects, and causal change, that does not correspond to the equilibrium of the initial phase of the institution's formation. In addition, Mahoney and Thelen (2009) argue that a power-distributional approach can explain change in all three strands of institutionalism (sociological, rational choice, and historical; cf. Hall & Taylor 1996). They claim that change may happen when issues of rule interpretation occurs and actors need to implement existing conventions in new ways. Similarly, North et al. (2009) argue that a transition from limited to open access order (roughly 'getting to QoG') requires certain doorstep conditions: rule of law, perpetual existing organizations, and political control over the military. Arguably, these institutions are themselves complicated and hard to achieve, but the theoretical idea contributes by underlining the pluralism of doorstep conditions institutions need for change, an idea which concords with Rothstein's (2011) indirect 'big bang' approach to anticorruption.

A general inquiry of the emergence of social norms is beyond the scope of this study (cf. Brennan et al. 2013; Bicchieri 2006), but the interaction between law and norms is however of great interest. Obviously, there is a circular dependency to the variables – we can expect norms to create laws as well as laws to create norms. This study is driven by the latter, a relationship which has been advocated by several leading scholars in social sciences (e.g. McAdams 2015; Carbonara 2017; Sen 2006; Sunstein 1996).

Social norms exist by three clusters of conformity: coordination; non-legal sanctions; and internalization. People conform to norms because others do so – sticking to a norm is, in other words, a Nash equilibrium. Moreover, people conform because they fear social sanctions, e.g.

shame (Cooter 2000). Bicchieri (2006) argues that a combination of these two, i.e. an empirical expectation and a normative expectation of others creates the equilibrium of the social norm. Lastly, some people conform to a norm from an internalized conviction.

Changing the social norm means changing the equilibrium, and changing the equilibrium means solving a coordination problem of ensuring that people believe others will conform to the new norm. Some argue that coordination is solved top-down by so-called 'norm-entrepreneurs' (Ellickson 2001) or 'political entrepreneurs' (Scheider & Teske 1992). Leading figures 'foresee' the future and introduce and convince others that they will benefit for conforming to a new norm. Others have argued for a proliferation of social norms in different groups. Societies can thus end up highly polarized with opposite social norms, which leads to an equilibrium of different norms (Carbonara 2008).

To sum up, corruption is an informal institution, reinforced by the expectant behavior of others. This equilibrium is sticky and requires either exogenous shocks or endogenous incremental change for transformation. However, the logic of the corruption equilibrium might be historically contingent, but it endures by a coordination game. Thus, information, coordination, signaling, and 'focal points' appear to be building blocks for solving the game.

Why legislation can reduce corruption

Since Max Weber, there are two strands of theorists of the origin of legal legitimacy. One emphasizes procedural sources, which holds that people obey the law if they perceive institutions (such as the tax office, police, or courts) to treat them fairly (Tyler 1990, 1997, 2006). The second underlines substantial causes, arguing that legitimacy is determined by the consistency with people's moral intuitions (Darley 2001; Nadler 2005; Colquitt et al. 2001). That legitimacy steer citizens to obey the law is plausible but hardly the whole story. Classical social science theorists (cf. Hobbes, Bentham, Beccaria) often emphasize deterrence theory, underscoring that people rationally calculate the consequences of their actions, and by making legal disobedience costlier, people will obey the law. Hence, strong punishment and control are key to changing behavior. Collective action theory casts serious doubts on this, as clarified above. Deterrence theory, on the one hand might explain legal obedience in some cases, but not for the issue of corruption. Legitimacy theory, on the other hand, is fruitful but presupposes either high moral standards or high institutional trust. In corrupt settings, institutional trust is

almost by definition low, which neglects the power of legitimacy theory to reduce corruption. What rather needs to change is the norm of suspicion of others (non-)corrupt behavior.

Hence, legislation has multiple effects. Take the deregulation of previously drug-classified substances, which marks three things. Firstly, it removes a sanction from a certain behavior. If an actor wishes to use the substance, he or she can do so without the fear of being legally sanctioned. Secondly, it legitimizes the use of the substance. If the state marks its position in a certain way, and the actor perceives the state to be legitimate, he or she will legitimize the use of the substance. Thirdly, the legalization sends a signal, an expressive focal point, and the social meaning of using the substance will change. Eventually, the new legislation can generate social norms of what is expectant of other members of the society. An oft-cited example is the regulation of smoking in bars, which has generated new social norms of the 'right' behavior (Nadler 2017). Brennan et al. (2013: 112) also confirm the norm-generating effect of laws. Large-scale collective action dilemmas such as recycling and drunk driving are examples how laws can foster non-formal norms. Even more evident are the norm-generating effects of coordination laws, for example traffic codes. Regardless whether we drive on the left or right side of the road, the law sets the rule which fosters the non-formal norm. Another illustrative example is the implementation of the first child corporal punishment law in the world, which arose in Sweden in 1966. Since child punishment occurs behind closed doors and thus would be difficult to detect and deter, individuals are not assumed to comply because fear of legal sanctions. In the 1960s, a majority of Swedish parents (approximately 90%) had punished their children, and 55% of them were positive to corporal punishment. The corresponding numbers for the 2000s is 10% (Modig 2009). The law, by its expressive function, contributed to a change of norms of the appropriate behavior. The legal reform was likely not the *only* cause to the behavioral change, but it was an important focal point for coordination.

There is generally an over-emphasis on the idea that strategic calculations dictate human actions. Information asymmetries, false preferences, heuristics, persuasion, rhetoric, etc., are factors suggesting we are not always strategic in making choices. Instead, the reason why people follow the law and socially reinforces it is because they have a preference of having order (Elster 1989). Fukuyama's groundbreaking works (2011, 2014) suggest that social order has been a key factor for all societies in human history. Traffic codes, conventions, and norms are merely means of maintaining order, and reducing risks of chaos. To reach order, humans have adhered to two strategies. First, humans want social belonging. They want to fit a group by sharing attributes, values, and norms. Second, humans seek to understand. Communication, language, and symbols are crucial for building more efficient complex societies (Colombo &

Steinmo 2015). We are following 'logics of consequences', but also 'logics of appropriateness' – we act and form behavior based on what we feel is appropriate to the social context. This appropriateness is calculated by the observance of others' behavior (March & Olsen 1989).

Why corruption persist in so many societies despite years of anticorruption efforts can from this standpoint be understood as a consequence of that people fear disorder. Corruption is the equilibrium, and the system of how things work in the everyday lives of the members. According to Posner (1998, 2000), the members reinforces the institution by sending signals about the person's character, which the receiver then relies heavily on in his formation whether to engage in cooperative behavior or not. The signals are rationally made in appropriateness to symbols. For example, a law prohibiting the burning of a country's flag will have an effect on behavior, either the activity will increase or decrease. But it will also work as a symbol for signaling among members of the society how they perceive the law, and this signal will be made so that it maximizes the cooperative gain. As Rawls (1971) argue, if the rules of institutions are public, those that engage in the institutions knows the limits of which one can expect others to behave. A law is a common ground for establishing reciprocal expectations.

The expressive theory accords heavily with the contributions of Nobel Laureate Thomas Schelling. Schelling (1960) developed the concept of 'focal points' in game theoretic models, referring to the idea that if individuals share an interest of coordination, they engage in a behavior that is mutually salient – the focal point. My argument, in accordance with e.g. Hardin (2001), McAdams (1997, 2000a, 2000b, 2015), Hadfield and Weingast (2012), and Cooter (1998), is that law supplies a focal point for behavior. This argument can be motivated by an illustration. In the case of a government protest, a large group is likely to have a bigger impact than a small group. However, a large group is harder to coordinate. One way to overcome the coordination problem occurred in the Arab spring, where activities on social media could spread information to thousands of protesters. It required nevertheless that actors were active on such social media. If the channel of coordination is only general to those using a certain software, it is not likely to create a focal point for the society's entire population. In contrast, formal law is in its definition universal. It is a coordinating social contract among citizens within the boundaries of the state. Even though law may be perceived as illegitimate, it is a general contract which individuals can lean on in the formation of behavior to ensure social order and future coordination.

How legislation can reduce corruption

The previous section examined motivations behind compliance. This section is devoted to the interaction between individuals and institutions – *how* they comply rather than *why*. There are at least four criteria for the law to change behavior: (1) it must refer to a coordination problem; (2) it must be sufficiently clear; (3) it must be sufficiently public; and (4) there are no stronger, competing focal points. If the law addresses mere conflict without elements of coordination, focal points is not expected to change the equilibrium. The second and third points are crucial for changing the behavior. Without the knowledge of the legislation, we cannot expect any expressive function from it. The fourth point is the core of the problem of corruption. A sticky norm continues to make salient the behavior of corruption. Therefore, corruption must be framed as a coordination game, the legislation must be clear and public, and it must overcome the focal power of the current norm.

