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The organizational reasons for wrongdoing. The case of Italy's Superior Council of the Judiciary (CSM)

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Abstract

Many scholars have highlighted the individual, organizational and inter-organizational causes of organizational wrongdoing; others have focused on its (negative) consequences or have analyzed how it can persist and spread between organizations. An underlining assumption shared by many of those studies is that organizational wrongdoing is a deviant, society-damaging phenomenon originating from individual and organizational actors' pursuit of undue advantages. We argue that, at least in some cases, actors may also have "organizational reasons" for wrongdoing, besides self-interest. This article aims at analyzing the organizational reasons for wrongdoing in the CSM affair, a scandal that shed light on the deviant practices for career paths within the Italian judiciary system. By relying on documents and several semi-structured interviews to judges, public prosecutors, and experts in the field, we reconstructed actual practices for career advancement (extra-legal governance) and compared them with formal policies (legal governance). Our analysis shows that deviant practices were not merely occasional episodes of favoritism, but were part of an extra-legal governance system that involved virtually all of Italy's judges. We also found that the CSM decoupled formal policies from actual practices to manage two organizational trade-offs – bureaucratic rules vs. efficiency, and independence vs. accountability. Therefore, besides individual gain, actors had two major "organizational reasons" for wrongdoing: first, they needed to cope with a lack of organizational capabilities and resources; second, they needed to address calls for greater accountability. In the light of our findings, we conclude with some considerations about organizational learning and the relation between law, organizations, and wrongdoing.

Keywords Organizational deviance · Wrongdoing · Dark side · Judicial systems · Decoupling

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Introduction

Organizational wrongdoing, the violation of law, social norms, or ethical principles by an organization or one of its members in the (primary) pursuit of organizational interest, can negatively affect individuals, organizations, and whole economic sectors in terms of legal, economic, and reputational costs. It may also impact on society as a whole, in terms of loss of human life, economic harm and environmental damage; if exposed, organizational wrongdoing can even damage the focal organization itself (e.g., Jensen, 2006; Jonsson et al., 2009; Owens, 2012; Piazza & Jourdan, 2008; van Erp, 2018). Social researchers have shown a sustained and ongoing interest in understanding the sources of organizational wrongdoing (Palmer, 2017; Palmer et al., 2016). Some scholars shed light on the individual reasons for organizational wrongdoing (see Tenbrunsel & Smith-Crowe, 2008 for a review). In particular, research on ethical behavior in organizations pointed out the role of cognitive frames (e.g., Bazerman & Tenbrunsel, 2011), emotions (e.g., Gaudine & Thorne, 2001), moral motivation (e.g., Shao et al., 2008) and peers (e.g., Moore & Gino, 2013) (see Trevino et al., 2014 for a review). On the other hand, some scholars focused on the role of institutional mechanisms and norms in generating and upholding organizational wrongdoing. They highlighted the role of flawed regulatory and control systems (Catino, 2013; Gabbioneta et al., 2013; Prechel & Morris, 2010), inter-organizational dynamics (Braithwaite, 2005), economic conditions (Simpson, 1986), and the media (Clemente et al., 2016), to mention only a few. Overall, literature shows that the institutional environment can influence the decisions of organizations to commit wrongdoing in different ways.

Other scholars looked for organizational factors behind organizational wrongdoing. Previous literature pointed out different organizational mechanisms that promote organizational wrongdoing such as incentive system, organizational culture, goal displacement, secrecy, etc. (see Greve et al., 2010 for a review). Finally, some studies focused on organizational ethical infrastructure (Tenbrunsel & Smith-Crowe, 2008) which comprises those components of organizations aimed to foster (professional) ethical behavior such as ethics codes, ethics programs and ethical culture. While the above research provides precious insights on different organizational mechanisms that promote (or hinder) organizational wrongdoing, the role of administrative laws and procedures in favoring wrongdoing has received less attention. In particular, we focus on organizational wrongdoing committed by Italian judges in carrying out *managerial tasks* related to judges' career self-government, not in conducting judicial activities. We argue that the concept of decoupling (Meyer & Rowan, 1977) can contribute to further our understanding of the causes of organizational wrongdoing in two ways. First, it highlights the heterogeneity of the environment and the inconsistent pressures that it exerts on organizations. Second, it sheds light on the complex, nuanced relation between organizations, law, and organizational wrongdoing. As we shall discuss, under certain circumstances, compliance with the law, paradoxically, may favor or even trigger organizational wrongdoing.

We applied the concept of decoupling to the analysis of the scandal involving Italy's Superior Council of the Judiciary (CSM). In 2019 a wiretapping operation

revealed that the appointments of Court Presidents were not decided on merit, as provided by the law, but through a sort of bargaining system. The CSM affair is not just an occasional episode of favouritism, but rather a case of organizational wrongdoing. On the one hand, the extra-legal governance system of career paths involved virtually all of Italy's judges: 9149 out of 9657 judges are members of ANM, Italy's National Association of Judges at the center of the scandal.[1] On the other hand, the CSM as a whole benefited from the extra-legal governance system of judges' career paths. Our analysis shows that the extra-legal governance system resulted from the CSM's attempt to deal with two organizational trade-offs: one between bureaucratic rules and efficiency, the other between independence and accountability.

