PUBLIC CORRUPTION IN ITALY. KNOWING THE PAST (TANGENTOPOLI) TO READ THE PRESENT (AND THE FUTURE?)*

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Sommario: 1. Position of the problem and lines of research. – 2. The "alleged" corruption. The entries in the register of offences. – 3. The propensity to report (*en attendant* Whistleblower). – 4. The "real" corruption. – 5. The Effectiveness of Agencies, in particular Investigators. – 6. The post-Tangentopoli criminal policy. – 7. The state of the art and summary proposals.

1. The neologism "*Tangentopoli*" – which has now also entered the scientific terminology[1] – describes the emergence of a vast and heterogeneous variety of deviant behaviors of political-administrative corruption in Italy, which was criminally prosecuted in the three-year period 1992-94.

The present work aims to provide answers to the following questions:

- *was there an actual increase in the frequency of administrative crime during that period?*
- *following this court case, did the system react and in which way?*

In order to answer the first question, thirty years after that moment, it is possible to analyze some empirical data, to be able to understand more precisely the criminological characteristics of this particular kind of administrative deviance. The empirical data referred to are based on three research channels[2]:

a) the frequency of corruptive conduct (entries in the register of offences *vs*. convictions);
b) the willingness of offended and/or aggrieved persons and/or persons informed of the facts to make a complaint;
c) the effectiveness of law enforcement Agencies, in particular investigators.

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[1] T. Padovani, *Il problema di "tangentopoli" tra normalità dell'emergenza ed emergenza della normalità*, in *RIDPP* 1996, 457; D. Nelken, *Tangentopoli*, in *La criminalità in Italia*, a cura di M. Barbagli, U. Gatti, Bologna 2002, 60.
[2] P. Davigo, G. Mannozzi, *La corruzione in Italia. Percezione sociale e controllo penale*, Bari 2007, 16.

The outcome of this research, will be to the answer to the second question: after having defined a deviant theoretical model, it will be possible to compare it with the legal framework currently in force, taking into account the regulatory changes that have taken place since the cases emerged, in order to grasp whether or not the law is responsive to the criminological evidence and to assess whether and how the legal instruments are able to effectively control it.

2. With reference to the frequency of corruption/ve conduct, the time period under consideration is that between 1983 and 2021[3], *i.e.* a span of almost forty years. In particular, the trend in the number of reports in the prosecutor's register for corruption offences will be analysed. These offenses are to be understood, from now on and up to paragraph 6, in a broad sense, encompassing the various forms of the phenomenon (extortion, active and passive bribery, incitement to corruption, etc.)

In this context, the number of reports from 1983 to 1991 is stable in a delta between 210 and 330; in 1992 there is a surge that will lead in 1993 to the peak of almost 1,300 disputes, and then gradually fade and become stable again at around 500 from 2002, until the reduction from 2021 to 350, as shown in the figure below:

[3] A. Vannucci, *La corruzione nel sistema politico italiano a dieci anni da "mani pulite"*, in *Il prezzo della tangente. La corruzione come sistema a dieci anni da 'mani pulite'*, a cura di G. Forti, Milano 2003, 5; A.N.A.C., *Corruzione sommersa e corruzione emersa in Italia: modalità di misurazione e prime evidenze empiriche*, Roma 2014, 14; Ministero dell'interno, *Dipartimento della pubblica sicurezza. Direzione centrale della polizia criminale. Servizio analisi criminale: i reati corruttivi*, Roma 2023, 8.

Reati iscritti in valore assoluto

Based on this merely numerical observation, it is first necessary to ask whether the peak of the three-year period 1993/95 is due to an overall increase in national crime rates. Taking some model crimes (personal injury, theft, robbery, fraudulent bankruptcy, drug trafficking) as benchmarks, it can be seen that the crime statistics recorded in the country are absolutely stable[4] and the surge therefore corresponds to a greater emergence of only corruption offences (at least alleged offences, since these are reports).

Hence, a further dilemma arises: has there been a *real increase in deviant behaviour or an increase in activity on the part of the investigative bodies during the time period concerned?*

To answer this second question, it is necessary to add two new variables: on the one hand, the figure for persons identified and therefore subject to investigation and, on the other hand, the concept of the "dark number", meaning the gap between the total number of criminal offences committed in a certain period of time and in a certain territory and the number of those that actually come to the knowledge of the authorities and are thus recorded in crime statistics[5]. An example: in the municipality of Milan, theft is the most reported crime, but this does not mean that it is in practice also the most committed; drug trafficking, on the other hand, has a very high 'dark number' that prevents an objective empirical observation and it is therefore impossible to successfully compare the two deviances.

The figure for persons under investigation is consistent with the trend of entries in the crime register, but shows a peculiar feature when compared to ordinary crime statistics, so to speak: the number of persons under investigation is always higher than the number of alleged corrupt acts, which is never the case, for instance, in property crime, as in this field the number of criminal acts is always higher than the number of persons under investigation[6].

