

Rules of Law and Laws of Ruling

On the Governance of Law

Edited by

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Chapter 12

Corruption as Governance? Law, Transparency and Appointment Procedures in Italian Universities

David Nelken

Another factor that contributes to Italian originality is the non-admirable ease by which the reigning laws are ignored and quite different ones are applied, laws which have never been formally approved but belong instead to a sort of material constitution which is stronger than the legislative apparatus. (Melotti 2005)

Introduction: Corruption and Transparency

The current period is one in which international and non-governmental organizations expend considerable effort trying to negotiate or impose international standards of behaviour on matters that concern, for example, health, food, safety, the environment, the economy and the banking system, immigration, and responses to crime or discrimination. States and other public and private organizations, for their part, need to find ways to signal their willingness to conform to such standards (Nelken 2006; Whitehead 2006) if they are to gain, or continue to benefit from, trading and other benefits of being part of the global or more restricted political or economic groupings. One of the many standards in play here – the one on which we shall be concentrating – concerns what states are doing about corruption. To some extent, being seen to be dealing effectively with this problem may even be considered a *sine qua non* of credibility in tackling others. A major player in trying to establish improved standards in this sphere is the non-governmental organization Transparency International (TI), which produces widely reported yearly check-ups on the levels of corruption in a large number of countries (see Figure 12.1). TI is engaged in valuable work. But there are also important questions that can and should be raised about the methods it uses to make its judgements as well as the remedies it suggests.

Is TI only engaged in discovering different rates of corruption – or is it also trying to bring about common definitions of what counts (or what should count) as such? Where do its standards come from? In one way, the subjective aspect is predominant, given that TI league tables are explicitly a construction of others'

constructions.¹ What is being compared is influenced by the ability and willingness of observers to see and describe local behaviour as corruption. But this means that societies where a sharper line is drawn between public and private life are also likely to be places where subjective perceptions of corruption will be higher (see Haller and Shore 2005, 5). But, at the same time, its judgements are also artefacts of objective differences in socio-political models of governance. Given that they define corruption largely in terms of the use of public office for private gain, the changing relationship between the private and public sphere in a given country will often be the key to the opportunities for what can or cannot be called corruption. Thus, it is interesting to note that the countries which do best in its league tables are either neoliberal ones such as New Zealand (in which the role of government is reduced) or social democratic ones like the Scandinavian countries (where the role of government is less challenged).² But it would not be safe to assume that the reason for the alleged low level of corruption is the same in each case.

We could say – at a minimum – that corruption, as defined by TI, is that which does not conform to the ways of governance of neoliberal or social democratic societies. But Nuijten and Anders (2007), in their recent critical remarks about TI, go further. They argue that there are “‘orientalist” overtones to the fight against corruption’ and see TI, ‘founded by a former world bank manager’, as in some way linked to neoliberal hegemony (Nuijten and Anders 2007, 3). For them, we should reject the dichotomization which sees corruption as having a distinctive presence in the South and East as compared to the Western world – the assumption that ‘they’ have ‘structurally embedded corruption’, whereas ‘we’ have only ‘rotten apples’. According to them, by uncritically depicting corruption as an absolute evil, these anti-corruption programs disregard the close relationship that exists between corruption and state power.³ Corruption cannot be understood as an individual act but only as one embedded in a wider matrix of power relations in society.⁴ There are many situations where people justify behaviour on moral grounds, even though it is prohibited by the state, because they rely on alternative sets of social and moral norms.

1 The Websites <www.transparency.org> and <www.transparency.it> provide some explanation of the sources (experts, businesspeople and others) on whom they rely in drawing up their assessments.

2 See the map of global corruption at <www.transparency.org>.

3 But, paradoxically, it is the neoliberal (anti-statist) project which tries to build up the power of the local state to deal with corruption in the developing world.

4 For some writers, what Western observers categorize as corruption in economically less developed countries is in fact less exploitative for those involved than everyday labour relationships in their industrialized societies. And its openness is a virtue. Pepinsky argues that ‘corruption and other violence are more directly expressed in Tanzania and more indirectly expressed by Americans who as a consequence are more enslaved to corruption and violence than Tanzanians’ (Pepinsky 1992, abstract). Bribery is an equitable ‘solution’, rather than a problem; on the other hand, it is patriarchy and domination that keep American poorly paid workers in their places.