This article contributes to the literature on organizational wrongdoing both theoretically and empirically. Theoretically, the literature tends to focus on the deviant, harmful aspects of organizational wrongdoing. Our research highlights a different – but complementary – side of the phenomenon: *besides self-interest*, individuals may also have "organizational reasons" for wrongdoing. By "organizational reasons" we refer to those organizational factors and mechanisms that favor wrongdoing with the (primary) aim of enhancing or preserving organizational efficacy or efficiency.[2] We do not argue that under certain circumstances organizational wrongdoing is positive or acceptable. Quite the contrary. On the one hand, even when actors act upon "organizational reasons", organizational wrongdoing tends to solve only short-term problems the members of an organization face when carrying out their tasks, rather than contributing to reach the long-term organizational objectives. As emerges from our analysis, the extra-legal governance system allowed CSM to manage judges' careers efficiently, but it did not grant the selection of the best candidates. On the other hand, extra-legal systems can be easily swayed by particular interests and degenerate because both relations and organizational processes are informal. Therefore, we argue the need to address actors' "organizational reasons" in order to eradicate organizational wrongdoing and prevent its reoccurrence.

Empirically, we contribute by analyzing a case of organizational wrongdoing in the judiciary, which is an understudied public institution, especially within organizational studies. Other studies have focused on judicial ethics and judges' wrongdoing in judicial activities (Bell, 2009; Crespo, 2016; Edwards, 1969; Remus, 2011; Valarini et al., 2021). Nevertheless, to the best of our knowledge, this is the first analysis of organizational wrongdoing in a judicial system concerning *managerial tasks* related to self-government activities, such as judges' career management. Finally, our paper contributes to the literature on decoupling by analyzing the unforeseen and harmful consequences of decoupling (Boxenbaum & Jonsson, 2017).

[1] All data were verified by the authors on January 26, 2021, on https://www.associazionemagistrati.it/associazione-nazionale-magistrati.

[2] Actors' organizational reasons for wrongdoing do not rule of out the co-existence of self-interest motives and the pursuit of individual gains.

Theoretical context

Organizations do not always "walk the talk". Sometimes their formal policies are decoupled from actual practices. According to Meyer and Rowan (1977) decoupling is an organizational strategy aimed at preserving internal flexibility while conforming structures to external norms. This strategy is rooted in organizations' efforts to secure their own survival by accommodating inconsistent demands. On the one hand, organizations need to run their day-to-day operations efficiently; on the other hand, they seek external legitimacy (and relevant actors' support and the resources that come with it) by conforming to the institutionalized norms of their environment. Such norms, whether they be rule-like social prescriptions, laws, regulations, or professional standards, reflect institutionalized social beliefs. Since norms are not necessarily related to efficiency, organizations may decouple formal policies from actual practices as a strategy to manage the emerging tension between efficiency and legitimacy demands.

Decoupling is but one strategy to cope with inconsistent demands (Meyer & Rowan, 1977). The literature has pointed out factors at individual, organizational and institutional level which increase the probability of decoupling (Cole, 2005, 2012; Hafner-Burton et al., 2008; Hathaway, 2002, 2003; Westphal & Zajac, 2001). At other times, decoupling is adopted not because of a lack of will, but because organizations lack the resources and capabilities to implement the required formal policies. This second reason is pointed out especially by those studies focusing on isomorphic national structures and different policy practices across nation-states (Camp Keith, 1999; Drori et al., 2003; Lim & Tsutsui, 2012; Meyer et al., 1997; Thomas et al., 1987).

More recently, research on decoupling has focused on environmental heterogeneity and inconsistency. Some authors have highlighted the fact that organizations need to implement multiple decoupling strategies at the same time in order to manage inconsistent institutional demands (Brunsson, 2002). Decoupling strategies can take different forms. In reverse decoupling (Snellman, 2011 cit. in Bromley & Powell, 2012) practices, instead of formal policies, are changed in response to external pressures. The means-ends decoupling (Bromley & Powell, 2012) consists in implementing formal policies even though their contribution to the achievement of organizational core goals is questionable. Concluding, decoupling has proved an effective organizational strategy to preserve efficiency (Covaleski & Dirsmith, 1983) and increase legitimacy (Westphal & Zajac, 1998; Zott & Nguyen Huy, 2007). Nevertheless, it has also a dark side.

Decoupling as a source of wrongdoing-inducing system

Decoupling may lead to organizational wrongdoing. Greve et al. (2010) and Bromley and Powell (2012) distinguish between harmful outcomes due to technical decoupling and harmful outcomes due to institutional decoupling. Technical decoupling is the result of technical malfunction or of individual violations of norms which are

implemented by the organization. In these cases, organizational wrongdoing takes the form of accidents, and it is temporary.

Institutional decoupling, on which we will focus, is the result of an organization's attempt to acquire legitimacy through normative isomorphism and tends to produce long-lasting changes in its formal structure. Institutional decoupling also facilitates organizational wrongdoing because isomorphism and legitimacy grant the organization ceremonial external controls. In turn they make it easier for the organization to hide from public scrutiny and to carry on pre-existing wrongdoing. Whiteman and Cooper's (2016) research on forestry operations conducted by Barama Ltd. in Guyana shows that the company succeeded in obtaining the FSC certification of environmental, social, and economic sustainability by concealing its irresponsible social practices, including the repeated rapes of local girls committed by some of its employees. Once obtained, the FSC certification protected Barama Ltd. from further external inquiries while deflecting public attention from its irresponsible practices. The relationship between legitimacy, ceremonial controls and organizational wrongdoing holds true even for nation-states. The literature highlighted that the ratification of human rights treaties by governments may result in a slowdown in change or even an increase in abuses (Hafner-Burton & Tsutsui, 2005; Hafner-Burton et al., 2008; Hathaway, 2002).