Consider the international system-of-states. International treaties ensure and coordinate expectations and behaviors of countries, focal solutions to the avoidance of war and conflict. Certainly, a potential threat of war can be seen as a sanction, but it is a non-legal sanction. Conformity then is reinforced by the states themselves without the fear of legal sanctions. The same is true for all coordination situations. Beyond legal sanctions lie other sanctions such as shame and isolation, and individuals will conform to the institution by rationally avoiding such sanctions. When institutions – such as a formal law – are displaced, the status quo is dislodged and individuals need to seek to behave within the limits of the displaced institution. Institutions can also be layered, referring to the amendment of existing rules, which changes behavior. These amendments can be small and not produce new focal points, but as several layers are added to an institution, the coordination might change (Mahoney & Thelen 2009).

The focal point theory explains a distinctive part of legal compliance. However, it may also work in conjunction with other parts of the law. In fact, a legal pluralism with deterrence, legitimacy, and expression is likely to be the most effective way of compliance. A country like Sweden that has a strong legal legitimacy can use all three mechanisms to influence the desired behavior. A systemically corrupt country lacks at least the second form, legitimacy. There, the expressive effect of law can function as a generator of legitimacy. It coordinates individuals to a way which, if it becomes focal and changes the equilibrium, can create compliance perceived as legitimate, not only rational. Nevertheless, the issue and creation of government legitimacy is complex and clearly beyond the scope of this study.

Absolutely crucial for the expressive function of law to work is that individuals bounded by the law have knowledge of it, which is often not the case (Ellickson 1986). Regardless of whether it is deterrence, legitimacy, or expressive theory, individuals will not comply with an unknown law. If individuals know the law exist but misunderstand the content, they will comply with what they think the law entails, not what it is. Therefore, all theories on legal compliance necessitate legal knowledge. Spreading legal information might thus be an important suggestion for policymakers to coordinate behavior and hence reduce corruption.

The behavioral change laws can bring forth may change habits and social meanings (Kahan 1997; Lessig 1995, 1996). The habit of wearing a seat belt while driving is created after some other mechanism convinces one to wear a seat belt. Similarly, as McAdams argue, when law permitted dueling, most men accepted it because refusing 'meant' being 'a coward'. A new law thus provides new reasons for changing behavior and hence 'ambiguates' the existing social meaning of the institution.

Research Design

The empirical study of corruption has several shortcomings. The most obvious one is that it entails a hidden component (Della Porta & Vannucci 2012). Corrupt exchanges can vary from small bribes between two actors to large-scale, complex situations involving multiple actors and large sums of money. The common ground to the variation is an invisibility to all actors not involved in the corrupt game. In consequence, evidence of corruption is mainly found in scandals and convictions, which are both ad-hoc and probably just the top of an iceberg. Instead, most studies rely on surveys of perceptions of corruption, usually from Transparency International or the World Bank. Based on stakeholders' (e.g. citizens and firms) perceptions and experiences of corruption, each country receives a final score of the level of perceived corruption. Given the collective action nature of corruption, if citizens perceive the level of corruption to be high, then the actual level is also expected to be high (Kaufmann et al. 2007). This can be true in contexts of systemic corruption, but probably not in contexts where corruption is the exception rather than the rule. Conversely, the theoretical understanding of the concept between survey designers and respondents might be mismatched (Geddes 2003). Respondents might also answer questions so that it pleases the researcher's ideas (Tversky & Kahneman 1973). Furthermore, since most people deem corruption as morally despicable, a social desirability bias is expected in survey measures (Edwards 1957). Lastly, the indicators used for a controversial concept of corruption (cf. Rothstein & Varraich 2017) might not correspond to theory (Andrews 2008).

The empirical application of expressive law is limited, and due to the difficulty of isolating effects from sanctions and legitimacy and to identify core components of the law that influence behavior, game theoretic experiments dominate the literature (McAdams & Nadler 2005). Thus, against both variables' methodological implications, conducting a statistical analysis of the focal relationship would not even come close to the causal story. The following sections to this chapter outline how I overcome these shortcomings.

Comparative historical analysis

With the rise of institutional theories and its emphasis on path dependency, trajectories, and critical junctures, comparative historical analyses (CHA) have become popular tools for answering political science inquiry. The study of history brings several advantages to especially

large-scale and complex phenomena, such as democratization or state transformation, because of its focus on processes, timing, sequencing, context, actors, and institutions. This multidimensionality helps solving issues of reversed causality and endogeneity, which are the two main critiques against mainstream cross-sectional designs (Capoccia & Ziblatt 2010: 933). To understand the mechanisms behind successive developments of countries breaking with corruption, it is reasonable to expect that such definite equilibrium was created by several episodes of institutional change. The origins and effects of these episodes are often overlooked, but cast important attention to the complex causalities of large-scale political outcomes. In consequence, CHA highlights crucial formative variables which improves the theoretical understanding of the subject and can subsequently be tested with various methods and contexts to seek generalizability. In other words, CHA examines interactions of institutions over time and is thus a suitable method in every starting phase of empirical research. Further, experimental research is growing in all social science subjects to locate micro mechanisms. The problem, as drawn up by Thelen and Mahoney (2015: 9), is that researchers cannot meaningfully manipulate many of the fundamental factors that steers the social world, e.g. power, resources, institutions, and ideology. The causal claims are thus taken without controlling for contextual factors which we can expect to have at least some effect on the *explanandum*. This gap can be filled by taking into account the historical circumstances. It contributes to building thicker theories, and it is a take-off position for answering questions needing multiple methods. By highlighting historical events, processes, and mechanisms, the experimentalist and the large-*N*-laden researcher have more precise variables to focus on. In addition, conducting experiments and constructing datasets are costly activities – it makes sense to initially locate *where*, *when*, and on *what* to look before starting such undertakings.

This study follows the logic of analysis proposed by Capoccia and Ziblatt (2010) in their influential paper on the role of history in European democratization. They underline five different but interrelated propositions to examine history. First, drawing on the works of Pierson (2000b, 2004), history reveals causality. Taking into account the interactions of actors and institutions during formative moments, several historical factors creates the causality of interest, in contrast to a common approach that if one specific historical factor correlates to a contemporary outcome, it also explains it. The theoretical comprehensiveness in historical analyses surpasses the power of statistical significance. Second, the process of state transformation is not expected to happen within one regime. On the contrary, it is the outcome of several institutional developments at different times, which themselves are emerging for various reasons. Hence, one must look wider than to the specific historical event to understand

the mechanisms behind the development. Third, since the emergence of multiple institutions at different times, one must look at episodes of institutional change. Questions such as what happened in a specific episode, who were the key actors, why did they act as they did, can the actions be traced as important critical junctures with long-lasting effects on the institution, must be asked. Fourth, CHA takes into account not only one structural factor as a driver of the institutional development, but multiple ones, which affect the motivations and actions of the actors involved in the episode. Fifth, studying the long-run historical development of phenomena casts light on the chain of big and small events throughout a long period of time and that can have substantial significance for the final outcome variable.

Mahoney and Falleti (2015) emphasize the importance of clarifying the conceptual building blocks in CHA. Firstly, it is crucial to distinguish the specific elements in *events* and *occurrences*. Take for example the national unification in Italy 1861. The institutions, actors, and structures formed the institutional change of unification in a very particular context. Due to its particularity, this *occurrence* is non-comparable. However, by regarding the occurrence on a more general level of analysis, one can review it as an event, i.e. merely a case of national unification during the 19th century Europe, and hence comparable to other cases (Gerring 2007). Crucially, cases must share some general characteristics in order to allow them for comparison. In his important book *Structuring the State*, Ziblatt (2006) uses this logic in the comparison between Italy and Germany. Needless to say, the two countries are in many respects highly dissimilar and the specific formative institutional change of national unification occurred in different ways and for different reasons. But, the shared attributes – that is, European context, unification during roughly the same time, and regionally divergent environments, allowed for an interesting investigation as to why unification resulted with federalism in Germany but not in Italy. In consequence, contrasting the cases reveal the importance of spatial and temporal contextual factors as causation. Secondly, sequences and processes are different concepts. The former signifies the ordering of events through time in a given context (Pierson 2004) while the latter denotes the temporal sequence belonging to a single institution (Falleti & Mahoney 2015). As an example, Rothstein (2011a) examines the anti-corruption development in 19th century Sweden and finds that several public boards and agencies aimed at developing infrastructure in the period 1840-1862 (event A) → freedom of trade was established in 1864 (event B) → and a major reorganization of the national bureaucracy in 1876.[3] The sequence is simply the ordering of these events, while the process is the sequence of events summing up to the outcome

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[3] This is a very simplified account for his empirical observation.

of interest. It is important to note that these events are part of multiple processes, not just the processes of anticorruption which was the dependent variable in the study. Moreover, following the analytical model of Falleti and Mahoney (2015: 216), I must also typologize sequences and processes. First, the elements in a sequence can either be causally connected or merely temporally sequential. Second, the order and pace can be crucial for the outcome variable. Third, the direction of sequences in processes, i.e. does the initial steps persist from Event A to Outcome Y or not. In other words, is the process *self-reproduced* or *reactive*? Fourth, the self-reproduced processes can be divided into three kinds of processes: *continuous* (unaltered), *self-amplifying* (increasing), and *self-eroding* (diminishing).