The reason is quickly stated: the dark number in property crimes (which are the majority of crimes statistically recorded in the available official data) affects the potential perpetrators and not the potential offence; in corruption offences, on the

[4] P. Davigo, G. Mannozzi, *op. cit.*, 24.
[5] G. Forti G., *Tra criminologia e diritto penale. Brevi note su "cifre nere" e funzione generalpreventiva della pena*, in *Diritto penale in trasformazione*, a cura di G. Marinucci, E. Dolcini, Pavia 1985, 53.
[6] P. Davigo, G. Mannozzi, *op. cit.*, 20; ANAC, *Corruzione sommersa e corruzione emersa in Italia: modalità di misurazione e prime evidenze empiriche*, Roma 2014, 19.

other hand, we see a plurality of perpetrators involved in relation to a single alleged offence. Before trying to draw a conclusion from this observation, it is appropriate to ask whether this situation also occurs in the case of other crimes. This question can be answered in the affirmative with reference to, among others, the offence of fraudulent bankruptcy, the offence of drug trafficking and the offence of mafia-type criminal conspiracy.

While the third offence does not pose any significant problem, because it is the ruler itself that has structured the offence as necessarily multi-subjective ("three or more persons", which in practice are real 'families', as they are called in criminal jargon, who carry out *a single* crime), the first two offences, on the other hand, have a single-subjective structure.

But beyond the label attributed by the law, once immersed in reality, these offences are characterised by a multi-subjective criminological dimension, involving a plurality of persons. In fraudulent bankruptcy the *de jure* administrators, *de facto* administrators, liquidators, etc., in drug trafficking the entire criminal chain, from the wholesale purchaser to the transporter to the retail dealer.

Similarly, corruption would appear to require a collective crime scene, an array of subjects that transcends the well-known corrupt-corruptor "dualism": these are civil servants, politicians, intermediaries and subjects who structure, organise, sort and instal the illicit payments[7].

Following this observation, however, it is not yet possible to answer the question of whether there has been a real increase in deviant behaviour or more activity on the part of the prosecuting bodies and, before addressing the number of convictions, it is necessary to investigate the propensity of offended and/or aggrieved and/or informed persons to report.

3. The propensity to report that characterizes corruption is historically low[8], due to the absence of a real primary victim[9], i.e. that person present at the crime scene against the which the crime is physically committed[10].

[7] A. Vannucci, *La corruzione nel sistema politico italiano*, cit., 26; S. Seminara, *Gli interessi tutelati nei reati di corruzione*, in *Scritti in memoria di Renato Dell'Andro*, a cura di G. Contento, Bari 1994, 866; T. Padovani, *op. cit.*, 457.
[8] D. Nelken, *op. cit.*, 60.
[9] H.J. Kerner, *Verbrechenswirklichkeit und Strafverfolgung. Erwägungen zum Aussagewert der Kriminalstatistik*, Monaco 1973, 27.
[10] P. Davies, C. Greer, P. Francis, *Victims, Crime and Society: An Introduction*, New York City 2017, 55.

From a criminological point of view, it has been argued that corruption is a typical contractual-offence[11] characterised by the utmost "privateness" of realisation and a "delayed" damaging expansion, since individual victimisation occurs progressively and the individuals harmed by the corrupt behaviour take a long time to perceive the action and, consequently, the damage. It has also been observed that the decision to report (or not to report) the act in which one has voluntarily participated is closely connected, if not entirely coincident, with the reasons that led one to commit it[12].

Ultimately, in this category of offences there is not a person who is immediately willing to bring the offence to the attention of the authority[13].

It has been agreeably emphasised that

"despite the [*a*] tens of thousands of bribes paid in Italy by entrepreneurs and the absence of [b] any danger to their physical safety, one can count on the fingers of one hand the entrepreneurs who have denounced their alleged 'extortionists'. Even in those very few cases, more than moral indignation, recourse to the judiciary is the result of an [*c*]economic calculation made by individuals in difficulty"[14].

Note how from such an analysis of reality emerges an economic cost-benefit assessment made by private individuals, where variables [*a*] and [*b*] are added together in equation [*c*] and the result [*y*] is the choice of *whether to accept* the system *or not*.

The reference to the economic analysis of criminal behaviour[15] provides a definitive explanation for the unfavorable propensity to report corruption offences: the bribe would not represent a [*a*] cost in the strict sense of the term for entrepreneurs, as this burden is reabsorbed by requests for variants during the course of work or price revisions, or passed on to the community through the provision of goods or services of lower quality than agreed, unless the bribe is [*c*] too expensive from the outset[16].