Decoupling may also favor the emergence of organizational wrongdoing by creating favorable conditions for deviance (MacLean & Behnam, 2010; Monahan & Quinn, 2006; Vaughan, 1982, 1996, 1999). Non-implementation of formal policies, adoption of ceremonial internal and external controls, formulation of ambiguous goals (Meyer & Rowan, 1977) and internal delegitimization of formal policies (MacLean & Behnam, 2010), all are organizational features that provide employees with enough flexibility to coordinate informally, and run, day-to-day operations efficiently. Nevertheless, the very same flexibility may also allow or even encourage employees to adopt fraudulent practices to advance organizational goals. Monahan and Quinn (2006) show that flexibility favored organizational wrongdoing in organizations as different as the Abu Ghraib prison and USA's national Intern Developmental Program for young architects. In the first case, the Republican administration enhanced military organizational flexibility by blurring the chain of command, producing vague and ever-changing procedures, and setting ambiguous values and goals; in the second case, flexibility was ensured through ceremonial controls over the activities of interns, geographical fragmentation of internship positions and centralization of the reporting system. Summing up, decoupling is an organizational strategy that allows organizations to maintain standardized and legitimate formal structures, while varying their internal activities according to practical considerations. Therefore, through decoupling, organizations can balance the demands of organizational efficiency with the need for external legitimation. Nevertheless, it has also a dark side because, while creating favorable conditions for flexible action, it also favors wrongdoing.

The CSM *AFFAIRE*

On May 2019, a huge public scandal emerged around the Superior Council of the Judiciary (CSM) in relation to the appointment procedures of Court Presidents and Chief Prosecutors. This scandal showed that judges' careers and promotions were not based on merit – as prescribed by the law – but mainly on membership in one of the four judicial factions (*correnti*) making up the ANM (Italy's National Association of Judges) which are represented within the CSM (Guarnieri & Pederzoli, 2020). In the context of an investigation which led to charges against an Italian businessman, it was discovered that judge Luca Palamara – the then president of ANM and a former member of the CSM (2014–2018) – frequently met with members of political parties and other stakeholders in a hotel in Rome in order to decide the appointments of Court Presidents and Chief Prosecutors "around a table". Despite the hyper-legalistic and complex framework prescribed by the law, the most important judicial roles were assigned through an informal bargaining process. In this framework, the ANM judicial factions acted as a link between the actors outside the CSM and the members inside.

The CSM and the judiciary framed the scandal as "a few bad apples" among judges and continued to ignore the underlying systemic problems. This attitude of framing the scandal without any self-criticism could have impacted on the public trust towards the judiciary. In Italy, the public trust remained relatively high and stable, more than 65%, from the end of the '90 (after the Clean Hands apex, 95%) until 2010. From this date, public trust towards judges started to decrease continuously. In February 2022, a new survey stated that only 39% of the Italian citizens trust the judiciary. This is the worst result ever.[3] The majority of national newspapers commenting this result recalled the CSM affaire as one of the causes for this huge decline.

The role of the CSM in the Italian judicial system, its composition and its functions had a major influence on the way promotions were managed. Unlike many European civil law countries, in Italy all judges, whether exercising adjudicative or investigative functions (judges and public prosecutors, respectively) belong to the same professional category. They are recruited through the same public competition process and throughout their career they may switch from one function to the other, albeit with some limitations.

The principles of independence and impartiality of the judiciary are strongly expressed in the dyadic governance structure designed by Italy's Constitution of 1948. On the one hand, the Constitution entrusts the administration of justice and the management of its resources to the Minister of Justice. On the other hand, it establishes self-government for the judiciary. The Superior Council of the Judiciary (CSM) is the self-governing body of the judiciary. It is headed by the President of the Republic – who is an ex-officio member – together with the President and the General Prosecutor of the Supreme Court of Cassation. As for the other members,

[3] https://www.corriere.it/politica/22_febbraio_18/sondaggio-giustizia-referendum-quorum-difficile-fiducia-magistrati-minimi-aa1db556-90f3-11ec-9e8a-badec6e7adb8.shtml

two thirds (16) are judges elected by their colleagues, and one third (8) are laypeople with a legal background elected by both Houses of Parliament in joint session.

In accordance with the institutional model prevalent in Southern Europe, the CSM makes all the decisions related to the status of judges and prosecutors. It has power over the selection, assignments, transfers, and promotions of judges as well as over disciplinary measures. Over the years, the CSM has expanded its functions into various areas, including criteria for the assignment of cases, and the organisation of courts (Di Federico, 2012, 2013). Among its functions, the CSM is entitled to select and appoint Court Presidents and Chief Prosecutors after assessing "the best candidate" among the bulk of applications received by an ad hoc internal Commission. Only judges who fulfil the requirements in terms of career steps may apply.

Method and data

By relying on an inductive case-study approach, this article aims at going beyond the study of formal policies of career paths in the judiciary towards the analysis of actual practices i.e., actual individual and organizational strategies. Our goal is to reconstruct the concrete system of action – the way actors actually organize their relations to manage issues related to the functioning of the organization. This set of rules cannot be detected by merely analyzing the relations disclosed by actors and the legal governance system. Research on the Italian judiciary system has mainly adopted a formal-legal approach that focuses on laws, regulations, and official documents. Far less attention has been paid to decision-making and actors' behaviors, especially by legal studies.