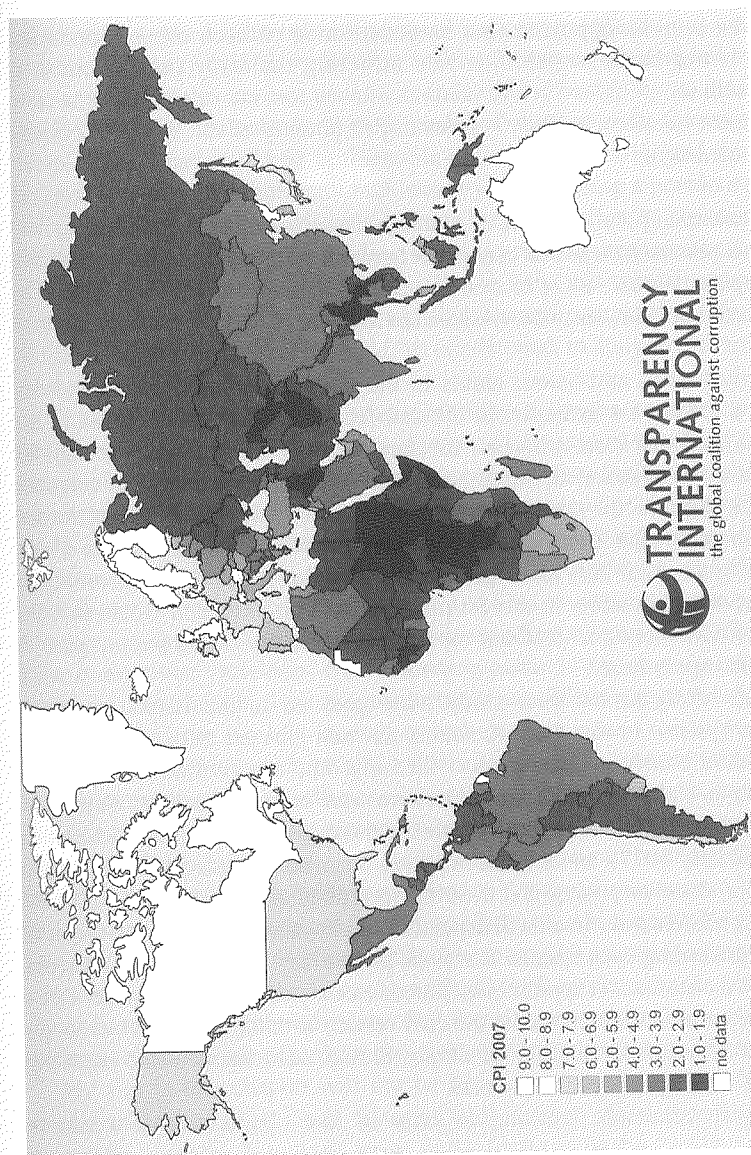


Figure 12.1 Transparency International's 2007 Corruption Perceptions Index. Reprinted from 2007 CPI. Copyright © 11 September 2008 Transparency International: the global coalition against corruption. Used with permission. For more information, visit <www.transparency.org>

But, under the influence of organizations such as TI, instead of talking of patronage or brokerage, people are increasingly encouraged to speak the judgmental language of corruption. The authors end by suggesting that corruption and law should not be seen as opposites, but as constitutive of each others' identities. Corruption is not law's negation, a vice afflicting the body politic, but is in continuity with it.

Our concern here is with Italy – a developed country of the West. As Nuijten and Anders comment:

Italy is something of a special case. Although it has become one of the leading economic powers in the world, in northern Europe it is still regarded as a hotbed of corruption. But because of its economic prowess it is not a prime target of the global anti-corruption coalition. (Nuijten and Anders 2007, 3)

Italy certainly has an ambiguous status in the struggle to impose standards on others. It is a leader, for example, in the call for the worldwide abolition of the death penalty, and – of more relevance for the subject of this chapter – through the Bologna initiative it also has an important role in the effort to produce convergence in higher education. At the same time it is disproportionately likely to be rebuked for malfeasance by the European Union Commission or the European Court of Human Rights. And Italy does get poor marks for corruption. According to TI's 2006 report, Italy came in at 41st place, after Dominica and Botswana. Do Nuijten and Anders' comments about the need to avoid confusing patronage with corruption also apply here?

I shall be taking as my case study what goes on in the Italy's university appointments system. In this system, almost all such jobs are allocated through a public procedure known as *il concorso* – literally, 'the competition'. As we shall see, many people claim that these procedures are more corrupt than those elsewhere. But are we comparing like with like? Academic manoeuvring has much in common everywhere (Bailey 1977); all methods of appointment sometimes involve improper pressures or produce surprising and even inappropriate outcomes. In so far as the judgement is a relative one, much will depend on what system we are comparing it to, and the laws governing each system. It may be particularly instructive, for example, to contrast the constraints on appointment procedures in many of the countries where university posts are considered part of the civil service with the ease by which single universities or departments can fill jobs simply through advertisement and interview, as in much of the English-speaking world.

One English academic working in Italy in fact claims that it would be misleading to describe Italian practices as more corrupt than those in the UK (Eve 1993; 1996).⁵ In the UK, he explains, there is much less obsession with the

⁵ We could also add that Italy suffers less from such problems as the hold that business has over university research in some of the most famous universities in the USA and elsewhere.

intrusion of the personal into public life. Appointment committees are so obviously 'subjective' that any serious candidate is well advised to try to discover the names and interests of those who will be making the decision. But despite (or just because of) an acceptance of the role of personal factors, people do not emphasize the networks that may condition decision-making.⁶ Matters are decided in a club-like way, and candidates are not usually scandalized if beaten by an 'insider' unless this is obviously attributable to differences of class or race. Committees can do things openly that would be unthinkable in Italy. In the UK (and the USA), it is acceptable to recruit an international 'star' by also offering a post to a perhaps less stellar husband or wife – whereas Italians would see this as nepotism. Doctoral candidates are taken on (and funding sought) precisely because their projects are of interest to their potential supervisors. But in Italy, this would not be legal; these awards, too, have to be gained through impersonal competitions. In short, many of the same practices which would be condemned in Italy are simply taken for granted in the UK.

There is much in this argument. One reason for the constant succession of 'scandals' in appointments to academic posts in Italy is undoubtedly the difficulty of maintaining the kind of extremely impersonalized distribution of public resources which the law purports to lay down. But the point should not be taken too far. Even if it is true that some of the methods which are used to rig job selection in Italy would not be forbidden in many English-speaking countries, and that academic merit is not the only thing that counts, it is also important to ask why it is that co-option in the UK does not have the same effect of preventing foreigners and other meritorious 'outsiders' from obtaining posts. In my experience, the ideas of academic merit held by Italian academics do *not* differ from those shared in what are considered the world's leading universities. It is just that proven ability in research and teaching are typically made subservient to other requirements – they are neither necessary nor sufficient for obtaining posts. Many Italians themselves insist that their appointment system is corrupt (and not only because they have been told so by others). It would surely be another sort of 'orientalism' just to tell them that they are wrong. In trying to destabilize the obviousness of transnational labels, we should therefore not fall into a relativism where something is 'right' just because it is being done (Nelken 2008). There may be reasons to be cautious about adopting the neoliberal (and more specifically US) reforms that some critics of the *concorso* system in Italy advocate. But the alternative should not be unthinking 'resistance' in defence of current practices (which are not even liberal ones).