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[11] F. Mantovani, *Diritto penale. Parte speciale. Delitti contro il patrimonio*, Milano 2021, 62.
[12] G. Forti, *L'immane concretezza. Metamorfosi del crimine e controllo penale*, Milano 2000, 412.
[13] C.E. Paliero, «Minima non curat praetor». *Ipertrofia del diritto penale e decriminalizzazione dei reati bagatellari*, Padova 1985, 253.
[14] «Nonostante le [*a*] decine di migliaia di tangenti pagate in Italia dagli imprenditori e l'assenza di [*b*] qualsiasi pericolo per la loro incolumità fisica, si contino sulle dita di una mano gli imprenditori che hanno denunciato i loro presunti 'estorsori'. Anche in quei pochissimi casi, più che l'indignazione morale, il ricorso alla magistratura è il frutto di un [*c*] calcolo economico fatto da individui in difficoltà», A. Vannucci, *La corruzione nel sistema politico italiano*, cit., 59.
[15] G.S. Becker, *Crime and Punishment: an Economic Approach*, in *Journal of Political Economy*, 76, 1968, 169; C.E. Paliero, *L'economia della pena (un* work in progress*)*, in *RIDPP* 2005, 1336.
[16] P. Davigo, G. Mannozzi, *op. cit.*, 36.

Besides the topic of the victim's propensity to report, it is now necessary to analyse the role of *witnesses* and the – relatively recently introduced – institution of reporting offences (so-called *whistleblowing*[17]).

Here again, it is necessary to draw heavily from the economic approach and game theory, assuming a so-called market of corruption, endowed with its own subcultural and antagonistic rules with respect to the proper exercise of public administration[18]. In a nutshell, these are rules that rest on a distorted basis of consensus, because they are aimed at illicit activities. This makes these rules valid within the circle of those for whom they are intended, such as the practice of remunerating officials who have now retired precisely in order to maintain the corrupt pact and preserve the image of "reliability" that is a condition for entering the corruption market[19].

The progressive intertwining of reciprocal illicit behavioural expectations on the part of public officials and private individuals means that

i. *in the medium term*, individuals who want to enter the legal market tend to adapt spontaneously to the rules of the illegal market;
ii. *in the long run,* it ends up being more difficult for the private individual to violate the subcultural rules of corruption than the criminal rules protecting the public administration[20], as the example of the remuneration of retired public officials shows.

The existence of a real regulatory system of bargaining of public powers enhances the *genesis* and *self-replication* of the corrupt phenomenon[21]. The intuitive conclusion is that the subcultural dynamic thus described is capable of depressing the propensity to report and that, on the contrary, it risks making the corruptive bond stronger.

Ultimately, individuals act in a largely motivating social context and arrive at deviance by implementing a series of progressively adaptive behaviors to rules or subcultural patterns[22]. Moreover, the German scientific literature has also historically

[17] F. Mucciarelli, *Il* whistleblowing *e il contrasto dei reati contro la Pubblica Amministrazione. Note minime tra teoria e prassi*, in *disCrimen*, 2020, 327; M. Scoletta, *Il fischietto silente. Ineffettività del* whistleblowing *e responsabilità da reato della corporation*, in *www.sistemapenale.it*, 1.2.2021, 1; M.A. Bartolucci, *Per chi suona il fischietto? Qualche nota sul c.d. paradosso del* whistleblowing *tra «autore» e «osservatore» in "ambito 231"*, in *Giurisprudenza penale web*, 1-*bis*, 2021, 2.
[18] D. Della Porta, A. Vannucci, *Mani impunite. Vecchia e nuova corruzione in Italia*, Bari 2007, 45.
[19] P. Davigo, *Gli intatti meccanismi della corruzione sistemica*, in, *Il prezzo della tangente*, cit., 181.
[20] A. Vannucci, *La corruzione nel sistema politico italiano*, cit., 67.
[21] F. Cingari, *Repressione e prevenzione della corruzione pubblica. Verso un modello di contrasto "integrato"*, Torino 2012, 39.
[22] A.K. Cohen, *The Sociology of the Deviant Act: Anomie Theory and Beyond*, in *American Sociological Review*, 1965, 5. D. Della Porta, *Lo scambio occulto. Casi di corruzione politica in Italia*, Bologna 1992, 82; A. Vannucci, *La*

shared this approach, observing that abstention from denunciation may be due to reasons of solidarity with the offender or even self-interest[23].

It does not appear, therefore, on the basis of the considerations made so far, that an increase in reporting is appreciable enough to explain the exponential increase in crime recorded. The reasons must, in conclusion, be investigated elsewhere.

4. Having reached this point in the research, it is necessary to investigate the data relating to final convictions, with two immediate clarifications: by convictions we mean all sentences (even suspended), whether delivered at the outcome of the trial or a simplified and shortened proceedings; secondly, there is necessarily a time lag that the figure does not "communicate" – this is because we proceeded by the year of the offence committed – linked to the "choice of procedure" (the average time of criminal justice in Italy in the case of the three levels of trial is around five years[24]).