This study examines the role of legislation in the fight against corruption. In order to yield empirical evidence for this argument, I employ a comparative two-case study following the logics of Mill's (1843/1961) method of difference, that is, these two cases share variable A, B, C, and so forth, but not the outcome Y. Although it is a conventional method for CHA, it is problematic because of the dynamic processes intended to be highlighted as causal mechanisms. Historical institutionalism assumes that several institutions in time and space affect the outcome of interest, making the static analysis hard to achieve (Lieberman 2001: 1016). CHA must involve a segmentation of the historical process into periods, which shed light on certain events, changes, or turning points as more 'important' than others for explaining the process. A critical question for the CHA is to decide which periods deserve attention, i.e. determining which events that are more important (Ibid.: 1017). Without doubt, this implication is a cause of criticism from non-historical methodologists. The author simply has the power to control what events in history to account for based on his or her convictions. According to such logic, the theoretical and empirical insights gained from historical studies are biased (Lustick 1996). However, sophisticated statistical studies carry the same implications – the choice of variables, be that actors, contexts, or institutions, are always to a various level, arbitrary. Hence, omitted variable bias is a problem in statistical methods as well as for CHA. A transparent approach of the alleged historical narratives makes the claims replicable.

I take use of a mixed strategy of studying episodes proposed by Lieberman (2001), an approach consisting of four strategies which works both in isolation and, more favorably, combined. The first strategy is to trace the institutional origin and compare both periods prior to and subsequent to the origin of the institution of interest. Secondly, I trace the development of the institution to shed light on turning points and critical junctures. Due to the limited scope of this study, I do not employ the third approach – the effects from exogenous shocks, e.g. wars

or natural disasters – and only a limited discussion on the fourth approach, concerning rival explanations.

Case selection strategy

This study employs an 'extreme case' strategy suggested by Seawright and Gerring (2008: 301). The logic behind is that there is an anomaly to either the independent or dependent variable, a rareness which is important to examine. This is highly applicable to the Italian South-North discrepancy in levels of corruption (and many other socio-economic variables) despite sharing the same formal institutions for over 150 years. The strategy violates to some extent the warning of 'selecting on the dependent variable' (cf. Geddes 2003). However, this is only an issue if the extreme case is treated as representative for the population, which it is not. As Seawright and Gerring (2008: 301) write, the approach is a "conscious attempt to maximize variance on the dimension of interest, not to minimize it". Furthermore, the method is suitable for explorative purposes, especially appropriate for open-ended research questions. It is a good starting point for locating mechanisms which can later be examined with less open-ended research questions.

Studying the level of corruption in Italy as one single unit entails, what Rokkan called, a 'whole nations bias' (Charron et al. 2016: 92). The different socio-economic development between the North and the South of Italy has been an emblematic puzzle for social scientists. Since the national unification in 1861, the northern regions have outperformed the southern regions in a number of areas, such as higher GDP, lower unemployment rates, lower child mortality rate (Bigoni et al. 2016), and most significant for this study, lower level of corruption (Charron et al. 2013). Two seminal studies have raised the scholarly attention to this North-South Italian divide, namely Banfield (1958) and Putnam (1993). In the former, Banfield argued that southern Italian culture embraces a certain moral basis, a so called 'amoral familism', which consists of self-interested and family-centric values. In consequence, these moral norms obstruct cooperation for the common good and makes the society, in his language, backward. Putnam's study, on the other hand, argues that the *civicness*, i.e. the participation and trust in public life, also called 'social capital', is the main driver of effective institutions. Contrasting the Italian regions, the southern possess remarkably lower levels of social capital and ineffective institutions than their northern counterparts. To explain this division, Putnam traces the historical development since the 11th century and finds evidence of persistently more vertical

governance in the south, making the creation of horizontal ties centuries later hard to accomplish. Furthermore, Charron and colleagues (2013: 142) have found evidence of remarkable variance of levels of QoG in the Italian regions (illustrated in Figure 1). For example, the northern region Bolzano scores in line with the German region Bavaria, whilst southern Campania is equal to Romanian region Severozapaden. A similar pattern is found for the provincial levels of social capital (see Figure 2). Against this backdrop, measurements of national levels of QoG in Italy skews the actual highly scattered picture. Why this scattered reality still exists after more than 150 years of sharing the same formal institutions is the puzzle of this study.

Figure 1   **Regional QoG (2017)**   **Figure 2**   **Provincial social capital**
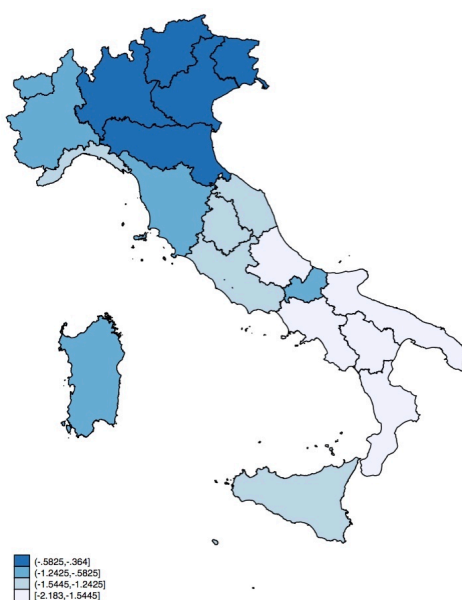
(Dark colors indicate high QoG)
Source: Charron et al. 2013 (updated data in 2017)
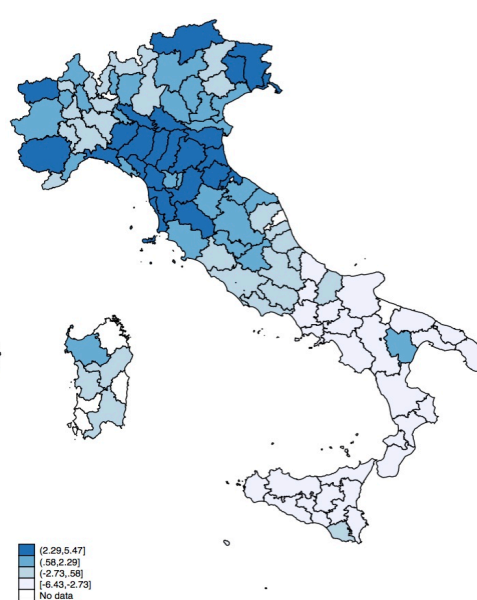
(Dark colors indicate high social capital)
Source: Cartocci 2011

Material and data

Examining historical events, especially a 'hidden' institution such as corruption, is as difficult as measuring current levels of it. Evidence on historical practices of corruption is easy to find, but the exact level and spread is much harder to determine (cf. Bågenholm 2017: 242). For example, Lisciandra and Millemaci (2017) use the number of reported crimes of corruption as a proxy for actual level of corruption from 1968-2011. It goes without saying that such data have serious validity issues – since corruption is systemic, the actors involved are not assumed

to report themselves, and the number thus contain a huge number of unreported cases. Given these shortcomings, the best way to examine historical corruption is through the use of secondary sources. In consequence, the analysis is perhaps less systematic but will better capture what it intends to study.

All secondary sources in the empirical section are written by scholars specialized in either corruption research or the historical development in Italy, or both. By contrasting conflicting historiographical evidence, I gain leverage to claim that the material is valid. However, recall that the nature of this study is explorative and is guided by an open-ended research question. This tentative study is, in other words, not interested in the precise size of the effect of law on corruption. Rather, it aims to explore the interaction between the two which can then be used for further, more sophisticated, empirical examinations. Furthermore, the study examines the constitution of Italy (1947), which I claim to be the first anticorruption law in Italy, and a bunch of laws (1990-2012; See Appendix), which have the typical anticorruption legal framework as proposed by the UNCAC (2004).

The North-South Gap of Italian (Anti-)Corruption

Based on the theoretical and methodological frameworks elaborated in previous chapters, this chapter examines the development of corruption in Italy by following the logics of CHA. It asks why the South, at least on the current levels, is much more corrupt than the North. Furthermore, it explores the role of law in the 'two Italies'.

Apart from the contributions of Banfield and Putnam who emphasized preferences and social capital as the determinants of South's 'backwardness', a typical explanation for corruption is the absence of modernization. Modernization, i.e. more wealth and democracy, reduces corruption (Lipset 1960). The idea is straightforward: wealth and electoral accountability raises the power of electors to monitor and punish government malfeasance. However, the obvious implication of such an argument is endogeneity. Corruption might be, and probably is, a fundamental obstacle to economic development. That said, there is an explicit association in Italy: the northern regions are considerably richer than the southern. Similarly, Charron (2013) uses cross-sectional data to explain the gap.[4] The North has higher political stability, low degree of party fractionalization, low levels of organized crime, an active civil society, and a high degree of social trust. Although interesting associations, the direction of causation cannot be determined, and is therefore theoretically insufficient.