My aim in this chapter will not be to 'expose' the Italian system as 'really' more corrupt than other ones, though I will need to offer some account of how the system operates. Nor will I try to find 'solutions' to the problem other than by pointing to the 'social traps' (Rothstein 2005) that underlie its current functioning. On the contrary, I am more concerned with showing the general limits of a strategy

⁶ But one does hear complaints about the success of what is called – tellingly – 'the Oxbridge Mafia' in placing its graduates in jobs.

that relies on exposure as a way of putting pressure on societies to change their 'corrupt' practices. I shall be giving special attention to the limits of law as a means of producing more transparency. The assumption built into the work of TI is that public decision-making is less transparent in relatively corrupt societies, and hence that more transparency would be a good thing. But can there be too much transparency? Does not authority always require some dissimulation? What if the means of exposure are themselves part of the problem? As we shall see, the living law of the Italian *concorso* has as much to do with hiding what goes on in the university appointment system as it does with making decision-making transparent.

The 'Law' of the *Concorso* (This is Not a Competition)

The Italian university appointments system – on paper – is one of the most meritocratic and transparent that could be imagined. In the university version of the usual means by which jobs are allocated in the public sector,⁷ the merits of candidates are assessed by some combination of assigned written work, published writings or sample lectures (depending on the different academic position being competed for). Judging is carried out by commissioners, who attain their positions through processes involving a mixture of election by peers from the same academic discipline and random selection. The judgements they formulate at each of the various formal stages of specifying the criteria for merit and the actual comparative evaluations of the candidates are obligatorily published on the Internet. But is any of this a guide to what actually goes on? For the purpose of answering this question, I shall discuss what is said in the academic literature, newspapers and on the Internet about the problems concerning these competitions, but I shall also draw on my direct experience of being a commissioner in various types of *concorsi*.

The media regularly carry reports of *concorsi* procedures going badly wrong. There are also regular stories about widespread nepotistic preferences being shown in all types of *concorsi*, with those involved also including leading professors whose institutional responsibilities should make them a guarantee against this being done by others. And there are recurrent scandals and discussions centring on the way that more able candidates are rejected in favour of 'protected' insiders. Are these only exceptional cases? Diego Gambetta, a brilliant Italian social scientist working in Oxford, tells us that they are rather the rule.⁸

⁷ There are differences in the extent to which such competitions are thought to be 'fixed'. The *concorso* for magistrates, for example, is considered pretty well uncorrupted (especially in its written part), though later promotion can depend on allegiance to different internal factions. Interestingly, by contrast, the method of selecting judges in UK jurisdictions relies largely on co-option.

⁸ Gambetta concedes that those fields that are more linked to international scholarship are less likely to be corrupt, and that 'there are exceptions who slip through the net'.

'Most academic positions in Italy', he writes, 'are allocated through national competitions held at irregular intervals, sometimes several years apart.' 'Those giving out jobs', he explains, 'operate on a pact of reciprocity – I promote yours and trust you to promote mine in the next round.' 'The system is corrupt because academic achievement counts little in determining the chances of promotion. ... there is near-universal agreement that loyalty and subservience to the "barons", as the powerful professors are dubbed, are the currency that gains promotion to applicants' (Gambetta 2006, 89–90).⁹

Many of those working inside the system agree. As a pressure group association of Italian professors (Coordinamento Intersedi Professori Universitari di Ruolo, CIPUR) explains:

CIPUR has been running a campaign for years against the malpractices of the university competition system and everyone knows that the scandals that are reported are only the tip of the iceberg. Few of the rejected candidates have courage enough to appeal against the decision knowing that they will come up against retaliation ... the system of organizing competitions at a local level has been applied in a distorted and, often, mafia-like way.¹⁰

In general, academic commentators on the Italian university (for example, Froio 1996; Simone 2000) investigative journalists (Zagari 2007), as well as innumerable contributors to Internet discussions all agree that the actual rules that govern Italian appointments are quite different from those set down by the law. Those who succeed in the *concorsi* are almost always co-opted – on the basis of past services rendered and assumptions of future loyalty¹¹ – by powerful professors and/or their academic 'schools'. These usually operate through disciplinary sub-groups that are linked to 'factions' that claim to stand (if sometimes only loosely) for values belonging to the different parts of the political spectrum (as with aspects of most public and social life in Italy).

⁹ Gambetta offers further proof of the corruption of the system from the fact that the Italian government has had to establish funds for inviting back accomplished Italian researchers who have gone abroad. As he puts it, 'no matter how internationally distinguished, their chances of obtaining a chair in the regular competitions were zero'. It may be added that there are now frequent reports of how these funds are either unused or misused.

¹⁰ From <www.cipur.it/>, accessed 30 January 2009.

¹¹ At this point, the reader may well want to ask how I got *my* job! The answer is that I was recruited using a provision in the 1980 law on universities which allowed for direct appointment of so called distinguished (*chiara fama*) full professors working abroad. It is highly unlikely that I could ever have got any position through a *concorso*. Although no bargain was ever specified, soon after my 'call', my sponsor stood for high office in an election in which I was eligible to participate. To remove any doubts, a professor of theology sat down beside me during the vote and whispered into my ear, 'Loyalty is the highest value.'

In my discipline, for example, there are the ex-socialists, the ex-communists (or lay group) and the Catholic (or central) group. Each has established historical dominance in certain sub-areas, and seeks to recruit new entrants. Because universities and faculties cannot appoint to posts directly, but only via the *concorso*, this means that appointments are in fact the outcome of multiple processes of negotiation: between barons and powerful figures outside the university, among barons who head the disciplinary factions, between barons and more lowly professors within their groupings or 'schools', and between barons, professors and candidates, and so on. These discussions largely pre-determine who will be on the commissions, who they should appoint, when, and why. Those professors unwilling to go along with this system will not receive the help they need – most importantly perhaps, if they cannot manoeuvre their assistants into jobs they are unlikely to attract any; hence, the system eventually reproduces only its own.