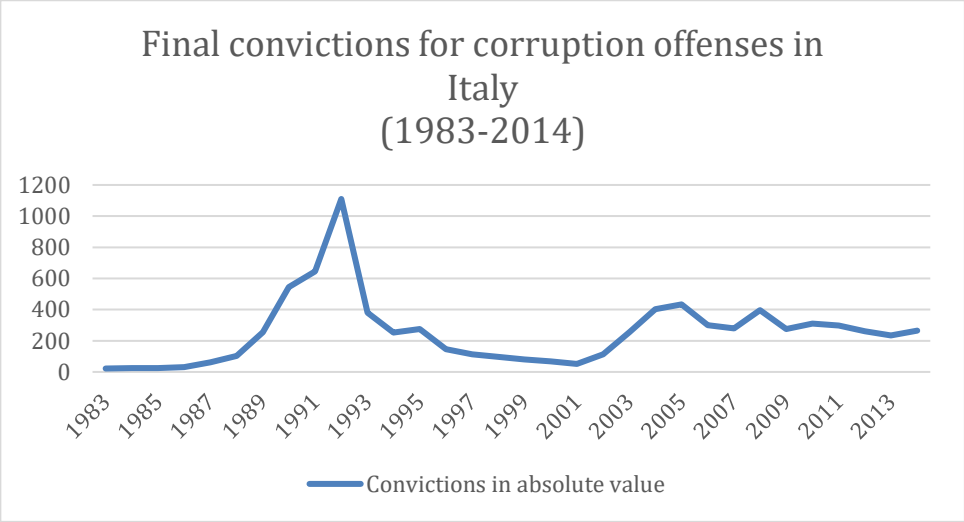
From a numerical point of view, we go from rated of convictions significantly below 200 from the beginning of the survey until 1988 to an exponential increase, with the peak of 1,100 convictions in 1992. Then, progressively, the rates fall back to pre-*Tangentopoli* levels and from 2004, settling around 300 convictions per year, until 2014, the last year for which we have certain data[25], as shown in the following graph:

corruzione nel sistema politico italiano, cit., 24.

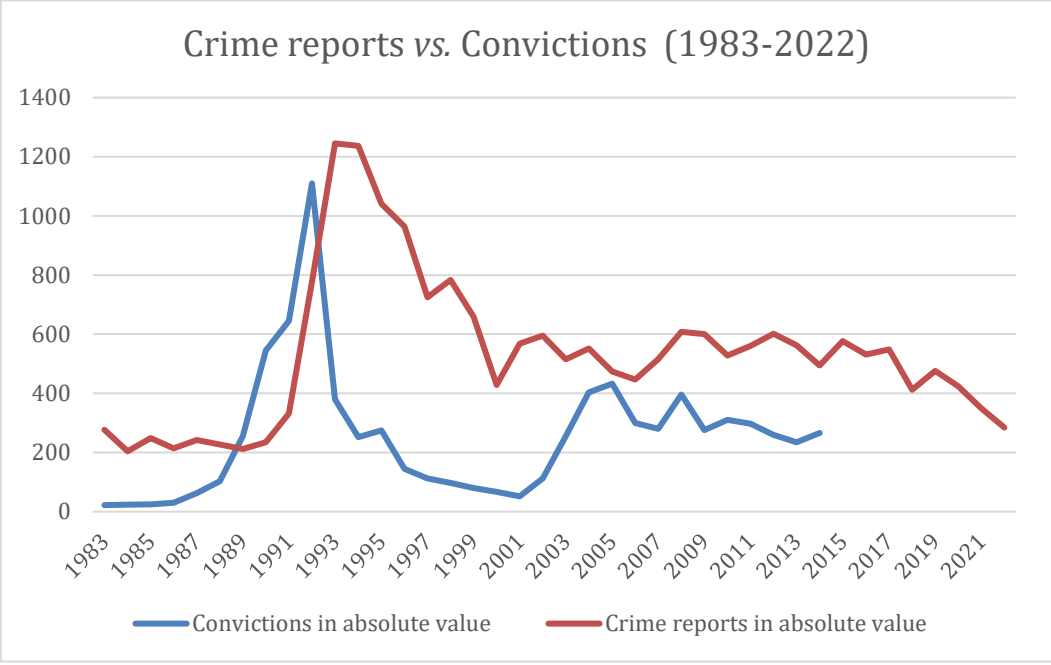
[23] F. Geerds, *Über den Unrechtsgehalt der Bestechungsdelikte und Seine Konsequenen für Rechtsprechung und Gesetzgebung: eine strafrechtliche und kriminologische Studie*, Tübingen 1961, 12; G. Forti, *La corruzione del pubblico amministratore. Linee di un'indagine interdisciplinare*, Milano 1992, 94.

[24] G.L. Gatta, M. Gialuz, *Riforma Cartabia e durata media del processo penale: - 29% nel primo semestre del 2023. Raggiunto (al momento) il target del PNRR. I dati del monitoraggio statistico del Ministero della Giustizia*, in *www.sistemapenale.it*, 6.11.2023, 71.