Our analysis has two main goals. First, it aims at reconstructing and setting out the correlation (or rather the lack thereof) between formal policies and actual practices of career paths in the judiciary: how are promotions decided? Are the formal procedures followed? Who are the real decision makers? How are decisions made? Second, our research aims at pinpointing actors' "organizational reasons" for creating and implementing extra-legal practices: what issues do those practices help to overcome?

To reconstruct actual practices and compare them with the formal policies of career paths, we analyzed and triangulated different empirical sources. Specifically, our reconstruction of formal policies is based on the analysis of statutes, procedures and regulations governing judges' career paths, including the appointments of Chief Prosecutors and Court Presidents. The reconstruction of actual practices is based on:

1) several semi-structured interviews with judges, members of the CSM (15) and experts in the Italian judicial system (5) (see the detailed list of interviews at the end of the article). These were mostly held between October 2020 and March 2021;
2) research notes and a diary kept by one of the authors while teaching on training courses for judges applying for positions as Court Presidents. Such mandatory courses are organized by the national Higher School of the Judiciary, each course being attended by between 40 and 80 judges;

3) judges' official statements and interviews published in Italian daily newspapers and specialized journals.

Trade-offs in the career paths of Italian judges

The CSM *affaire* shed light on the existence of an extra-legal governance system of judges' career paths involving virtually all of Italy's judges (Fig. 1). The appointments of Chief Prosecutors and Court Presidents were decided through informal contacts among the four judicial factions making up Italy's National Association of Judges (ANM) and relevant non-judicial actors such as the government, Parliament, and political parties; the President of the Republic and other stakeholders. We argue that the extra-legal governance system emerged in response to two organizational trade-offs: the independence vs. accountability trade-off and the bureaucratic vs. efficiency trade-off.

The independence vs. accountability trade-off

The key issue behind the CSM affair is the selection of Court Presidents. These organizational positions are highly appealing to most Italian judges since the Italian judiciary system is based on egalitarian pay and a poor reward system. The appointment of Court Presidents features many contradictions produced by one of the classic trade-offs in judicial systems (Contini & Mohr, 2007): the independence vs. accountability trade-off. Traditionally, the Italian judicial system prioritizes judges' independence over their accountability, and even more so after the amendments

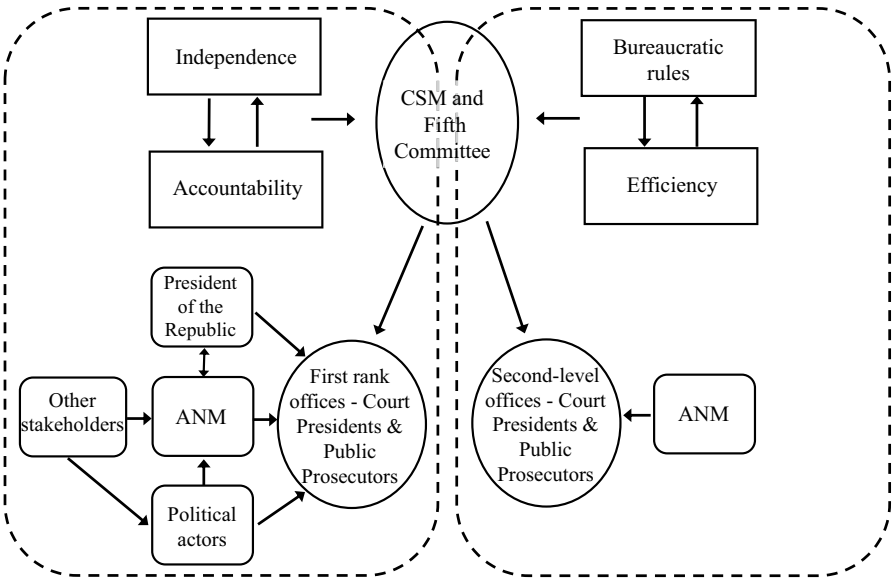

Fig. 1 The extra-legal governance system of judges' career paths

introduced in the 1948 Constitution. To better safeguard the independence of the judiciary, the Italian Constitution entrusts its management, including all aspects affecting judges' status and career, to the CSM. Unlike most European countries, the Minister of Justice only manages administrative staff and the budget.

The electorate voting for judges to be elected at the CSM is represented by all the Italian judges in office at the time of the election. The election system is mainly run by the ANM, a professional association representing virtually all Italian judges. This association is organized around a very peculiar model, unlike any of the other European judges' associations. Essentially, it is a federation of several factions, each representing different ideals and values of justice. The ANM may exercise a huge influence on the functioning of the CSM since all the judges elected to the CSM are previously selected by the ANM and presented in the candidate lists of each faction (similar to those of the political parties), which also draw up voting programs, debates and manifestos.

Starting from the late 1990s, some changes occurred in the functioning of the Italian and European judicial systems, highlighting the need for more accountability especially in the tools and procedures applied. These changes have been rooted in two main drivers. On the one hand, the New Public Management has drawn attention to the quality of services provided to citizens. On the other hand, the existence of a deficit in accountability became increasingly evident, especially with regard to public prosecutors' choices and decisions. The accountability deficit within the Italian judiciary is also related to the increasing judicialization of society (Hirschl, 2004). In common with the majority of Western democracies, since 1945 Italy has undergone a process consisting in a progressive and massive shift of decision-making from public administration, the legislative and executive bodies to courts. Judicialization is related to three trends: a growing capacity of judiciaries to constrain other branches of government; their growing willingness to do so; an increasing tendency for them to become drawn into partisan political conflict (Newell, 2005).