Those who are critical of the current system have made a number of attempts to spell out what are the applicable *unofficial* rules. A public prosecutor involved in arresting seven medical professors came up with the following five rules which he said showed how an organized crime model is used to control public competitions in the Italian university system:

1. A job must be advertised by the university only when the local full professor wants it.
2. At the national level, the group of colleagues dealing with the relevant subject matter has to approve this even before the official institutions do.
3. The local professor is allowed to select one candidate who is to be considered qualified for the job; colleagues are allowed to select the other.
4. The candidate who wants to win will have to have been totally faithful to the local full professor and to have satisfied all his [*sic*] expectations.
5. To make further career progress, it will be necessary for the winning candidate to obey whenever required to do so by the group (Zagari 2007, 93).

These allegedly 'criminal' rules are hardly different from those said to characterize the everyday functioning of the appointment system. Raffaele Simone, the leading commentator on the problems of university governance, claims that there are unwritten rules that regulate the corporations, create beliefs and convictions, and orient individuals and groups, and that everyone who enters the university world knows them off by heart (Simone 2000, 68ff.). The first and most important is the law of 'primordial affiliation'. To get a job, you must be the 'son' or 'daughter' of someone already there, whether by real kinship or a 'family-like' or 'client-like' relationship. Following this are rules such as that of 'egoistic reproduction', meaning that the new professor must be as much like his protector as possible and guard his academic territory; that of academic symbolism, the candidate 'representing his academic father till death or an irresolvable public disagreement'; the law of exchanging academic favours, which forms the basis for *pax academica*; the

advantages of fitting in with the political complexion of the faculty, and the right to return to a university in one's home town at a later stage of career progression.

Judging a *Concorso*: When in Rome ...

But all such attempts to spell out the unofficial rules of the appointments system can give at best only a partial and misleading picture of the *concorsi*. Not only are there other rules than those mentioned,¹² but the meaning of the rules is often unclear¹³ and only emerges as they are actually used. If we are to gain a better sense of this process, we need to go beyond de-contextualized descriptions. As Giorgio Blundo points out, rather than focusing on sensational cases, 'a good description of the practices of corruption must, on the contrary, restore them to their triteness, their daily character, their ordinary dimension, and their ambivalence' (Blundo 2007, 34). I therefore offer here some insights which may help fill in the picture based on my own experience of the system as an 'observing participant' (Nelken 2000). I shall also try to cast the difference between the 'normal' and the 'exceptional' *concorso* in a new light. It is often arbitrary when a *concorso* becomes newsworthy, since this depends on judicial intervention that casts a past *concorso* in a poor light retrospectively. For those involved in running a *concorso*, however, what counts is what prospectively causes the routine application of the unofficial rules to break down.

One of the first things I learned was that trying to apply practices from elsewhere in a different system could easily cause havoc. Once, in a low-level *concorso*, I confidently chose the academically most meritorious person, only to discover later that this person was about to move to another university, following their 'patron' professor. Before long, I found some of my ideas being used as his by the other professor. On the other hand, trying to run a *concorso* only by following the written rules can equally lead to trouble. As already noted, because they involve the disbursement of public funds, PhD candidates are also supposed to be awarded their posts by open, blindly marked examinations. But if this were adhered to rigorously it could mean that a person ended up joining a department even where their academic interests were quite different and they could not easily be supervised in their work. Moreover, they would almost certainly continue their collaboration with their previous professor in another university and not spend

¹² A practice has grown up, for example, by which candidates send in their publications but do not actually turn up at the *concorso*, or do not see it through to the end. This strange behaviour is meant to signal their availability for future employment, but also their willingness to abide by the unofficial rules of the system and their acceptance that they do not expect to be appointed simply on their academic merits.

¹³ It is the barons who make the rules. But it is far from obvious what entitles someone to be considered a baron. Such recognition of entitlement as often follows the successful assertion of power as vice versa.

much time or contribute anything to the university that gave them the award. As these examples show, in deciding who is the 'best' person for a post, it is essential to give attention to whether the candidate's loyalty is likely to be given to one's institution (even though these considerations are not written into the legal rules).

But it is one thing to recognize the sense of unofficial local practices, and quite another to break faith with universal ethical principles. What were the principles that commissioners respected? My participation in the discussions of commissions, particularly ones for higher-level positions, helped me understand that, for my colleagues, a single *concorso* did not and could not exist as an independent unit. Much like a game of three-dimensional noughts and crosses, what is decided in any given competition depends on what has been decided in previous *concorsi* going back many years, as well as what is already decided for, or likely to be decided in, future *concorsi*. In keeping with the principles of distributive justice that regulated the division of posts among factions, candidates were expected to wait their turn irrespective of whether they had more academic merit than the candidate whose turn it was.

Normal Cases

A good illustration of how a smooth *concorso* runs its course is offered by one of the first competitions for full professors in which I was involved. In this competition, our task was to choose three eligible candidates who would later be called to posts by different universities. The majority of the commissioners had allegiance to the central faction of my discipline; therefore, according to the unofficial rules, two of the winning candidates would have to be chosen from this faction. With the packs of candidate's materials still unopened, the decision was soon made to choose two of the central candidates. There remained the question of who would be the winning candidate from the minority faction (to which I was, by default, aligned). I had identified by name one sociologist who had published widely and was therefore on my list of likely favourites. But I was told we could not choose her, as there were already agreements between the heads of the factions that she would be made to win a forthcoming *concorso* elsewhere. Instead, my colleagues proposed promoting a candidate I had not heard of, and whose writings I had not received by post.