[25] P. Ammannato, *La misura giudiziaria della corruzione: il terzo livello dell'effettività penale*, in *DPenCont*, 4, 2020, 99.



The time has now come to compare alleged corruption, *i.e.* the entries in the offence register, with assessed corruption, *i.e.* the convictions for those acts, as shown in the graph below:



Looking at the data comparison yields the following self-evident observations:

a) the decrease of convictions, after the peak recorded during *Tangentopoli*, is much steeper than the "descent" of registrations;

b) in the four-year period 1989-1992 alone, compared to more than twenty years covered by both figures, the number of convictions exceeds the number of referrals, so it is only in that period that we find empirical confirmation of the assumed multi-subjectivity of corruption.

Moreover, it is also worth to ask why the number of convictions is falling so sharply. This question can be answered immediately by assuming that the frequency of corrupted? behaviour has actually decreased.

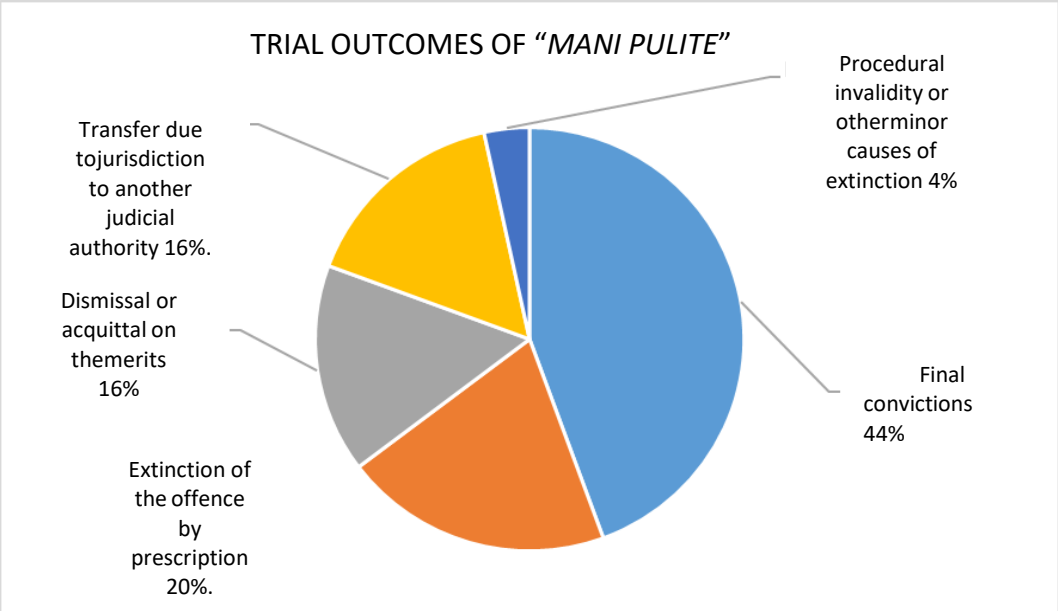
However, this statement - which is certainly true in part, for reasons that will be discussed below - is not by itself sufficient to explain the trend of the break, otherwise, it would not be clear why the number of registration of offences remains high for further eight years (at least until 2000).

Two further research steps enrich the framework of the analysis: the disaggregated data on trial outcomes and the concrete dimension of the sentence at the end of the conviction.

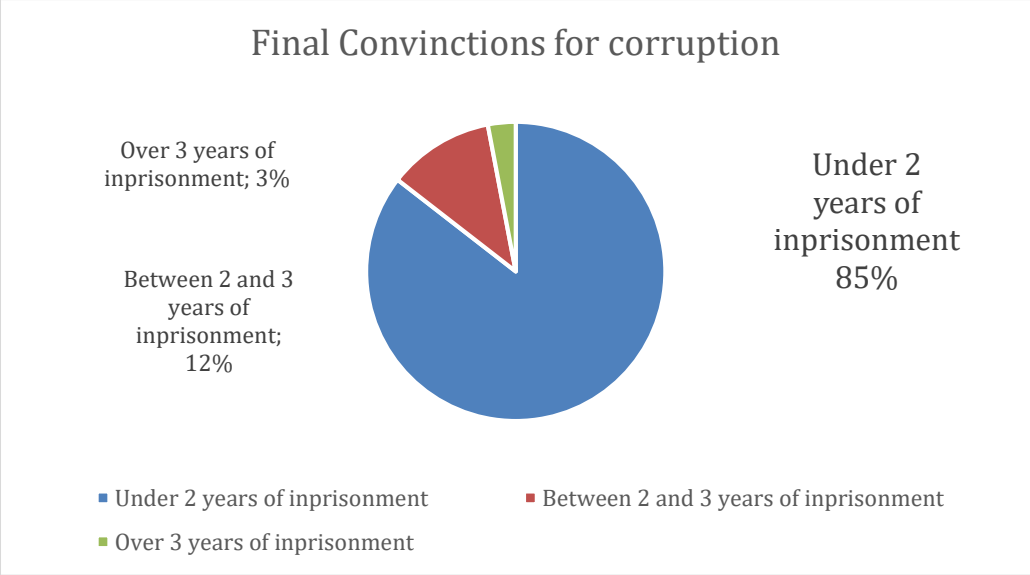
We do not have the value of these two data on a national scale, but it is possible to have the percentages provided by the Public Prosecutor's Office at the Court of Milan, the "main" location of *Tangentopoli,* and the related investigation (so-called "*mani pulite*"[26]):