Pre-unification convergence

The pre-unitary Italy was a collection of several states with very different institutions. As traced by Putnam (1993), northern city states developed complex bureaucracies such as the *Podestà* and *Sindacato* and developed strong horizontal ties among the citizenry during the Middle Ages. Meanwhile in the South, a feudal system of governance dominated which strengthened the submission to rulers and thus emphasized vertical ties. The origin of the North-South division is disputed; some argue that it took shape already in the late Middle Ages (Abulafia 1977), others believe the Italian unification was the formative moment (Daniele & Malanima 2011: 7). Despite experience of different governance structures, the economic development was roughly the same at the time of unification, as shown in Figure 3.

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[4] His chapter examines Bolzano and Campania, which are typical regions for the distinction 'North' and 'South'.

Figure 3   **GDP per capita, 1861-2004**
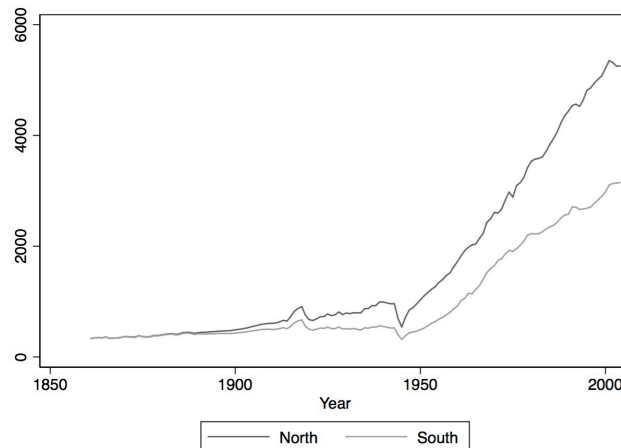
Source: Daniele & Malanima (2011: 94)

Massimo d'Azeglio, a leading figure of the national unification and who famously declared that "we have made Italy, now we must make Italians", wrote a letter to his wife just before his death in 1866, saying "if only you knew the vastness of cheaters and exploiters which is spread in Italy, you'd tremble" (Turone 1992: v, my translation). In the 1870s, Italy was governed by the left party under the leadership of Agostino Depretis, who for the first time initiated a reform program of a Weberian rationalization of the government, and who the English historian Denis Smith (1969: 171) has called one of the most important and respectable personalities in the story of modern Italy. However, he did not manage to vitalize such reforms because of his more important aim of consolidate political power, which forced him to mediate with the opposition and drop the reform package. Furthermore, people were asked to ratify the unification with regulatory plebiscites which were definitely ambiguous, and with the words of Tommasi di Lampedusa, the opportunists' cunnings emerged (Turone 1992: 4). The aim to modernize Italy during the period witness of a culture of widespread non-modernity and, most presumably, widespread corruption. In addition, several corruption scandals occurred during the coming decades throughout Italy, most notably the *Banca Romana* scandal which forced the Prime Minister Giolitti to resign from office in 1893 (Ibid.: 31). Altogether, the corruption divergence which is evident in the Italian regions today did not exist during the time of unification (cf. Vannucci 2012). This is furthermore evident in the recently published historical data from the Varieties of Democracy (V-Dem) Project, which ascribe Piedmont to have slightly higher level of public corruption than the Two Silicies from 1789 to 1860. Although variation exists, it is not a North-South divide as the one we see today (Coppedge et al. 2018).

In 1861, Piedmontese[5] rulers managed to unify six different states on the Italian peninsula into one national entity, except for the Papal state which did not merge into the country until 1870. The event was a consequence of several factors. First, the northern states (Piedmont, Modena, Parma, Lombardy, Tuscany) developed already in the early 19th century a 'modern' commercial-minded production, inspired by the Napoleonic leadership in France. Piedmont, the richest and largest northern Kingdom of the time, was led by enlightened political actors in Guiseppe Garibaldi and Camillo di Cavour who managed to mobilize a substantial social base in support of a new commercial-based modernization on the whole peninsula, a territory that shared several national identifications such as the Italian language (although with great variation), religion, and earlier Roman rule. At the same time, the southern part of Italy[6] lacked a corresponding temptation to commercialization and market unification, which frustrated the rulers and its nationalist alliances of the North to create a unified country and indeed a unified market. In other words, the South was resistant to the unification while the North was impulsive. The resistance of the South could very well stop the nationalists in the North – its population was three times larger than the Piedmontese, it had a massive military, and a bureaucracy twice as big as the Piedmontese counterpart (Ibid.: 77). Despite that, Piedmont succeeded in their attempt to unify Italy – but it did not happen without resistance. Under the military leadership of Garibaldi, Piedmont annexed the southern Kingdom in 1860 and initiated for unification. This process was planned to be negotiated but ended up by conquest, largely because, as argued by Ziblatt, of Garibaldi himself. His aspirations of conquering Sicily and Naples forced Cavour to send more troops to the area, which forced the Bourbons[7] to flee the country. Why Piedmont could achieve such a conquest is explained by its relatively developed financial and administrative capacity, by nationalist conviction, and by Garibaldi's surprisingly coercive implementation of the annexation. In addition, anti-feudalism rebellions were recurrent in the South during the whole century, not least during the 'year of revolutions' [1848] when a wave of several revolutions emerged in European states. The consequence of unifying Italy by *conquest* was the emergence of a centralized state. As Cavour did not need to negotiate on the matter of decentralization, he rejected the proposition of federalism and instead instituted central rule from Turin, the capital of Piedmont and thereafter the capital of Italy.

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[5] 'Piedmont' refers henceforth to Kingdom of Sardinia, Savoy-Sardinia and Kingdom of Piedmont.
[6] The pre-unity connotation of 'Southern Italy' refers to Kingdom of the Two Sicilies
[7] The House of Bourbon ruled in Naples and Sicily from 1734 and in the Kingdom of the two Sicilies from 1816-1860.

Post-unification divergence

Throwing out the *ancien régime*, and a culture of feudalism, together with market-liberal reforms, created political instability in the region and paved the way for criminal gangs (Gambetta 1996, Dimico et al. 2017). The end of feudalism is a pivotal factor for the high levels of corruption in the South. This is mainly because the system of feudalism is founded on personal relations – the vassals, i.e. the citizens, were allowed to use and the elite-owned land for production and gain protection by exchange of some sort of service to the elites, the so-called lords. The culture of feudalism thus emphasized coordination between lords and vassals, underlining some sort of interpersonal contract, while the bureaucratic structure of the northern regions emphasized the role of institutional trust. When the South then was anchored into the new non-feudal unitary Italy, the citizens needed to strengthen its trust to the state. Unfortunately, the new and North-centralized Italy failed, or had not sufficient willpower, to assume effective political government in the South which hindered the citizenry to build the institutional trust. The birth of the big Mafia organizations of the South[8], was heavily an effect of the failed presence of the Italian state – when the state fails to provide government and basic public goods, other actors will acknowledge the gap and fill it (Lupo 2004). In other words, the genesis of Italy was the fundamental factor for the systemic corruption, where the historical traditions steered its development. In the North, corruption became *part* of the institutional structure, while in the South, it became a *replacement* for the institutional structure.

A year before being brutally killed by the Mafia, the anti-Mafia judge Giovanni Falcone proclaimed that "the Mafia is, essentially, nothing but the expression of a need for order, for the control of a state" (Bandiera 2003: 218). The Mafia did what the state could not: provide protection and enforcement of property rights. In effect, the state lacked an initial credible commitment by the citizenry, at the expense of the neo-feudal Mafia system, a system of 'stationary bandits', to use Olson's theory (1993, see also Miller & Hammond 1994). With a limited government, the Mafia could settle and become a stationary bandit who allows the economic activity in the polity to a certain degree, as it expects to remain the protector of the property for a long-term period. The Mafia thus has an incentive to take some governmental function to ensure future payoffs. Inversely, the Italian government had a comparative disadvantage to securing private property, which made it a non-credible actor. Hence, the process of creating credible commitments in England after the Glorious Revolution described

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[8] *Camorra, 'Ndrangheta, Sacra Corona Unita,* and *Cosa Nostra*

by North and Weingast (1989) is inapplicable to the case of the Italian South. In addition, during formative moments of state-building, the level of initial trust between citizens and elites and levels of state capacity can have long-lasting effects on institutional trust (Rothstein 2000). By reputation and 'collective memory' transmitted through generations, citizens form their expectations and strategies of behavior. It is unlikely that the South has a positive collective memory of the early state-building, and accordingly, the expectations of others and strategies of agents are presumed to be negative for solving collective action dilemmas.