The other members of the commission spent the rest of the day at the computer, carefully drafting each of the various reports that were to serve as a legally satisfactory record of our deliberations (*il verbale*). But I decided that I needed to find out more about this candidate before I could give him my vote. I untied the relevant package of publications and read enough to convince myself that I was not agreeing to support a candidate without any merits. Once they were satisfied that the *verbali* had been completed correctly, the other professors returned and sat down in front of the large (or small) packs of candidates' materials in front of them, each of which was still tied together with string. The senior professor of the central faction now made a move to gather up the candidates' materials and take

them away. Since mine were the only ones which were in part opened and not so easy to gather up under his arm, I apologized for this fact, trying in this way to make a subtle allusion to the fact that my colleagues had found it unnecessary to read the materials because the winners had been selected beforehand. I thought he might tell me that I had clearly only been doing my duty by reading the materials. But with great charm, he simply replied that I should not worry about it as it was no problem for him to gather up my papers even as they were. Clearly, my attempt at irony was out of place. What was happening was entirely normal. I felt (and I was) stupid for having made such a comment. Yet the inability or unwillingness to see or respond to such irony does also tell us something about the seriousness with which proceedings are taken in their own terms.

Most of the other *concorsi* I was involved in were similarly routine. It was usually clear who was supposed to win, often on the strength of past services rendered to their faction or their university. Although in the higher competitions the publications of some of the candidates were impressive, at lower levels they were few and poor. The agreements between the factions, or the understood wish of the local faculty, made for 'competitions' in which there was in fact nothing to decide. Often, only one candidate turned up – though it was still necessary to go through the rigmarole of procedure. But there are certainly also often cases of *concorsi* where factions fight it out for a while before reaching agreement, and uncertainties can also arise when there is more than one well-backed candidate from the same faction. In one commission of this sort, I helped make a decision to give a post on the merits to a candidate more junior than the one who (I later discovered) had been 'intended' to win, and no doubt had been made to wait for this chance. We later learned that this had created some distress for the losing candidate. It is not clear whether the decision would have been the same had we known of this extrinsic claim (or whether it should have been). But the case illustrates how the opportunity to play off different kinds of 'merit' can add a considerable element of unpredictability to outcomes.

Uncertainty was also increased as a result of the law reform in 1998 (now repealed) which gave local universities more responsibility for the *concorsi*. This created more of an opportunity for competition between the candidate the factions in the relevant discipline wanted to win and the one favoured by the local faculty. In one such *concorso*, I found myself the so-called 'internal' commissioner, whose task it was to defend the local candidate, who already taught there. But another roughly equal candidate belonging to my faction had also decided (been told?) to compete. This led to quite a battle within the commission, with the members of the other two factions not knowing which of the two contenders represented our 'official' unofficial candidate who was meant to get the post. In the end, the problem was solved because the second candidate from our faction, on instructions from above, withdrew at the last minute (to the fury of those who were backing him).

A Really Exceptional Case

These kinds of struggle form part of the story of many a *concorso* (or series of them). But they are usually resolved to maintain a system which it is in the interest of all (insiders) to keep going. For those playing the game, keeping to the unofficial rules means that you are sure to eventually have your turn without unpleasant surprises. The following case, however, stands out as the only *concorso* in which I participated in which the commissioners were unable to bring the proceedings to any sort of closure.¹⁴ It is therefore in some ways the exception that proves the rule – showing what would happen if the unofficial rules broke down completely. It also shows the ways in which official law can also be invoked to obstruct or contest *concorsi* decision-making and, on the other hand, the way unofficial rules may be used to try and make *concorsi* yield pragmatically sensible results.

The *concorso* in question had to be organized for a rather special reason. An earlier commission dealing with same job had made its decisions some twelve years previously. But two of the losing candidates had appealed the decision to the courts. After a lengthy series of claims and counter-claims, it had finally been decided that because of a formal error in procedure (which is almost the only way to get a *concorso* reopened), the original *concorso* had to be nullified. This meant that, legally speaking, since we were being asked to re-do the *original concorso*, we were only allowed to consider publications that had been submitted up to that date of the original competition so long before. Legal time and scientific time did not coincide. Hypothetically speaking, if one of the candidates had been awarded the Nobel Prize in the years following the earlier *concorso*, it could not be taken into account.

In this new-old contest, the leading candidates whose merits we had to (re-) evaluate were Professor A, the winner last time round, and the two who had brought the successful legal action to have the *concorso* reopened, a lady, Professor B, and another man, Professor C. As the only member of the commission who knew anything about the subject matter, the view that I formed after reading their work was that Professor B had had the most relevant publications at the time of the last *concorso*. But it soon became clear that the relevance of publications was not the (only) issue that mattered. We were informed that the post had indeed originally been created so that Professor B could be promoted at her university. But because of better backing from the factions, Professor A had been appointed. He had since moved university, but because of the legal action taken to reopen the *concorso*, his promotion had never been fully recognized. The unsuccessful local candidate had meanwhile spent the last twelve years of her life trying to get 'her' job back. It was as much because of these other factors as questions of academic merit that

¹⁴ Because much of this account is necessarily based on hearsay and partial understanding of the higher levels at which bargaining is carried on, this description (like the other accounts of *concorso* proceedings) expresses only my fallible understanding about what I perceived was happening.

three of the other four commissioners agreed that the post should now be awarded to Professor B.

Given the number of commissioners ready to vote in Professor B's favour, it might have been thought her victory this time would have been a foregone conclusion. But this underestimated the determination of Professor A, something which had manifested itself even before the first meeting of our commission. At an early stage, one powerful professor (not on the commission) had rightly foreseen trouble in resolving the competing claims of Professors A and B. He had therefore sought to see if a *new* job could be created for Professor A (the original victor, who had, however, now lost the court case) to win at the university where he now worked. This would have left the way clear for us to award Professor B the post we were supposed to be re-deciding. But Professor A saw this as an effort to take away from him what he considered his rightful post. He used this attempt at a pragmatic 'solution' as an opportunity to attack the commission for committing the crime of 'the use of public functions for private ends', and launched various court cases and sent warning threats to commission members. Various strange messages arrived by email. One sent to me explained that he had interested himself 'in my friends and influence', and had been told that I liked 'to play the Englishman'; it added that he liked English novelists and had enjoyed spending time in England.