i. persons convicted (or equated under Articles 444 and 447 of the Code of Criminal Procedure) with a *res judicata* are approximately 44 per cent of the total number of defendants charged; then there is a 16 per cent of defendants whose files have been passed on to another judicial authority so that it is not possible to statistically reconstruct the outcome of the relevant proceedings and, finally, a 40 per cent of defendants acquitted (also due to the time bar limitation) by the court[27], as shown in the table below:

[26] P. Davigo, G. Mannozzi, *op. cit.*, 133.
[27] P. Davigo, G. Mannozzi, *op. cit.*, 137.



ii. from this share of convicted persons, the value of the actual sentences imposed was disaggregated, as shown in the table below:



The relative mildness of punishments (as opposed to the harsh penalties provided for in the penal code) is quickly explained by the analysis conducted in the Anglo-Saxon literature according to which the frequency of deviant behaviour is inversely

proportional to the level of punishment deemed appropriate by the judge[28]: exemplary punishment is reserved for isolated behaviour; faced with serial behaviour, Agencies tend to "get used to it", lowering the level of sanctioning response.

It can thus be exemplified that out of thirty people convicted of acts of corruption, twenty-five of them can abstractly obtain the benefit of the suspended sentence (both principal and accessory), which turns the institution into a kind of generalised clemency act[29]. Consequently, the only sanction for those convicted becomes the trial, with its reputational, human, and economic costs, but certainly not the punishment, which is destined to remain "on paper".

At this point, it becomes crucial to investigate the effectiveness of the Agencies, especially with regard to the investigative bodies, in order to explain the exponential increase in *notitiae criminis*, first, and then in convictions, relating to the period under consideration.

5. By now focusing the analysis on the activity of the public prosecutor, who in Italy, to summarise brutally, enjoys a "decision-making opacity"[30] due to the combined effect of an unsanctioned mandatory prosecution[31] and belonging to the judiciary, with all the prerogatives of independence usually reserved for judges in a comparative perspective, it is possible to observe three reactions by the perpetrators of corruption offences in the period observed:

i. a *real* reaction (resulting from a concrete risk) and *independent* (the public prosecutor has no interactive capacity), when the perpetrators – who fall into the category of *white-collar criminals*[32] – have no habit of either the strict rules of the criminal process, or even less of precautionary measures, where they are ordered. These characteristics make them, under certain conditions, subjects particularly willing to cooperate with the judicial authorities when, faced with the charge of a crime, the dominant subcultural group to which they belong does not immediately intervene to

[28] D. Kessler, S.D. Levitt S. D., *Using Sentence Enhancements to Distinguish between Deterrence and Incapacitation*, in *Journal of Law and Economics*, 1999, 343.
[29] E. Dolcini, *Le 'sanzioni sostitutive' applicate in sede di condanna*, in *RIDPP* 1982, 836.
[30] G. Forti, *Il diritto penale e il problema della corruzione, dieci anni dopo*, in *Il prezzo della tangente*, cit., 93.
[31] C.E. Paliero, «Minima non curat praetor», cit., 331; M. Chiavario, *L'azione penale tra diritto e politica*, Padova 1995, 77.
[32] E.H. Sutherland, *Il crimine dei colletti bianchi. La versione integrale*, a cura di G. Forti, Milano 1987, 305.

protect them[33];

ii. an *unreal* and *tendentially independent* reaction, at the moment of the *media* (hyper) "perception" of the prosecutor's activity[34], capable of putting the author into a "psychological" crisis, as in the hypothesis from the game theory of the so-called prisoner's dilemma[35];

iii. an *unreal* and *tendentially dependent* reaction, when the public prosecutor acts as a proactive agency[36], "selecting" the most profitable trial strands according to the model of the *Funnel effect*[37], disinterested in the judicial epilogue but focusing on a "climb" to the highest levels of corrupt decisions[38].

The intermingling of these three different modes of reaction has endowed the public prosecutor with an "effectiveness of action"[39] that is greater than it really is and has caused an unprecedented domino effect of confessions and calls in complicity[40].

When does this domino effect vanish?

When the authors realise that the actual result of the control system falls far short of what was intended, *i.e.* when they realise that the only real sanction is "only" the trial and not the punishment.