As a result, this shift entails also a substantial expansion of the sphere of action of judges at the expense of that of legislators and administrators (Tate & Vallinder, 1995). In practice, the legislative and executive bodies tend to delegate to the judiciary the resolution of potentially polarizing issues related to individual rights, such as end-of-life decisions, heterologous artificial insemination, and other socio-economic issues (Dallara, 2014; Dallara & Lacchei, 2021).

Thus, public prosecutors may substantially influence political, economic and social institutions, both at the national and at the local level. In Italy, this aspect is even more problematic because public prosecutors are chosen by the CSM independently of political institutions. For instance, despite the principle of mandatory prosecution, Italian public prosecutors enjoy a significant amount of discretion when conducting investigative activities and in the management of cases. Chief Prosecutors, who head public prosecutors' offices, enjoy even more discretionary power as they manage the activities of their offices and most importantly, they may draw up public prosecutors' guidelines for prioritizing cases. As a result, public prosecutors in metropolitan areas and economically relevant cities, in particular, are crucial actors in the local socio-economic governance. In sum, public prosecutors' accountability is very limited with regard to setting judicial policy goals, the definition of strategies and the consequences of such choices.

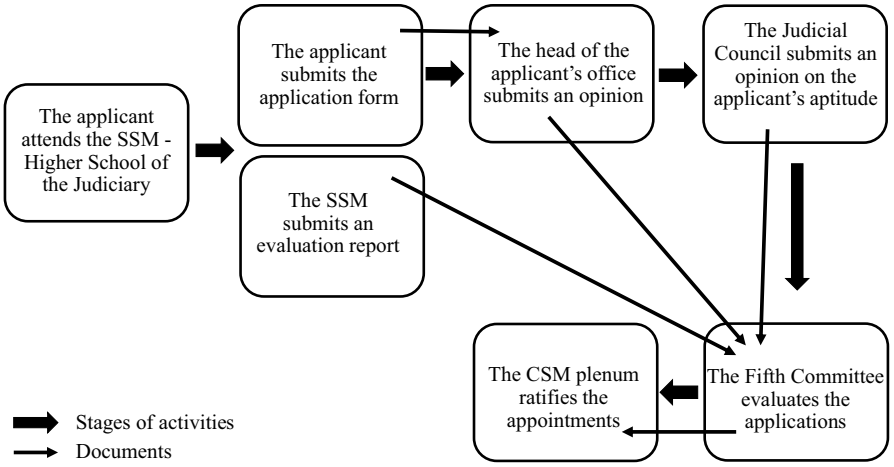

Fig. 2 The legal governance system of judges' career paths

The increasing relevance of public prosecutors and judges is not balanced by an adequate degree of accountability, which is only addressed through the election by Parliament of one third of the members of the CSM (eight laypeople with a legal background). As will be discussed in the following sections, these members are unable to substantially influence judges' career paths or the appointments of Court Presidents and Chief Prosecutors. Therefore, to manage the trade-off between independence and accountability, the judicial system adopted alternative solutions that suddenly became sources for wrongdoing practices.

The bureaucratic rules vs. efficiency trade-off

Until 2006, judges' career paths were based mainly on seniority. In 2006 the Italian Parliament introduced new rules for the career advancement of judges as part of a broader reform for improving the efficiency of the judiciary. As for Court Presidents, the new rules aim at selecting applicants with strong managerial skills (Guarnieri, 2012; Guarnieri & Pederzoli, 2020). The new – complex – selection process consists of several evaluation reports produced by different bodies and offices of the judiciary (Fig. 2). At the end of the process, all these reports are collected in a folder and submitted for the definitive evaluation by the CSM's Fifth Committee, the unit entrusted with the selection of Court Presidents. Finally, the opinion of the Fifth Committee is submitted to the CSM plenum for ratification.

Each applicant's folder is made up of several qualitative and quantitative data collected from different offices, namely: a) each document included in the applicant's personal file, especially all prior professional evaluations; b) statistical summaries of the applicant's workload over the previous three years; c) all and any document that may usefully demonstrate the applicant's possession

of job-relevant skills; d) the applicant's organizational project proposal for the office s/he is applying for; e) the CSM's inspection reports; f) if needed, the report of the hearings held by the Fifth Committee; g) the Minister of Justice's inspection reports; h) any other document or information deemed to be relevant.

Such a long list of documents and the high number of actors point to an extremely bureaucratic selection process. This feature conflicts with the logic of efficiency which is supposed to inform the process. Indeed, efficiency requires practical, clear, and simple criteria to rank applicants and fill the job positions accordingly in a short time. On the contrary, several features of the huge bureaucratic process described above make the evaluation of applicants difficult to carry out in practice:

- *The quantitative dimension*: the Fifth Committee is bound to evaluate applicants according to many different, differently weighted indicators calculated by the self-same Committee itself from among the several documents already listed.
- *The qualitative dimension*: it is extremely challenging to extract suitable data from those documents. Indeed, they do not contain useful information about the applicants' merits and managerial skills. For instance, formal opinions about applicants are rather lengthy descriptions of their activities or vague and positive feedback.[4] Some members of the Fifth Committee pointed out, moreover, that they are unable to verify the information contained in the documents they receive. According to them, "Sometimes the most effective way is simply to call the applicants' colleagues and ask for an explicit opinion" (Interv. 5).
- *The temporal dimension*: the selection process is also highly time-consuming. Therefore, reconciling the timeframe of the formal procedure with the time actually needed to analyze all documents is challenging for the Fifth Committee. The issue is further exacerbated by the high number of applications.
- *Judicial culture vs. culture of evaluation:* the judiciary's organizational culture is mainly judicial. A judicial culture results in judges' judicial activities being assessed mainly through comprehensive hyper-regulation to the detriment of other managerial approaches and instruments.
- *Professionalism vs. dilettantism:* the Italian Constitution entrusts the CSM with the management of judicial offices and judges' career paths. Nevertheless, the members of the CSM typically lack human resources management skills. Moreover, the *ad-hoc* composition of members assigned to the Fifth Committee makes learning-by-doing virtually impossible.