Professor A continued to cast a shadow over our proceedings. Of the five commissioners, only one of us had been a member of the earlier commission whose decision had been nullified. As it happened, this professor, the most left-leaning, ex-communist, member of our commission, had voted against the winning candidate last time (perhaps also because he was opposed to the majority faction then), and in favour of the loser, Professor B. But it was exactly this commissioner who was to prove the undoing of this *concorso*. As soon as we sat down to discuss the candidates, he announced that this time he intended to vote for Professor A, who had been the winner last time. 'What?', we asked astounded, 'How come you have changed your mind? We are looking at the same candidates and the same books as when you were involved in the last *concorso* – and that time you were the only one who was in favour of our candidate!' 'It's true,' he replied, 'the candidates are the same and the books likewise. But I am different! I have changed my mind in the mean time.'

Obviously, we then tried to find out why. 'Well,' he said 'because I am left-wing I always vote for the weakest candidate. Last time the woman candidate was the weakest, so I supported her. This time the one who won last time is the weakest, so I am supporting him!' But there was more to the story. It seemed that Professor A, for all his insistence on reminding commissioners of their legal obligations, had 'got at' this commissioner. Professor A had persuaded him that he would kill himself if he did not get his promotion confirmed. As a matter of conscience, he therefore felt bound to support him. I protested that with this type of argument, the woman who had lost last time might also threaten to kill herself. After all, it was probably her last chance at promotion, to the job which had originally been meant for her. We also noted that if our colleague changed his vote between the

previous *concorso* and this one, she would certainly appeal his decision on the basis of inconsistency, so the matter would still not be resolved. But he refused to give way, and announced that he would block our proceedings if we sought to decide against his favoured candidate. Frustrated at what seemed an impossible situation, I suggested at this point that we could consider awarding the post to the other professor, Professor C, who had been the joint winner of the appeal against the decision of the previous commission. I had read the publications that we had been sent and found them relevant and of a decent standard.

The only small problem was that he was dead. But – and this was crucial – he had *not* been dead at the time of the original *concorso*. So, I suggested, just as we were only allowed to consider the candidates' publications as they were then, the same applied to the candidates. Appointing Professor C would have a number of advantages. Professor A would be less likely to kill himself (even assuming that he was serious about this threat) if he was beaten for the post by a dead person rather than by his old, living rival. Also, since the ministry would, eventually, discover that Professor C was unable to actually take up his post, there was a good chance they would advertise a new *concorso* for someone able to deliver their lectures. In this competition (open also to Professors A and B), the commissioners would be allowed to read work that had been published since the date of the nullified *concorso*, something which was forbidden to us.

I was gratified – if also a little surprised – that some of my colleagues seemed to take this proposal seriously.¹⁵ After considering the matter, however, they told me that there was a technical problem with it. Even though we had for some reason been sent his books, Professor C himself had not replied to the minister's letter asking previous candidates to indicate whether they wanted to be considered in this re-enactment of the *concorso*. Of course not, I answered – he was dead! (And we should not be discriminating against the dead.) Ah, said my colleagues. After further examination of the issue, however, they found out that at that point, he *had* in fact been alive. He had not asked to be evaluated again because in the mean time he had won a *concorso* for another university position (which he unfortunately did not live to take up). So this solution, too, turned out to be unworkable.

While we tried to get on with the work of the commission, Professor A kept up his guerrilla tactics. At one stage, the president of the commission had been sent a large bunch of flowers which purported to come from the ex-communist commissioner. It was only at one of our meetings that they both realized who must have sent them. At another, we were told that Professor A had stationed himself in front of the president's residence, something that he found threatening. The ex-communist did his best, as promised, to delay our meetings, and then resigned, making it necessary to postpone matters until a replacement could be appointed. Professor A went on making threats of legal action against the commissioners. Worn out by all this, and unable to get any helpful advice from the ministry, the

¹⁵ Of course, it is possible that the joke was on me. But it is not unusual in Italy to look for formalistic ways round formalistic obstacles.

president advised us all to submit our resignations, which we did. I lost touch with what happened afterwards. But it seems that Professor A is still at his post, while Professor B (who quickly accused the newly appointed commission which replaced us of being demonstrably biased towards Professor A) has never received promotion. Instead, a new *concorso* was set up and another candidate (linked to one of the previous commissioners) has been appointed at a more junior level.

Corruption as Governance

What conclusions can be drawn from these experiences? I would not want to claim too much for accounts based on only a limited experience of commissions. 'Observant participation' excludes the possibility of systematic study of a random sample of *concorsi*. In the commissions in which I took part, it was never necessary to reject the academically best qualified candidate. And the more dramatic stories of corrupt commissions that appear in the newspapers do tend to come from subject areas where there is more power and money at stake than mine. If we are to believe reported telephone interceptions, there commissioners sometimes take 'macho' pleasure in being able to block the candidates who are clearly the most qualified. But even in my disciplinary area, I heard indirectly of highly qualified candidates trying and failing to get appointed, of candidates obtaining promotion for reasons that were not strictly academic, and of progress being blocked because a patron had died or gone abroad, or more rarely, because candidates had dared to disagree with or defy a baron. Given what goes on, it is not surprising that many describe the Italian appointments system as corrupt, and even Mafia-like in its *modus operandi*. At a minimum, there is no doubt that many appointments involve at least some measure of legally borderline behaviour. Almost all public discussions of the *concorso* system are critical, and it is difficult for those involved to find universalistic language to justify what seems undeniably a particularistic form of decision-making.

