

POLITICAL CORRUPTION: THE INTERPLAY BETWEEN JUSTICE AND MEDIA IN ITALY

ANNA MESTITZ AND PATRIZIA PEDERZOLI¹

The judicialization of politics has played a major role in altering the Italian political landscape since 1992. Undoubtedly, the increasing independence of both judges and public prosecutors must be counted among the factors that have opened the way to the investigations internationally known as "Clean hands" and "Kickback city". Nonetheless, the political impact of those affairs cannot be understood without taking into account the close interaction between the magistracy (i.e. judges and prosecutors) and the news media. After considering the deep changes in the organisational setting of the Italian magistracy, the article presents some preliminary findings of a research on the media coverage of the political corruption scandals in the period 1992-94. It appears that press reports have fostered a very supportive climate to the magistrates' initiatives often infringing upon the due process guarantees. On many occasions the countervailing right of access to, and divulgation of information has prevailed at the expense of the protection of the defendants' reputation and privacy. However, the existing literature indicates that in the subsequent years the media have adopted more critical positions than previously. This might have contributed to the steady decline of public confidence in the justice system which emerged in the period 1995-98.

1. Introduction

The interaction between justice and the media has become an area of concern in many countries. A tension inevitably exists between two sets of values which democratic polities recognise as fundamental rights to citizenship: due process protections

¹ Patrizia Pederzoli is the author of paragraphs 1-4 and 7; Anna Mestitz is the author of paragraphs 5 and 6.

surrounding those who are involved in judicial proceedings, and freedom of opinion and expression on which rests the strength of the “fourth power”. In principle, the press is expected to fulfil crucial functions in open societies. According to Robertson, for example, media reports can provide the public with the information it needs to understand the working of courts, and can also detect the defects in the justice system, thus “raising critical consciousness of the need for reform” (2000: 2). On the opposite side, it is often argued that trial and pre-trial media publicity may seriously undermine the litigants’ and the victims’ basic rights, such as the preservation of their privacy, and especially the defendant’s constitutional rights, such as the presumption of innocence.

This article seeks to explore some of the issues raised by the increasingly complex interplay between justice and the media with particular reference to the intervention of Italian judges and prosecutors in the campaign against political corruption, a campaign which, since 1992, has played such a significant role in altering the Italian political landscape. The massive press coverage of the investigations internationally known as Clean hands (*Mani pulite*) and Kickback city (*Tangentopoli*) provides a relevant case for those who are interested in the study of the justice-media relationship and its consequences on the delicate balance between due process guarantees and public access to information.

We shall focus on both sides of the justice-media relationship. First, we shall consider the essential features of the judicial organisation in Italy, where judges and prosecutors not only belong to the same corps (as is the case in France) but also share in fact the same high levels of institutional independence². It is submitted that these peculiar traits have supported the opening of the Italian justice system to the media, a fact which represents a not

² We shall use the terms “magistrate” and “magistracy” to indicate both judges and prosecutors. Due to the influence of the Napoleonic model on the Italian justice system, the organisational arrangement of the judiciary in the two countries still exhibits some notable similarities. In both cases judges and prosecutors form a single corps and are allowed to change their roles even recurrently during their career. In France, however, the public prosecutors fulfil their functions under the direction and control of Chief prosecutors and ultimately the Minister of Justice (Di Federico, 1998; Guarnieri and Pederzoli 1996: 101).

insignificant aspect in the development of the scandals. Second, the press treatment of the Clean hands case will be considered by presenting some preliminary results of a research project aimed at analysing the press coverage of the scandals in the period 1992-94. Relying mainly on the available literature, attention is paid to the impact of televised trials as well. Some data on the citizens' confidence in the judicial system are also provided. Our point is that in the first half of the 1990s a close interaction was established between members of the magistracy and a prominent part of the news media. For a long while, this triggered a sort of co-operative endeavour in the struggle against political corruption with significant implications for the rights that the Constitution and the law afford to accused persons. The underlying assumption is that both the rapid escalation and the magnitude of this so-called Italian "judicial revolution" would be difficult to comprehend without taking into account the synergy between these elements.