In sum, a bureaucratic, complex and time-consuming formal procedure as well as the CSM's lack of resources and skills made compliance with the new formal policies an unviable option for the CSM.

[4] Giovanni Canzio, former president of the Court of Cassation, *Il Dubbio*, January 8, 2021.

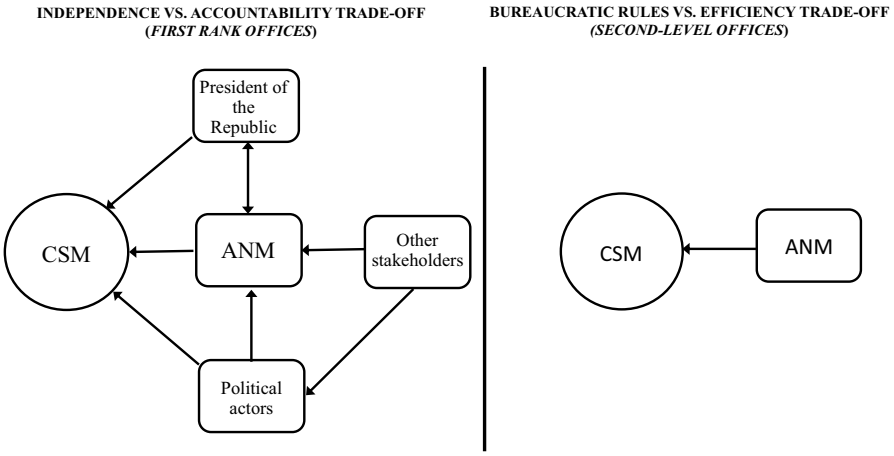

Fig. 3 The two extra-legal governance systems of judges' career paths

The extra-legal governance system to manage trade-offs

When the legal governance system of an organization does not achieve the prescribed goals, an alternative, extra-legal, and self-organized governance system tends to emerge. The lesser the effectiveness of the legal governance system, the greater the relevance of the extra-legal one (Skarbek, 2020). In the case of the CSM, the formal procedure was nominally followed, but in fact "The applicants' folders are often ignored" (Interv. 5) and Court Presidents' appointments were decided through an extra-legal governance system. The CSM decoupled the formal policies from the actual practices as a strategy to manage two different trade-offs: "independence vs. accountability" and "bureaucratic rules vs. efficiency". For this reason, the extra-legal governance system consists of two parts that differ from each other in the number of participants, rationale, and decision-making (Fig. 3). This dual structure is absent from the legal governance system, whose single selection procedure reflects the lack of any distinction among offices.

The management of the independence vs. accountability trade-off is the main goal of the first extra-legal governance system we will illustrate. Hence it is adopted when selecting Court Presidents of offices deemed "crucial". In concrete terms, these are ten first-rank offices[5] (Interv. 1, 2 and 5) that can substantially influence Italy's social, economic and political institutions because of their territorial jurisdiction over large cities, including Rome and Milan – the Nation's main economic and political centers. In contrast, the management of the bureaucratic rules vs. efficiency

[5] Namely: the Chief Prosecutor of the Public Prosecutors' office in Rome, Milan, Brescia, Perugia, Naples, Palermo and of the General Prosecutor's office at the Supreme Court of Cassation; the President of the Supreme Court of Cassation, the President of the Court of Appeal in Rome and the President of the Court in Rome.

trade-off is the main goal of the other extra-legal governance system we will illustrate. This governance system is adopted when selecting Court Presidents of second-level offices with territorial jurisdiction over secondary economic and political areas (Interv. 5 and 17). Because of their limited impact on social, economic and political institutions, those second-level offices are considered "easy" and "not-crucial". Therefore, the independence vs. accountability trade-off is far less relevant.

The management of the "independence vs. accountability" trade-off

When the issue at stake is judges' promotions to the first-rank offices, managing the trade-off independence vs. accountability becomes a crucial problem. As explained, in such offices, Court Presidents and Chief Prosecutors' organizational choices can significantly impact social, economic, and political national institutions. The independence vs. accountability trade-off is rooted in the particularly high level of institutional independence granted by the Italian Constitution to the judiciary, and in the principle of judicial impartiality. The CSM's self-government model reflects both principles. The lack of judicial accountability is worsened by judges and public prosecutors' wide discretion in opening and conducting judicial investigations. The exercise of substantial discretion despite the constitutional principle of mandatory prosecution[6] has heightened the need for increasing judges and public prosecutors' accountability. Finally, the judicialization of society (Hirschl, 2004), by widening the scope of judicial action, has further broadened judges and public prosecutors' discretion and correspondingly strengthened the need for greater judicial accountability.