None the less, it is important to appreciate that, for the commissioners actually involved, it usually feels more as if they are involved in solving a difficult problem of micro-politics than in engaging in forbidden exchanges. It is clear to all involved in a *concorso* that the larger agreements that frame its deliberations are made by the barons. In most cases, they do not even need to be physically present. But the placemen on the commissions see themselves as part of a scheme of (self-)governance, rather than slaves of the personal whims or ambitions of faction leaders. The overriding responsibility of the commission is to ensure that posts are allocated between the known candidates of different schools and factions, according to their relative levels of electoral support among the relevant professoriate as expressed in a given *concorso*. Only in this way can conflict between the different academic 'schools' or the disciplinary factions be avoided. There have been and can be genuine and serious political and cultural divergences at stake. It is for this reason that the merits of candidates can only be relevant after, and subject to, this overriding requirement of political 'mediation'.

The major task of the commissioners during *concorsi* meetings is not to decide the winner, but rather to create a legal record that candidates will not be able to challenge. This involves ensuring that all procedural requirements (ostensibly there to prevent corruption) can be seen to have been satisfied. In the normal *concorso*, the ‘extraneous’ considerations that dictate which candidate should win are not usually discussed when dealing with the paperwork. Phone instructions from faction leaders are received, if possible, in another room, and cross-dealing with other commissions which happen to be meeting simultaneously takes place between working sessions. Only exceptionally, as in the dead professor case, does the ‘outside’ erupt dramatically into the *concorso* itself. The crucial deals which create preferential links and encourage (and, above all, discourage) applications are established *before and outside* the most legally regulated moment of the proceedings.

But even if we accept that the appointment system is a form of governance, this does not prevent our asking, as a normative question, whether we should consider it as an example of good or bad governance. In terms of the different possible principles of ordering recognized by political scientists – network, state and market – what we see here are networks profiting from the trust delegated to them by the state in order to limit the turbulence that could be created by market competition in university posts.¹⁶ Rather than offering a robust alternative to official law, the unofficial rules of the *concorso* live in parasitic symbiosis with it. Even though there are no procedures for resolving disputes over single cases, factions do generally respect each other’s selections – because, as I was once told, ‘otherwise everything would collapse’. Outside the moment of the *concorso*, representatives of the different factions sometimes even make efforts to modify the operating rules, by specifying, for example, the number of publications that would normally be expected for positions at each level. But these decisions are not easily enforced, and the factions have so far been unable even to establish minimal common criteria to exclude unworthy insider candidates. There has certainly not been any concerted effort to ensure that the *concorso* is genuinely open to outsiders: that would go against the interests of those playing by the unofficial rules.

The *concorso* system is connected to other problems found in the world of Italian universities¹⁷ (Zagari 2007) as well as public life in general, and tinkering with the *concorso* system may not be the only or best way of improving matters. In the 1998 reform, for example, it was decided the *concorsi* should no longer be organized at the national level, but instead held at each of the universities that were seeking to appoint people. The idea was that this would make universities more transparently ‘responsible’ for their choices on the merits. But this turned out to be

¹⁶ Rather against Giglioli’s (1979) predictions, government bureaucracy has not tried to overcome the power of the barons.

¹⁷ Simone (2000) focuses mainly on the distracting effects of the heavy involvement of professors in professional or political activities outside the university. Interestingly, the role of the ‘public intellectual’ is now becoming *more* prized in the English-speaking world.

a complete failure, leading to what was described as ‘the rise of the local cretin’, with allegedly as many as 90 per cent of candidates simply being promoted within each university itself. As a result, the system has now been returned to operating at a national level. Getting entirely rid of the *concorso* would also offer no guarantee that merit would then become the guiding criterion of decision-making. At the time of the expansion of higher education in the 1970s, there was massive *direct* recruitment of former assistants to professorial roles, without any real *concorsi*, but most of these had not published much – and have not published much since.

Those who advise moving to systems of recruitment more similar to those used in the English-speaking world admit that this would only produce decisions based on merit if other more fundamental changes were made, including abandonment of the current equal legal value of all degrees, introduction of competition between different universities, the reduction of job security, and so on. But each of these issues is highly controversial. External pressures towards harmonization may, eventually, bring about change, and there is likely to be increasing political embarrassment over the haemorrhaging of talent as academically able Italians are forced to go abroad to find work. But reforms which go in the direction of more individualism and neoliberalism would be hard to reconcile with the many other structural features and values of Italian life that stress group loyalty.

Law and the Secret of Corruption

We may now return to our starting question. How does the *concorso* help maintain what many Italians themselves describe as their ‘corrupt’ system of university appointments, and what implications does this have for the pursuit of transparency as a purported solution to the problem? As we have shown, the *concorso* usually does more to conceal than to expose what is really going on. In routine cases, it does nothing to stop outcomes being pre-determined. In these cases of *de facto* co-optation, its main role is therefore to conceal the range of extra-legal criteria (both those ethically defensible and those quite indefensible) that have in fact been taken into account. In the exceptional cases, such as the one described above, resort to law can upset the well-laid plans of the commissioners. But it is an open question whether it helps produce the best outcomes. And it typically does more to impede or annul deliberations than improve them.

Looked at in terms of their role in fighting corruption, the role of the courts is also complex, and often contradictory. Resort to the courts can serve as a weapon for the relatively powerless, for example in annulling a *concorso*. But this depends on the willingness of victims to come forward. The courts are slow and costly, and the results are uncertain as compared to the high risk of permanent exclusion from the unofficial system. As in many other areas of social life, when state-guaranteed rights do not work as they are purported to do, the courts tend to arrive too late on the scene. Judges are usually only willing to consider formal errors, and are unable or unwilling to go into substantive questions about the quality of scientific work.

What is more, courts can also be used for their own reasons by those who run the system. For example, a *querela* (a private legal action) for defamation may be threatened against those who try to expose 'fixed' competitions.