A recent experimental study on the roots of the North-South divide finds that people from the North have higher trust and contribute more to the polity. People respond differently to identical incentives, which supports the role of preferences, expectations, and social norms in generating successful cooperation. They underline that the origin of the cooperative gap may lay in the expectations of others behavior. In this line of thought, people would cooperate more if their cooperative counterpart is expected to do the same (Bigoni et al. 2016). A follow-up experiment attempts to explain more thoroughly why Southerners have a lower ability to cooperate. They find that Northerners and Southerners share the same pro-social preferences but differ in beliefs about others cooperative behavior, and in the level of social risk aversion. In other words, the findings reject the famous proposition by Banfield (1958), that at the heart of the problem lies a preference asymmetry. What matters are the beliefs about others behavior and the level of risk aversion (Bigoni et al. 2018).

The follow-up question is where these beliefs originates. I argue that, again, we need to acknowledge the formative moment of the Italian state. The presence of the Mafia and low presence of the state reinforced the feudal institutions of patronage and a low-trust culture towards formal institutions. In such a system, actors always fear the risk of being cheated upon since the state – which in this context is the legitimate actor of coercive power – cannot guarantee security and upholding basic services. In response, rational actors will lack a leap of faith, which is necessary for overcoming collective action dilemmas. The new institutional set-up by the Mafia has then been reinforced by increasing returns (Pierson 2000a). This path dependent institutional culture has become the existing equilibrium, the social order which the people lean on to coordinate their behavior. Needless to say, it is certainly sub-optimal, but having order is more desirable than living under disorder. Therefore, people conform to the new order by communicating with a mutual language – in this case by signaling low-level beliefs of others behavior – and by following the logics of appropriateness. At the same time, the continuously strengthened institutions generate norms of anti-state compliance.

1861-1946: The liberal era, wars, fascism, and birth of the Republic

During the subsequent decades, the gap between the North and South widened. The 'Southern Question', as popularized by Antonio Gramsci and other left-wing members of the time, was a fact. Inspired by liberal economists, the Italian rulers opened the economy and made it one of the most free-trade countries in the world (Felice 2017). The production was diversified – in the North, especially the 'industrial triangle' of Piedmont, Liguria, and Lombardy produced capital intensive goods, while the South placed its production in agriculture, especially olives, citrus fruits, and grapes. Economic divergence at this time was, despite the mafia-controlled regions of the South, mild. The reason was that millions of Italians emigrated to foreign countries and sent home remittances or returned with capital which was used for investing in land and production.

The socio-economic regional divergence continued to grow during the Great War (1915-1918). Just after the war, Italy democratized, but the new regime faced severe turmoil and social disorder throughout the country, in the countryside and cities alike. People from all political alliances blamed the democratic system for setting the country in chaos, which forced the Italian king to encourage the fascist leader Benito Mussolini to form a government. By charismatic and authoritarian leadership, many believed Mussolini and his party would improve the lives of the Italians, but reality proved the opposite. According to Berman (2017: 33), the fascist regime was far more violent and destructive than the non-democratic regime which preceded it in the beginning of the century. The fascists, however, had its roots in the old regime. It was a closed and elite organization steeped with backroom deals and institutionalized corruption. Thus, the fascists grew from a crisis of legitimacy. Furthermore, the regime's disinterest of implementing necessary reforms hindering the unequal development of wealth in the country was a catalyst for both reinforcing anti-state compliance and illegitimizing the regime, especially among Southerners.

Space permitting, a more thorough examination of the liberal era and the fascist era would give more evidence of the continued Italian socio-economic disparity (see Daniele & Malanima 2011, Felice 2014). The end of fascism meant the birth of the Republic of Italy. This was the beginning of a twenty-year period of high prosperity, growing the GDP per capita with 5.2% yearly from 1951 to 1971. Figure 3 above illustrates the economic *boom* of the time – but it also illustrates the gap between the North and the South. This gap still persists: for example, the South has a GDP per capita of 13.704 vs North's 23.837 Euros, higher unemployment rate

(12.6% vs. 5.3%, and higher child mortality (0.41% vs. 0.29%), to name a few (Bigoni et al. 2016: 1318).

The birth of the new Republic marked an end of monarchy, illiberal democracy, two great wars, and a two decade-long fascist regime. What the Italians needed, as explicitly and strongly emphasized by the reformers, was a clear and just constitution. The constitution of 1947 is, I argue, the first anticorruption law, as it meticulously describes how the country is governed, i.e. the procedural law governing the country.

In the post-war period, Italy was devastated, poor, destructed, and with a confused self-image caused by the long fascist regime. There was a great need for all citizens to restore social order, coordination, and cooperation. The new constitution was the focal point for how the new Italy would be governed. The civil and political rights, the role of the president, the parliament, the craftsmanship of law, and so forth, would now be written down with clarity, in order to restore the country left in devastation. According to Cartabria, Vice President of the Constitutional Court in Italy, the story of the Italian constitution is one of success, despite unfavorable preconditions. The fascist regime had committed crimes *through* the law rather than *despite* the law for twenty years, making citizens and lawyers suspicious to the legal institution in the after-war era. Despite that, the Constitution quickly became one of the most important authorities in the Italian institutional framework, winning the utmost respect from all other government branches (Cartabria 2016: 41). The constitution, which reformed the government fundamentally and abolished the monarchy, was elected on 22 December 1947 with 453 votes against 62. The Italian Republic was born in the aftermath of war with a strong majoritarian consensus to transform the state. The new charter consisted of 139 articles and four categories: fundamental principles, rights and duties of citizens, organization of the Republic, and transitory and final provisions. The constitution makes very clear that Italy is a modern, liberal democracy with broad civic and political rights. The third part – the organization of the republic – is very clear on how the country is to be governed, emphasizing the importance of meritocracy, professionalism, and impartiality in all branches of government (see Appendix). Notable for the regional governance, however, is that regions have very little administrative and political role in Italy. The central state which was founded almost 90 years earlier in some sense 'by mistake', continued to be the governance system for the coming era, until the notorious regional reforms of the 1970s (Putnam 1993).

The coming decades – *la ricostruzione* [the reconstruction era] – was characterized by an astonishing socio-economic development – at least in the North. The constitution marked an important turning point in rebuilding the country, and worked as a coordination scheme for how

to collectively pursue the restoration. The problem, however, is that the low credibility of the Italian state in the South gave Southerners little reason to coordinate their behavior in accordance to the new constitution. The low interest in the South, the negative economic development, and the persistence of the Mafia institutions instead abstained Southerners to believe in the state inventions. This is, of course, to some extent a simplification. The Italian state is, also among many Southerners, the legitimate ruler and it is reasonable to suspect that some form their behavior according to this. In turn, while the constitution worked as a focal point of behavior in the North, it failed to do so in the South. The reason is a clear reference to history and the institutions already put in place during the unification. I argue that the expressive power in how the government is steered reinforced the relative cooperative successes, which itself is an effect of beliefs of others, in the North as in contrast to the South. The Northerners did not possess higher moral standards than their counterpart, the state was merely more credible, which affected them to conform to the procedural norms written down in the constitution. Remember the words of Aristotle (Politics IX 350 B.C.E): "[f]or if a constitution is to be permanent, all parts of the state must wish that it should exist and the same arrangements be maintained".

The Clean Hands, Berlusconi, and the new anticorruption laws

After decades of political stability and increased socio-economic development, the development culminated in 1992 into the largest corruption scandals to ever happen in modern Italy. The *mani pulite* ('clean hands') process shook the country when six former prime ministers, hundreds of parliamentarians, and thousands of bureaucrats were investigated for grand corruption. Until this time, Italy had transformed and institutionalized corruption within the public sector. Scandals, such as the Ingic scandal in 1954, Oil scandals in 1974 and 1978, and the Lockhead scandal in 1976, did not lead to any judicial action. The inability to convict the actors involved witnesses of an inefficient law enforcement (Sberna & Vannucci 2013: 573). Notwithstanding, Italy has more laws than most European countries. For example, there are roughly 37,000 laws in Italy, compared to about 10,000 in Germany and France (Gambetta 2018: 150). According to Gambetta (2018: 152), Italy has "the worst judiciary that money cannot buy". In consequence, the political system collapsed – most politicians were forced away, parties disappeared – and notably – new political parties and actors were born (Vannucci 2009: 233).

When Silvio Berlusconi entered the political scene after years of building the biggest financial empire in Italy, he was considered a strong and decisive actor, which was at the time what the aftermath of the scandals called for. Someone new, someone who is not part of the thoroughly corrupt political system. The new political landscape, which emerged as a consequence to corruption did not, however, remove or even reduce corruption. As Vannucci (2009: 234) writes, anticorruption did not figure in the public debate as a relevant question. Instead, the question was rather the nature of the judicial system in Italy – judges were said to have arbitrary power, be politically biased, and lack electoral legitimacy. In consequence, a new system of corruption with Berlusconi in the forefront was formed, which would persist until his resignation in 2011 after him being accused and convicted for several crimes. How Berlusconi, who was an obvious and indeed leading figure of grand corruption, could be reelected for almost two decades, and the fact that there are during this time no significant anticorruption reforms – despite the obvious core of the problem – is a puzzle to many scholars. One explanation is that the new political actors 'politicized' the issue of corruption (Sberna & Vannucci 2013).