The need to balance independence and accountability led to the emergence of a more inclusive, extra-legal governance system of career paths. In the case of first-rank offices, the most influential actors are the ANM's judicial factions and several political actors – the President of the Republic and key members of government and opposition parties (Interv. 1, 5, 6, 11, 19 and 20). Therefore, both the political plausibility of applicants and their membership of one of the judicial factions are crucial criteria for appointments to first-rank offices. Court Presidents and Chief Prosecutors of first-rank offices are selected by the CSM through an actual, highly competitive vote: "The first-rank offices are where the real conflict/bargaining among the judicial factions takes place. In these cases, political actors express their *informal* opinion using the ANM channel" (Interv. 2 and 5) and especially "Public prosecutor offices are the key target for the conflict between judicial factions and political actors" (Interv. 2). During the selection process judicial factions and political actors interact frequently, both directly, and through the CSM lay members. In particular, the lay members of CSM, especially the ones with political background, play the crucial role of "liaison officers" between judicial factions and political actors (Interv. 4)**.** Because of this role, winning their support is critical to all judicial factions (Interv. 1, 2 and 5). In sum, the ANM's judicial factions are central actors in the

[6] According to this principle, a public prosecutor is required to prosecute whenever s/he learns of a criminal offence.

extra-legal governance network of relations. Because of their centrality, the judicial factions exercise a sort of *institutional* or *agency capture* towards the CSM, at least in certain circumstances. Probably, institutional capture is possible because there are no other actors with the position and power comparable to that of the ANM.

The management of the "bureaucratic rules vs. efficiency" trade-off

After the 2006 reform, the management of the bureaucratic rules vs. efficiency trade-off has become the main issue of the selection process for second-level offices. On the one hand, the formal process for selecting Court Presidents and Chief Prosecutors is complex and time-consuming. According to the new procedure, the evaluation of applicants shall be based on many indicators and several documents – heterogeneous and not very informative. On average, the Fifth Committee receives at least 8–9 opinions or reports for each applicant. Relying on those documents, it shall calculate about 30 different indicators and formulate an opinion accordingly. On the other hand, the new formal policy requires the Fifth Committee to work on a very tight schedule (just in the 2014–2018 four-year period it assessed 1050 applications). The Fifth Committee's lack of an evaluation culture and skills in human resource management, and the *ad-hoc* nature of its composition, which hinders *learning by doing*, further exacerbates the trade-off between bureaucratic rules and efficiency.

To cope with this trade-off, the CSM relies on an extra-legal governance system based on a political, consensus-seeking logic rather than a professional, evaluative logic. As prescribed by the law, it is the CSM plenum, on the recommendation of the Fifth Committee, that appoints Court Presidents and Chief Prosecutors. However, the Fifth Committee does not engage in debates over its recommendations since applicants are in fact previously chosen by the ANM's judicial factions (Interv. 1, 2 and 5) through a collusive process based on bargaining. Specifically, the selection process consists of discussions among members of the same faction; discussions among judicial factions' leaders; and frequent contacts between the latter and members of the Fifth Committee (Interv. 6). The agreements reflect the balance of power between factions and the main criteria is candidates' faction membership rather than their actual merits (Interv. 2, 16 and 17). Occasionally, appointments were intentionally delayed so that judicial factions could later bargain a greater number of positions at once.[7] For instance, in a first-rank office of Northern Italy, decisions were made over six appointments at once. Reflecting the balance of power, each of the three main judicial factions was rewarded with two appointees. This method, designed to facilitate agreement, is called "nomine a pacchetto" (bundled appointments). The "magistrati segretari" (clerk judges) play a pivotal role in the selection process for second-level offices. They are responsible for managing the overall legal procedure coherently with the agreements reached through the extra-legal one (Interv. 3, 5, 7 and 8).

[7] An efficiency indicator of the extra-legal system is the amount of time needed for reaching an agreement on candidates: it has shortened from 85 to 65 days between 2006 and 2018 (Consiglio Superiore della Magistratura, *V Commissione*, 2018).

In sum, the ANM's judicial factions are the actual key actors of the extra-legal governance system for appointments to second-level offices. They acquired such an influential status because, as discussed, they were already powerful actors who, by wholly managing CSM elections, were later able to influence the decisions of the CSM. After the 2006 reform, this broken-in, faction-centered decision-making mechanism has been used to cope with the trade-off between bureaucratic rules and efficiency when selecting Chief Prosecutors and Court Presidents.

Discussion and conclusion

In the light of our findings, we draw some theoretical and practical implications. *First*, the literature shows that some organizational and institutional processes may encourage actors to pursue undue personal and organizational gains through wrongdoing (e.g., Ordóñez et al., 2009; Prechel & Morris, 2010). Our analysis highlighted that actors may also have "organizational reasons" for wrongdoing, namely the lack of resources and capabilities to implement formal policies, and non-judicial actors' demand for new accountability mechanisms. Further research could investigate alternative organizational reasons for wrongdoing and assess whether actors always have also organizational reasons or whether this is true only under certain organizational and institutional circumstances. Extending the analysis to other sectors, both public and private, and adopting a comparative perspective, might be a fruitful strategy to discover new mechanisms linked to organizational wrongdoing.