Nuijten and Anders (2007) claim provocatively that 'corruption is the secret of law' – because real power lies in the ability to *apply* the rules. But this tension between the rule of law and the role of law – between law as a constraint on power and law as an instrumentality of power – can and does vary in time and place. What is special about this relationship in Italy? Most of the individual elements that play a part in this story have parallels elsewhere. Other systems have laws that are made in the interest of powerful groups (even more so, in some ways). There is nothing specific to Italy about the ubiquity of informal norms, organizational working rules or plural legal orders, laws that are 'dead letters', or gaps between 'law in books' and 'law in action'. But the skill at playing off official and unofficial rules does seem remarkable. Commissioners not only exploit to the maximum the margins offered by the *concorsi*, they use them for purposes which often contradict the explicit statements they make about choosing the academically most qualified candidates.

There is evidence from levels of tax evasion and other forms of illegal behaviour in many other areas of social life that suggests that ordinary Italians often find ways to get round what they treat as over-formalistic legal regulations, and no doubt this, too, plays its part in the way the official rules governing the *concorsi* are (not) observed. But 'the problem' starts at the top. In Italy, it is difficult to control the controllers, and it is sometimes even hard to tell controllers and controlled apart.¹⁸ Ministers know what actually goes on in the *concorsi*, but do not (or cannot?) find effective ways to regulate them. As scholars keep rediscovering, Italian governments employ the art of 'not governing' (Di Palma 1977; Ricolfi 2007), and 'ruling through leniency' (Melossi 1994), especially – though not only – where the powerful are concerned. Expressions commonly heard in Italy, such as 'the law is applied to enemies, but is interpreted for friends' or 'as soon as a law is passed, a way of outwitting it is found', are used to describe the behaviour of those *making* the laws as much, if not more than, that of those *subjected* to them (as suggested by the quotation that serves as an epigraph to this chapter).

The ability to manipulate the law in the way we have illustrated does not show it to be irrelevant. Far from it – no one in Italy can feel securely beyond the reach of the courts. (Most recently, the barons have decided that deals will no longer be conducted by telephone, but only in person). The need to provide a patina of legality itself produces a 'dirty togetherness' by which participants know that they are all at risk unless they keep to their pacts. Thus – perversely – the threat of legal sanctions for any abuse of procedures helps to induce reliability rather than

¹⁸ The Italian branch of Transparency International broadcasts its public service appeals for less corruption on the Berlusconi-owned Mediaset television channels. And, on the other hand, as I write this, the centre-left Minister of Justice and his wife (also a politician) are both being investigated on corruption charges.

defection. Thus, it may not be going too far to say that not only may corruption be called the secret of law, but law itself may be the secret of corruption. The 'law' of the *concorso* serves, above all, the purpose of making it more difficult for excluded candidates to complain – and forces them to do so in terms of procedure rather than substance. By arranging for decisions to be taken collectively on allegedly technical criteria, the *concorso* diffuses responsibility for outcomes. Above all, it offers legitimization for a process that would otherwise be seen more clearly for what it is: an exercise of power by insiders, for insiders.

Italian political clientilism used to be defended as a form of democracy which has the advantage of openness (as compared to the hidden power of 'Anglo-American lobbies'). Because power is palpable, one knows where it lies (La Palombara 1987). It is true that candidates understand that they have little if any hope of getting a job unless they can identify the barons in their fields and create a long-term relationship with a protector. But as the *concorso* system shows, this is only half the story. Those involved in university appointments send out two types of signals, at the same time, to two different audiences. One is meant for those in the university world, the other for those outside it. Even an open secret is still a secret. While purporting to control corruption, the *concorso* also hints at the power of those it pretends to control. In this way, the legal facade raises hopes, but the system, in practice, sends the message that personal links of dependency are the only way to secure a job and make progress in one's career.

Is the answer even more 'transparency', and what would that mean? Why has the frequent exposure of *concorsi* through the courts and the media not already torn away the facade? If the *concorso* maintains its place despite the frequent scandals, this is because it allows the issue to be posed as one of wrong procedures being followed – implying that right procedures would solve the problem. But also, and this is just as important, a society which has too many scandals become desensitized to them. The tendency is for each political or other grouping to focus on the faults of the others. Different media sources, few if any of which are perceived as independent, tell incompatible stories with different heroes and different villains. People become suspicious of the motives of those who launch corruption accusations, and 'facts' are easily reduced to opinions (Travaglio 2006). In the many cases that go through a process of trial by newspaper, the sentence, if any, issued much later after going through various court stages, reports circumstances which seem quite different from the facts as they had first been reported.

In a society where appearances mean everything, appearance is always suspect. As a condition of social survival, people learn to use *dietrologia* (or 'looking for what lies behind'). This suggests the need for rethinking the work of Transparency International and similar bodies. The TI experts who give Italy a low ranking are not offering an assessment that is different from that shared by many Italians themselves. But – just because of this – the risk of spreading these rankings (whatever other good this may do) is that of inducing a self-fulfilling prophecy. Those who see corruption as the result of a 'social trap' (Rothstein 2005) explain that the trap is set by the belief that, if others are corrupt, you would

be a fool not to behave the same way. So it would be naive to assume that simply generating more transparency about what goes on in the university appointment system would inevitably lead to improvements in the behaviour of those involved in the system.¹⁹ Under conditions of ‘pervasive corruption’ (Varese 2000), more information about what is really happening may only reinforce candidates’ apprehensions that without protectors, they have no future. This said, the ‘law’ of the *concorso* offers little more than a simulacrum of legality. Both falsely transparent and transparently false, it can do little to create a virtuous circularity of trust through which academic merit could come to have greater weight in relation to the criterion of loyalty to a patron.

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¹⁹ Della Porta and Vannucci (2007) emphasize the failure of the many years of media discussions of the Tangentopoli corruption scandals to produce movement towards genuine reform of its underlying causes.

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