The comedian, blogger, and later leading political figure, Beppe Grillo launched in 2007 a campaign called 'Clean Parliament' with the aim to illuminate the many convicted parliamentarians still in office. Furthermore, the Anti-Mafia Parliamentary Commission instituted an 'ethical-electoral code' in 2010, to throw mafia-related politicians out from elections. None of these campaigns worked: 45 mafia-related politicians stood on electoral lists, of which 15 won their seats (Ibid.: 580). Interesting for the future to come, Grillo's anti-establishment and 'throw all rascals out'-agenda has resulted in an electoral support of over 30% in the last election (2018). More interesting, however, is the regional distribution of the votes: The Five Star Movement won almost all southern provinces, while the Lega (former Northern League) won almost all northern provinces, which witnesses of a highly polarized political geography.

So far at least, it is evident that Italian anticorruption laws, as suggested by the UNCAC (2004), do not work. The logic for this is obvious in the light of collective action theory. The corrupt system plaguing Italy goes from the top to the bottom, and incentives are not likely to surmount the existing equilibrium. The anti-corruption legislation emerging from early 1990s to today refer to the composition of an anticorruption Commission, regional Ombudsmen, and anti-money laundry laws, and so forth (see Appendix). Barbieri and Giavazzi (2014), two leading Italian journalists and scholars of economy, write that the violation and corruption of laws is the largest and most dangerous political phenomenon in Italy. To a country with a

myriad of laws, and where the judiciary is corrupted, new laws cannot solve the problem of corruption. On the contrary, perhaps Tacitus' proclamation of 'the more laws, the more corruption' was right. The risk, Barbieri and Giavazzi continue, is that the public opinion, disconcerted by cases of striking violations of the law, forget that the main problem is the corruption of the laws. Against that, not much evidence suggests that laws will either reduce corruption in Italy as a whole or tighten the gap between the North and the South.

Figure 4 and 5[9] illustrate sequences of the 'two Italies', and where the institution of high versus low credibility of the state becomes path dependent around a formative moment, in this case the national unification. In this model, the explanation to South's more widespread corruption and the 1947 constitution's focal ineffectiveness has roots going back to the feudal institutions, Piedmont's relatively higher state capacity, liberalist doctrines, and Garibaldi's aggressive military approach, to name a few factors. Absolutely critical for the reinforcement of the more corruption in the South was the North's incapacity to stretch itself and be a credible enforcer of property rights.

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[9] The information in Figure 4 and 5 is gathered from Moe (2002), except for the episodes already discussed above.

Figure 4   **Anticorruption sequence in the North**

Authority Sequence
(Self-Eroding Sequence)

Cultural Sequence
(Continuous Sequence)

Environmental Sequence
(Causal Sequence)

Anticorruption Sequence
(Self-Amplifying Sequence)

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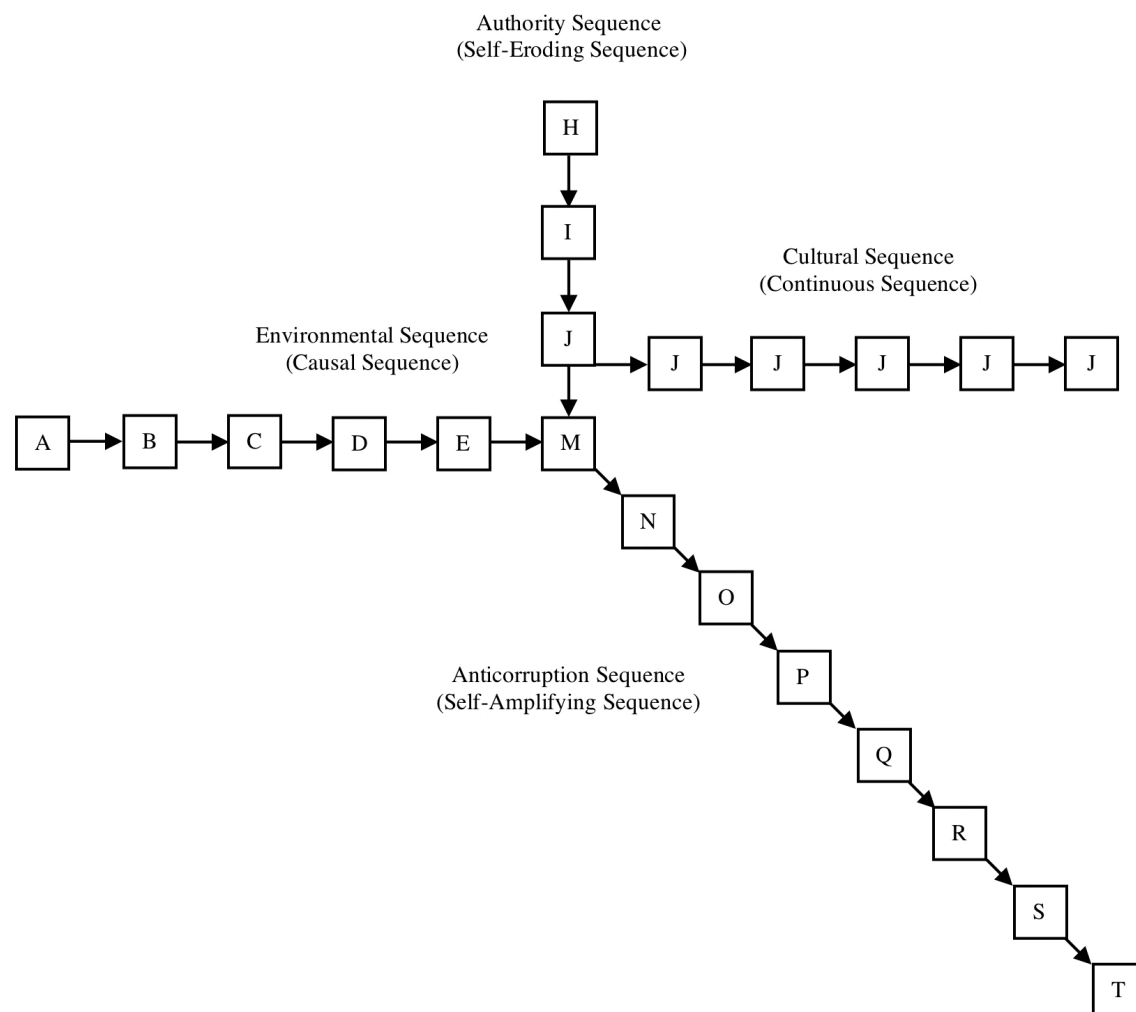
A: A system of city-states constantly at the threat of war.
B: Pre-modern bureaucracies, partly participatory decision-making and rotating governance structures.
C: Commerce and modern capitalism is born.
D: Humanism, the renaissance, and the discovery of the New World.
E: Wars during the 15th and 16th centuries resulted in conquest by France, Spain, and Austria

H: Historical experience with state institutions and political participation.
I: State capacity and social capital, strong horizontal ties.
J: The state is the credible and legitimate enforcer.