Second, when laws *do not fit* organizational resources and capabilities, they can trigger organizational wrongdoing. The literature has already examined the ambivalent relation between the law, organizations, and organizational wrongdoing. Some scholars have pointed out that the relation between the law and organizational wrongdoing is complex because organizations do not implement laws passively (Edelman et al., 2001). Laws can favor – indirectly and unintentionally – organizational wrongdoing by creating opportunities (e.g., loopholes). Our study highlights that the law may even trigger organizational wrongdoing, especially when laws *do not fit* organizational resources and capabilities. In this last case organizational wrongdoing results from an organizational capability gap rather than a lack of will to implement laws. Therefore, to avoid misfit-triggered organizational wrongdoing one or both of the following strategies should be adopted: the design of procedures should be tailored to existing organizational resources and capabilities and/or actions to provide the organization with the needed resources and capabilities should be taken. More research is required to investigate the relation between the law and organizations. For instance, under what circumstances and how does the law trigger organizational wrongdoing?

Third, organizational wrongdoing is not static. It tends to escalate as in the case of financial frauds (Catino, 2013; Gabbioneta et al., 2013) and to spread among actors over time (Palmer & Moore, 2016). The evolving role of judicial factions in the self-government of the judiciary shows that change in organizational wrongdoing can also be qualitative and, specifically, that wrongdoing may become more serious over time.

This slippery slope dynamic results from the continuous feedback between normalization of wrongdoing (Palmer, 2012) and drift to wrongdoing. In other words, the normalization of not-so-serious deviant behaviors makes it easier to commit slightly more serious actions. After these are normalized, it becomes easier to commit still "wronger" actions, and so on. Our analysis highlights that decoupling (Meyer & Rowan, 1977), by granting actors flexibility and informal coordination, favors "drift to wrong(er)doing" both at the individual, organizational and inter-organizational level.

Fourth, accidents, failures and crises are an opportunity for learning and organizational change. In the aftermath of a crisis, organizations may focus on the responsibility of individuals to limit both legal expenses and the costs of structural remedial measures (Catino & Dallara, 2021). Nevertheless, this strategy hinders double loop learning (Argyris & Schön, 1996) – and, therefore, deep organizational change – by concealing the structural problems of the organization. Learning and change require identifying and dealing with "flaws" at the organizational and institutional level and addressing actors' organizational reasons for wrongdoing. Otherwise, the actors, regardless of their identity, will tend to reproduce the same behavior as those who preceded them (Greif, 2006).

In sum, collective, organizational issues cannot be overcome if they are reduced to individual, moral issues. However, this seems to be the approach followed by the Italian Association of Magistrates that, instead of opening a wide internal reflection, mainly framed the scandal in the public debate using the "bad apple" rhetoric. After the general assembly of September 2020 in which Palamara was expelled for the Association, most of the public declarations were focused on accusing judge Palamara as the only guilty of damaging the whole association. In November 2021, the ANM started a civil action against Palamara asking for damages at the public image of the association.

Neither actors outside the judiciary will probably promote deep organizational change, for at least two reasons. First, the CSM scandal highlighted that political parties looked for alternative channels to control the appointment of chief prosecutors. To this end, they exploited the extra-legal system. Not surprisingly, until now, Italian political parties, with few exceptions, did not propose concrete solutions to solve the knots behind organizational reasons for wrongdoing.

Second, in the Italian system, government and parliament exercise a very limited influence over the judiciary. Therefore, organizational change could also be hindered by what some scholars consider an excessive degree of self-regulation of the judiciary (Nelken, 1996, 99–101). The excessive self-regulation could also be connected and explained by the high degree of technicality that characterized judicial reforms.[8]

In a nutshell, actors turn to the extra-legal governance when the legal governance fails to achieve the organizational goals. Therefore, blaming an organizational

[8] Some partial solutions to address the organizational reasons behind wrongdoing in judges' career management have been envisaged in the recent text of the judicial reforms approved in June 2022. As an example, a more concrete role for the judge dossier to be used for all the professional evaluations of each judge's career; and some provision to prevent judges having exercised political roles to come back in office. For both the provisions, time is needed to understand if and how these will be implemented in practice.

scapegoat (Catino, 2023) for wrongdoing is not an effective strategy to eradicate the extra-legal governance. Rather, countermeasures should focus on identifying and removing the organizational factors that make the legal governance unsuitable for the achievement of organizational goals.

List of interviews (each person was interviewed once or more than once):

- Interviewed 1: Former President of ANM.
- Interviewed 2: Lay member of CSM (2002–2006).
- Interviewed 3: Judge, member of CSM (2010–2014).
- Interviewed 4: Judge, member of CSM (2010–2014).
- Interviewed 5: Judge, member of CSM (2014–2018).
- Interviewed 6: Lay member of CSM (2014–2018).
- Interviewed 7: Lay member of CSM (2018–2022).
- Interviewed 8: Judge of Preliminary Investigations.
- Interviewed 9: Civil Court Judge.
- Interviewed 10: Criminal Court Judge.
- Interviewed 11: Public Prosecutor.
- Interviewed 12: Public Prosecutor.
- Interviewed 13: Court President – North Italy.
- Interviewed 14: Chief Public Prosecutor – first-rank office.
- Interviewed 15: Chief Public Prosecutor – first-rank office.
- Interviewed 16: Expert in Italian judicial system and comparative judicial systems.
- Interviewed 17: Expert in Italian judicial system and civil procedure.
- Interviewed 18: Expert in Italian judicial system.
- Interviewed 19: Expert in Italian judicial system and judicial statistics.
- Interviewed 20: Expert in Italian judicial system.

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Declarations

Conflict of interest All authors certify that they have no affiliations with or involvement in any organization or entity with any financial or non-financial interest in the subject matter or materials discussed in the manuscript.

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