As soon as the corruptive power players (political parties, private companies, public administrations), having recovered from the *shock*, realise that the public prosecutor is neither quantitatively nor qualitatively capable of guaranteeing the "anti-corruptive performance" for long, they reintroduce the differential and subcultural barriers that allow the phenomenon to be re-immersed in the murky waters of the natural dark number with relative agility[41].

[33] T. Reik, L'impulso a confessare, Milano 1967, 559.
[34] C.E. Paliero, *La maschera e il volto (percezione sociale del crimine ed "effetti penali" dei media)*, in *RIDPP* 2006, 497.
[35] G. Jervis, *Individualismo e cooperazione. Psicologia della politica*, Bari 2003, 202.
[36] C.E. Paliero, *Il principio di effettività in diritto penale*, in *RIDPP* 1990, 535.
[37] C.E. Paliero, «Minima non curat praetor», cit., 235.
[38] T. Padovani, *op. cit.*, 450.
[39] A. Pagliaro, *La lotta contro la corruzione e la recente esperienza italiana "Mani Pulite"*, in *RTDPE* 1997, 1109.
[40] C.E. Paliero, *L'autunno del patriarca. Rinnovamento o trasmutazione del diritto penale dei codici*, in *RIDPP* 1994, 1238.
[41] R. Asquer R., *Corruption Charges and Renomination Chances: Evidence from the 1994 Italian Parliamentary Election*, 12.8.2014, 26.

In conclusion, the following statements can be made:

- corruption is an offence with the following character
    - *serial*, since the unfaithful public official will tend to repeat the same behaviour countless times, as will the private individual who employs illicit means to pursue lawful objectives;
    - *diffusive*, since it imposes compliance with the *pactum sceleris* also on non-contracting parties who are nonetheless present at the scene of the crime, indeed ready, on the next occasion, as a "reward for silence", to receive undue remuneration[42];
- in the four-year period 1989-1992, the true nature of corruption emerged, both in terms of absolute value and in terms of multi-subjectivity, thanks to a drastic reduction in the dark number. This statement leads to two final considerations:
    - there is no *prior* link between corruption that actually took place and corruption that emerged: it is possible to assume that the corrupt exchanges were the same from 1983 to 1992;
    - on the other hand, there is an inversely proportional *posterior* link between actual and emerged corruption: it is possible to assume that the emergence of *Tangentopoli* temporarily inhibited deviant behaviour[43];

the ineffectiveness of sanctions allowed for a rapid decline in the subject's willingness to cooperate[44] and the reinstatement of the dark number.

6. Before entering into the merits of the legal system's reaction following the events described in the previous paragraphs, it is necessary to mention the criminal statute of the public administration at the time of the events under analysis.

Corruption offences in Italy, in the 1930 Code – which is still formally in force – adopted the so-called "mercantile model", according to which the core of the incrimination revolves around whether or not (Article 319 of the Criminal Code) the public official paid by the private individual acted in breach of his office (Article 318 of the former Criminal Code), according to the scheme of the necessarily multi-subjective offence[45]. The picture is completed by the crime of extortion (Article 317 of

[42] M.A. Bartolucci, *L'"indebita ricezione di utilità" da parte del pubblico ufficiale: condotta criminalizzabile* per se *o solo elemento tipizzante del delitto di corruzione?*, in *RIDPP*, 1, 2021, 119.
[43] L. Giorgino, *Opere pubbliche prima e dopo Tangentopoli*, in *Stato e Mercato*, 1994, 438.
[44] G.S. Becker, *op cit.*, 170; S. Cardenal Montraveta, *Corrupciòn pùblica y suspensiòn de la ejecuciòn de la pena*, in *Est. pen. crim*, 2017, 27, 240.
[45] A. Spena, *Il «turpe mercato»: teoria e riforma dei delitti di corruzione pubblica*, Milano 2003, 58.

the Criminal Code), which is configured as special extortion by a public official against a private individual, and incitement to corruption (Article 322 of the Criminal Code), which punishes one-sided conduct that does not result in an agreement. Despite the fact that more than one voice in doctrine suggested changes aimed at unifying the two corruption offences, repealing extortion and introducing grounds for exemption in the event of denunciation of the fact (so-called Cernobbio proposal[46]), the Italian legal system remained unchanged until 2012.

In truth, two reforms that do not directly concern corruption have objectively weakened the relevant *law enforcement*:

- Legislative Decree No. 61 of 11 April 2002 practically "decriminalized" the offence of false corporate communications[47], the main incentive for corruption by private individuals;
- Law No. 251 of 5 December 2005 significantly reduced the limitation periods[48], especially for offences that have a considerable latency between the commission of the act and its occurrence[49], as is the case with corruption.

As anticipated, Law No. 190 of 6 November 2012 saw a significant change in the criminal statute of the public administration, with the introduction of a new offence "halfway" between extortion and corruption (Article 319-*quater* of the Criminal Code), the rewording of Article 318 of the Criminal Code, which now punishes remuneration no longer for an act in accordance with official duties but for the exercise of the entire function, the introduction of whistleblowing and an administrative anti-corruption authority (*A.N.AC.*).