M: North unifies Italy by force.
N: Centralized Italian state, central seat is Turin.
O: Corruption becomes part of the state, which has a limited capacity to reach in the south.
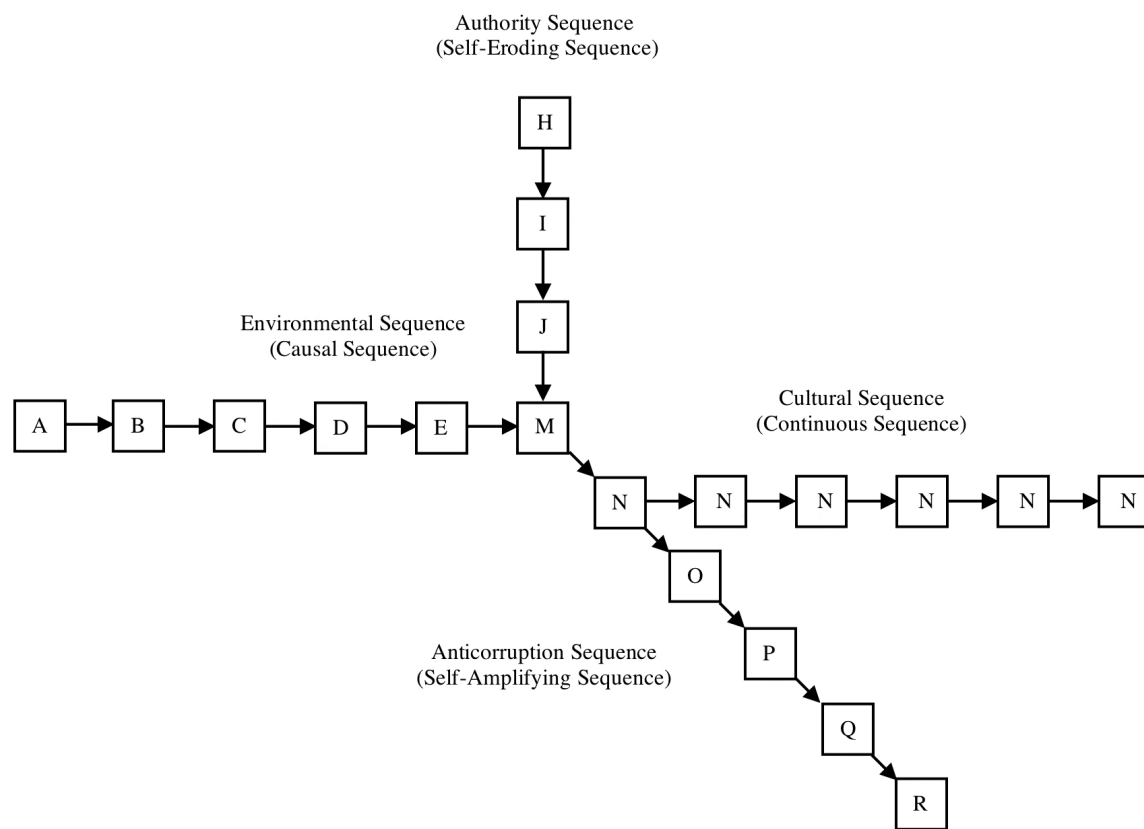P: Liberal reforms, Italy became one of the most free-trade countries in the World.
Q: A broken post-war Italy, new constitution made with emphasis on impartial government.
R: The new Italian republic is born and North is highly progressive for the next decades.
S: A major corruption scandal leads to a crisis of legitimacy. A new political landscape is born.
T: Corruption persist to be a serious problem in all of Italy, but new anticorruption laws are implemented.

Figure 5   **Anticorruption sequence in the South**

Authority Sequence
(Self-Eroding Sequence)

Environmental Sequence
(Causal Sequence)

Cultural Sequence
(Continuous Sequence)

Anticorruption Sequence
(Self-Amplifying Sequence)

A: Became a Greek colony, new powerful cities were born, e.g. *Napoli* ("New city").
B: From 11ᵗʰ to 13ᵗʰ century, it was conquered and ruled by several kingdoms, e.g. Greece, Lombardy, and the Islamic Caliphate.
C: Institutes a constitution and forms a centralized state 1231. Led to war and the partition of the kingdom into *Kingdom of the two Sicilies*.
D: After centuries of wars, the kingdom fell under the rule of House of Bourbon, who opposed the new liberal doctrines and endeavors of Napoleon Bonaparte.
E: After conflict with Bonaparte and his new liberal-minded allies in the North of Italy, the House of Bourbon regain legitimate power by the Congress of Vienna in 1815.

H: Feudalism (formally) until 1807.
I: Several rebellions against the *ancient régime*, not least revolutions in 1848.
J: The resolution of feudalism and the intensity of rebellions leads to conflicts over land ownership.

M: South Italy is annexed by force, and the Kingdom of Italy is born.
N: The new Italy has a limited capacity to rule in the South, but who liberalizes the already conflict-laden property institutions. This paves the way for Mafia-ruled extractive institutions, and the Italian state fails to credibly commit to the Southerners.
O: Economic growth becomes much slower in South. Prime minister Giolitti conceded the existence of many places in the South where the law does not operate at all.
P: The Mafia and the fascist regime melted together. However, after the war, the South was highly damaged. The new constitution of the new Republic (1947) did not have focal power over the coordination of Southerners future behavior. This fails because of lack of credible commitment from the Italian state.
Q: Socio-economic 'backwardness' dominates the coming decades, until this very day.
R: New Italian anticorruption legislation is implemented, but are hardly going to be effective in the South.

Conclusion

This study has explored potentials for state transformation. Recent conceptual developments in corruption research have pointed on a misdirected understanding on the foundations of corrupt activities. At the same time, scholars and practitioners have suggested several remedies against corruption, often with limited effects and inadequate theoretical consistency. Against that, this study makes one overarching conclusion: the solution against corruption must, at least to some extent, lie in the roots of corruption. The stickiness of corruption is path dependent, i.e. it has been an equilibrium reinforced over time and space, and not acknowledging this will hardly change the equilibrium.

In connection to the 'easy solutions' and the stickiness of corruption, the main focus of this study has been the role of law in fighting systemic corruption. If anticorruption laws are expected to have either little, none, or even harmful, effects, what is the purpose of having them? Arguably, anticorruption laws must be categorized in two fields. The first category regards the framework suggested by the UNCAC (2004: iii), which "introduces a comprehensive set of standards, measures and rules that all countries can apply in order to strengthen their legal and regulatory regimes to fight corruption". It regards the establishment and implementation of effective monitoring institutions such as anticorruption agencies and ombudsmen. In countries with low levels of corruption, such laws can very well serve the purpose, but its potential to reduce corruption in systemically corrupt societies is very limited. The second category concerns another spectrum of law: its expressive effect. Signaling a position can be much more powerful than attempting to monitoring or punishing behavior. This type may encapsulate a focal power which can be an important pillar for coordination. The need for social order, for the logics of appropriateness, for social belonging and for social understanding, will affect people to seek coordination. The role of law, then, is to find an expressive function and focal points, which will guide people into the desired behavior. Since the law is one of the most fundamental pillars in societies, it bears much potential. Therefore, in systemically corrupt contexts, the role of law in the fight against corruption is not only to criminalize it. Conversely, its role is to signal the *opposite* of corruption: a *credible* alternative to the current equilibrium. A general model for how to reach this focal power is however beyond the scope of this study, but is a theme suggested for further research.

To explore the role of law empirically, I have reviewed the historical trajectory of anticorruption in the North and South of Italy. The findings show that history plays a dominant

role in the development. However, it is not history *per se* that determines the development, but its interaction with institutions and actors. When Italy unified, the conditions were very different in the North and South. Feudalism in the South and pre-modern state institutions in the North paved the way for different responses to the critical juncture. The North's annexation of the South forced the *ancient régime* away, which led to a centralized monarchy based in the North. Market-liberal reformists freed the already disputed land ownership in the South, together with a lacking capability of property enforcement, led to two factors: (1) the rise of the mafia, and (2) the lack of credible commitments by the state. These two institutions have then become path dependent and, in my view, explains why the South is disproportionally corrupt.

The Italian constitution of 1947 was very awaited. Two decades of fascist rule and two wars left Italy traumatized. The *ricostruzione* era modernized the country, abolished the monarchy and founded the First Republic. The period (1945-1950) was certainly a formative moment, a moment when people sought social order and new forms of coordination. The constitution certainly played a part for this – but mainly in the North. This is explained by the institution created in the unification of Italy. The low credible commitment in the South and persisted mafia institutions formed a skeptical apprehension of the new republic. In other words, the constitution was focal in the North but not in the South.

Italy is, as Gambetta (2018) writes, disproportionally corrupt, but it is not my mission here to explore why this is. What this study has explored is why the South is so much more corrupt than the North. In my opinion, the anticorruption fight in Italy (and perhaps elsewhere) must be reframed and not considered a problem that can be solved by increased punishments and monitoring. Instead, the state must be a credible actor and meaningfully take action against all other 'stationary bandits'. If we want people to break the law of corruption and start following the law of anticorruption, we must make sure it is a credible alternative. And since institutions shape peoples' beliefs and risk-aversion, there is no single formula for this, but the perception of the *signaler* rather than the *content* of laws is more decisive for compliance.

The findings call for future research projects. First, more comparative studies on how constitutions, or other laws *not* emphasizing monitoring, can have a focal power of anticorruption. By broadening the contextual scope, we gain more evidence of the potential importance of laws in reducing corruption. Second, the link between credible commitments and levels of corruption should be further examined. Third, micro-mechanisms of how, when, and why individuals seek coordination of (anti-)corruption should be studied. Lastly, studies on (anti-)corruption should examine other, competing focal points. When the law fails to become focal, what does?

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Appendix

Chronological order of anticorruption law

1947	Constitution
1990	Access to Information 1990
1991	Prevention of Money Laundering 1991
1994	Law No. 20 1994
2000	Appointment of the president of the corte dei conti
2000	Law 300 29 September 2000
2001	Regional Office of Regional Ombudsman 2001
2001	Provisions for the formation of the annual and multiannual budget of the State
2003	Disposizioni ordinamentali in materia di pubblica amministrazione
2010	Istituzione dell'Agenzia nazionale per l'amministrazione destinazione dei beni sequestrati e confiscati
2010	Piano straordinario contro le mafie, nonché delega al Governo materia normative antimafia
2012	L'Autorità nazionale anticorruzione ANAC, 2012

Excerpts from legal documents

Constitution of Italy, 1947

Art. 97

Public offices are organized according to the provisions of law, so as to ensure efficiency and the impartiality of administration.

The regulations of the offices lay down the areas of competence, duties and responsibilities of their functionaries.

Employment in public administration is through competitive examinations, except in those cases established by law.

Art. 98

Civil servants are exclusively at the service of the Nation. If they are members of Parliament they may not be promoted except through seniority.

The law can set limitations to the right to become members of political parties in the case of magistrates, career military in active service, functionaries and agents of the police, diplomatic and consular representatives abroad.

Art. 101

Justice is administered in the name of the people.

Judges are subject only to the law.

Art. 102

Judicial proceedings are exercised by ordinary magistrates empowered and regulated by rules of judicial regulations.

Extraordinary or special judges may not be established. Only specialized sections for specific issues within the ordinary judicial bodies can be established, and include the participation of qualified citizens who are not members of the judiciary.

The law regulates those cases and the forms of the direct participation of the people in the administration of justice.

Art. 103
The Council of State and the other organs of judicial administration have jurisdiction for safeguarding before the public administration legitimate rights and, in particular matters laid out by law, also subjective rights.

The Court of Accounts has jurisdiction in matters of public accounts and in other matters laid out by law.

Military tribunals in time of war have the jurisdiction established by law. In time of peace they have jurisdiction only for military crimes committed by members of the armed forces.

Art. 104
The judiciary is an order that is autonomous and independent of all other powers. The High Council of the Judiciary is presided over by the President of the Republic.

Members by right are the first president and the procurator general of the Court of Cassation. Two thirds of the other members are elected by all the ordinary judges belonging to the various categories, and one third by Parliament in joint session from among full university professors of law and lawyers after fifteen years of practice.

The Council elects a vice-president from among those members designated by Parliament. Elected members of the Council remain in office for four years and are not immediately re-eligible.

They may not, while in office, be registered in professional rolls, nor serve in parliament or on a regional council.

Art. 105
The High Council of the Judiciary, in accordance with the regulations of the judiciary, has jurisdiction for employment, assignments and transfers, promotions and disciplinary measures of judges.

Art. 106
Judges are appointed by means of competitive examinations.

The law on the regulations of the judiciary allows the appointment, even by election, of honorary judges for all the functions performed by single judges.

Following a proposal of the High Council of the Judiciary it is possible for their outstanding merits to appoint as councilors in cassation, full university professors of law and lawyers with fifteen years of practice and registered in the special professional lists for the higher courts.

Art. 107

Judges may not be removed from office. Neither may they be dismissed or removed from office nor assigned to other courts or functions unless following a decision of the High Council of the Judiciary, taken either for the motives and with the guarantees of defense established by the rules of the judiciary or with their consent.

The Minister of Justice has power to originate disciplinary action. Judges are distinguished only by their different functions.

The state prosecutor enjoys the guarantees established in his favor by the rules of the judiciary.

Art. 108

The rules governing the judiciary and the judges are laid out by law.

The law ensures the independence of judges of special courts, of state prosecutors of those courts, and of other persons participating in the administration of justice.

Art. 109

The legal authorities have direct use of the judicial police.

Art. 110

Without prejudice to the authority of the High Council of the Judiciary, it is the Minister of Justice which has responsibility for the organization and functioning of those services involved with justice.

Access to information, 1990

Art. 22

To provide for transparency in administrative activity and encourage impartiality in its performance, any person who has an interest to safeguard in legally relevant situations shall have the right of access to administrative documents according to the procedures laid down by the present law.

Prevention of money laundering, 1991

The law (197), which was ratified 5 July 1991, lays down "urgent provisions to limit the use of cash and bearer instruments in transactions and prevent the use of the financial system for purposes of money laundering".

Law No. 20, 1994

Art. 1: Actions of Responsibility. The responsibility for subjects submitted to the jurisdiction of the Corte dei conti [Court of audit] relating to public accountability is personal. This extends to illegal gains and debts accruing from them.

The right to compensation of damages is limited to 5 years from the date in which the loss was verified, or in the case of hidden loss, from the date of its discovery. In cases where the right to compensation has exceeded the 5 years, due to omission or delay in the denunciation of the

fact, those who have delayed it are responsible. In such cases, action may be taken within 5 years from the date the period expired. The Corte dei conti can judge on the administrative responsibility of administrators and public servants even when the damage has been caused to other public bodies than those to which they belong.

Appointment of the president of the corte dei conti, 2000

The president of the Corte dei conti is appointed among the magistrates of the Corte dei conti, who have really held directive functions for three years at least, by decree of the President of the Republic, on proposal of the President of the Council of Ministrs, following a deliberation of the Ministers and the advice of the Council of the Presidency of the Corte dei conti.

In case of of vacancy, the functions of the President of the Corte dei conti are held by the doyen among the Presidents of Chamber of the Corte dei conti.

The president of the Corte dei conti has to be appointed by thirty days from the vacancy and no later.

Law 300 29 September, 2000

Art. 1: Ratification of international instruments. The President of the Republic is authorized to ratify the following international instruments drawn up on the basis of art. 3 of the Treaty on European Union: Convention on the protection of European Communities; financial interests, done in Brussels on 26 July 1995; First Protocol done in Dublin on 27 September 1996; Protocol concerning the preliminary interpretation, by the Court of Justice of the European Communities, of said Convention, with attached declaration, done in Brussels on 29 November 1996; Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union done in Brussels on 26 May 1997 and OECD Convention on combating bribery of foreign public officials in international business transactions, with annex, done in Paris on 17 December 1997.

Regional office of regional ombudsman, 2001

The office of Regional Ombudsman is hereby set up as part of the Valle d'Aosta Regional Council.

The Regional Ombudsman shall exercise his or her functions in complete freedom and independence and shall not be subject to any form of hierarchical or functional control.

The Regional Ombudsman shall intervene on request by Italian citizens, foreigners or refugees with residence in, or living in the Region, by bodies or social groupings or on his or her own initiative in compliance with the procedures set out below. Such intervention shall be in relation to cases of omission, delays, irregularity or illegitimacy caused or arising during the carrying out of the administrative process (or intrinsic to administrative actions which have already been effected) by bodies, offices or services of the Regional Administration as well as by bodies, offices or services of entities, institutions, companies or consortia subject to the control or supervision of the Region, by bodies, offices or services of the Local Health Authority or by

bodies, offices or services of the local government authorities with reference (in the case of the latter authorities) to functions which have been delegated or sub-delegated to them by the Region. The Regional Ombudsman shall only intervene on the basis of application by directly interested parties or by representatives of bodies or associations concerned with the defence of collective interests and of those of society at large.

The activities of the Regional Ombudsman shall also be aimed at ensuring the observance of equal opportunities between men and women and the prevention of discrimination on the grounds of sex.

The Regional Ombudsman shall also have the power to intervene as against Local government authorities in relation to the latter's own functions following the conclusion of the appropriate conventions between such authorities and the Region.

The procedures the Regional Ombudsman shall follow, including in relation to cases falling under the conventions as afore-mentioned, shall be those set out under this law.

The activities of the Regional Ombudsman in the extra-judicial defense of personal rights, legitimate and generalized interests, shall be aimed at ensuring the efficiency, correctness and impartiality and generally, the good conduct of the public administration.

Provisions for the formation of the annual and multiannual budget of the state, 2001

The Italian Foreign Exchange Office shall act as an advisor to Parliament and the Government regarding financial action to prevent and combat economic crime. In order to contribute to fuller activity to prevent money laundering, the Italian Foreign Exchange Office shall identify the cases of particular importance in which statutory, regulatory or administrative provisions of a general nature could create favorable conditions for money laundering and shall report them to the Minister of the Treasury, the Budget and Economic Planning, to the competent parliamentary committees and to the National Antimafia Prosecutor, offering, where it deems it appropriate, opinions as to the measures to be adopted.

Disposizioni ordinamentali in materia di pubblica amministrazione, 2001

Establishment of the High Commissioner for the prevention of corruption and other forms of illicit behavior within the public administration, to the direct functional dependence of the President of the Council of Ministers.

Istituzione dell'Agenzia nazionale per l'amministrazione destinazione dei beni sequestrati e confiscati, 2010

The establishment of an anti-mafia government agency. See:

http://www.benisequestraticonfiscati.it/

Piano straordinario contro le mafie, nonché delega al Governo materia normative antimafia, 2010

The government adapts a new law containing the code of anti-mafia laws and prevention measures.

L'Autorità nazionale anticorruzione ANAC, 2012

The task of the National anticorruption authority is to prevent corruption in the Italian public administration, in the subsidiary and controlled companied by the public administration, also through the implementation of transparency in all aspects of management, as well as through the supervision of the scope of public contracts, offices and in any sector of the public administration that could potentially develop corruption, avoiding at the same time to aggravate the proceedings with negative effects on citizens and businesses, orienting the behaviour and activities of public employees with interventions in consultation and regulation.