This was followed by Law No. 69 of 27 May 2015, which saw an overall increase in penalties, while Law No. 3 of 9 January 2019 saw the introduction of grounds for exemption (Article 323-*ter* of the Criminal Code) in the event of reporting the fact[50].

7. The time has come to draw some conclusions, declined in two areas: the precept-related aspects and the penalty-related aspects.

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[46] Aa.Vv., *Proposte in materia di prevenzione della corruzione e dell'illecito finanziamento dei partiti*, in *RTDPE* 1994, 1025; *contra* C.F. Grosso, *L'iniziativa Di Pietro su Tangentopoli. Il progetto anticorruzione di Manipulite tra utopia punitiva e suggestione premiale*, in *CP* 1994, 2345.

[47] C. Pedrazzi, *In memoria del falso in bilancio*, in *Riv. soc.*, 2001, 1369.

[48] M.A. Bartolucci, *Crisi*, in *Studi in onore di Carlo Enrico Paliero*, Milano 2023, 1350.

[49] G. Marinucci, *La prescrizione riformata ovvero dell'abolizione del diritto penale*, in *RIDPP* 2004, 276.

[50] M.A. Bartolucci, *Dei rapporti e delle interferenze tra la c.d. direttiva Pif e le norme penali spagnole e italiane in materia di corruzione*, in *www.penalecontemporaneo.it*, 2019, 35.

The offences placed to guard against corrupt deviance in Italy complicate the work of the Agencies rather than simplify it, due to an excess of norms[51].

To ensure an effective criminal defence against corruption, there is no need for the regulatory redundancy currently deployed, which in judicial practice shifts the *focus* from (increasingly rare) rigorous reconstruction of the fact to tormented subsumptions in rules with vague and often unpredictable boundaries[52].

The criminological reality would seem to suggest that there are only two deviant models: the corrupt agreement and the extortion of the public official, which - albeit with all the relevant criticisms[53] - fall under the cases provided for in Article 318 of the Criminal Code and Article 319-*quater* of the Criminal Code[54].

The ruler should therefore act "by subtraction" by expelling the other subsidiary hypotheses from the area of criminal relevance.

On the other hand, with regard to the punishment, the question arises as to how this can be dissuasive without being disproportionate (a risk that is far from uncommon, given the current penalty levels that also cover cases of "petty" corruption, because the ground for non-punishment on account of the minor nature of the offence does not apply).

The 1930 legislator had not envisaged that the suspended sentence would also extend to accessory penalties, whereas Law No. 19 of 7 February 1990 (significantly, at the dawn of *Tangentopoli*) had decided to include them in the institution[55].

Yet the corruption of the public official marks all the characteristics of the incrimination as a function of the relationship with the public administration: therefore, the real deterrence with respect to the offending conduct must consist in the (threatened, but realisable) breaking of that relationship with the public administration, of the bond of privilege with respect to other citizens, which then ultimately constitutes the pivot of the criminal action.

Law No. 3 of 9 January 2019, subject in Italy to fierce criticism for an excessive "penal populism"[56], has made a return to the past with respect to the reform of the 1990s, re-

[51] R.K. Merton, *Teoria e struttura sociale*, Bologna 1959, 340.
[52] M.A. Bartolucci, *L'"indebita ricezione di utilità"*, cit., 159.
[53] V. Manes, *Corruzione senza tipicità*, in *RIDPP*, 1, 2018, 1139; V. Valentini, *Dentro lo scrigno del legislatore penale*, in *DPenCont,* 2, 2013, 132.
[54] P. Severino P., *La nuova legge anticorruzione*, in *DPP* 2013, 7; M.A. Bartolucci, *L'"indebita ricezione di utilità"*, cit., 159.
[55] G.L. Gatta, sub *art. 166 c.p.*, in *Codice penale commentato*, a cura di G. Marinucci, E. Dolcini, Milano 2015, 231.
[56] G. Insolera, *Il populismo penale*, in *disCrimen*, 13.6.2019, 1.

proposing to the judge the possibility of not suspending the accessory penalty of disqualification from public office pursuant to Article 28 of the Criminal Code, making it possible to restore a "simulacrum", at the very least, of deterrence, although without resorting to more draconian options, with a strictly custodial content, as the Spanish doctrine instead suggests[57].

Pending more significant interventions, however, the power to abandon the "total (...) clemency character of probation has been re-attributed to the judge, constituting the non-suspension of accessory penalties the last general-preventive residue"[58].

[57] S. Cardenal Montraveta, *op. cit.*, 240.
[58] «Totale (...) carattere clemenziale della sospensione condizionale, costituendo la non sospendibilità delle pene accessorie l'ultimo residuo generalpreventivo», F. Mantovani, *Diritto penale*, *Parte generale*, Padova 2007, 819.