2. The relevance of the relationship between justice and the media

In recent years political scientists have outlined the growing relevance that courts are acquiring in democratic polities (Tate and Vallinder, 1995). At a different level, however, the social and political significance of justice is confirmed by the capacity of judges' rulings and prosecutors' initiatives to gain news media coverage. Traditionally, newspapers have focused mainly on criminal justice. But the "global expansion" of the third branch, the crowded dockets of courts, the salience of the issues they deal with, and recurrent cases of judicial activism have resulted in major changes in the media's coverage both in quantitative and qualitative terms. On occasion, even the daily operation of the judicial system attracts the attention of the press and television and, therefore, public opinion.

The resulting interaction between justice and the news media is often troubled. Even though this is not a recent phenomenon, it is becoming an area of primary concern in many countries³.

³ See for instance the papers presented at the international colloquium organised under the aegis of the Institut des Hautes Etudes sur la Justice on "*Justice*,

Sensationalised headlines, dramatic reports of high-profile cases, and prejudicial disclosure of information raise a range of specific problems. Given the technical nature of the matters involved, doubts have been cast on the media's ability to provide accurate and reliable information not only on individual cases but also on the whole functioning of the judicial system. Since the level of knowledge about the law and the legal process appears generally low, media coverage usually represents the citizens' main source of information (Slotnick, 1991). The ways in which the events are portrayed may thus jeopardise public understanding of the work of forensic actors and undermine support for the judicial system; moreover, disclosure of backstage information and pre-trial publicity tend to interfere with the conduct of criminal investigations. Also, it has been argued that media coverage before the formal proceeding may produce a phenomenon of "delocalization" of justice, bringing about the risk that trials be conducted out of courtrooms playing on the emotional reactions of the public at large (Garapon, 1996a: 232). Most important, the media are often accused of threatening the core principles of the judicial process: they may negatively affect the impartiality of the judge (and particularly of jurors), infringe on the rights afforded to defendants, undermine the guarantee of a fair and unbiased trial, destroy privacy, and harm innocent people (Surette, 1992: 184-185).

If it is obvious that the media actively seek to gain access to information in order to increase circulation or audience, the other side of the coin also deserves attention. The judicial system cannot be depicted as the passive target of press and television reports; in a number of cases media publicity seems to be actively sought by judges and especially the prosecutors themselves (Garapon, 1996b). On the one hand such a phenomenon can be viewed as the corollary of the media-courts link which itself suggests the need of greater openness and accountability in the exercise of judicial power (Robertson, 2000). Even English judges, who have traditionally

opinion publique et medias" (Nantes, November 4-5, 1994). On that occasion Loic Cadiet recalled that the relationship between justice and media already appeared in the *cahiers de doléance* as a matter of discussion at the time of the French revolution.

cultivated an approach to the media characterised by self-restraint, are beginning "to appreciate the need actively to promote the public support which once they took for granted" (Malleon, 1999: 2). However, in countries which have recently experienced a process of "judicialization of politics" (Tate and Vallinder, 1995: 13), the interaction between justice and media has gained a new momentum. This process is at work in many democracies, but in Italy it has acquired an intensity which has no parallel in other systems, and the magistracy has very often come to hold the spotlight.

3. The cases of political corruption

The sudden burst of judicial investigations into political corruption and their unprecedented impact on the political class and the party system is related to a complex interplay of social, political, and economic factors (Nelken, 1996a; Cartocci, 1997; della Porta and Vannucci, 1999). The analysis of the conditions that have favoured the proliferation of illegal behaviour in the Italian public sphere does not fall within the scope of this work. There is general agreement, however, that political corruption developed in the late 1970s and became a "systemic" phenomenon in the 1980s (della Porta, 1992). Throughout this period prosecutors' initiatives in this field were scarce or unsuccessful. Despite some remarkable exceptions, they did not usually go beyond the local level. Only at the beginning of the 1990s did the magistracy mobilise its conspicuous resources with the declared aim of restoring legality.

Investigations started in Milan in February 1992 and rapidly involved prominent politicians, businessmen, managers, and executives serving in public administration. As David Nelken (1996a: 191) has pointed out, in a couple of years "all the parties of government were swept away" in the course of a judicial campaign which unravelled a widespread and deeply rooted web of illegal financing of political parties. All major members of the political class which had governed the country were involved under the charge of having solicited or received bribes. Pending trials, most of them decided, or were in effect forced, to resign. In addition to the turnover of political personnel (Ricolfi, 1993), the old equilibrium of the party system underwent dramatic changes. Suffice it to recall that the Christian Democrats – the leading party of the governing majority for over forty years – split several times.

While the Socialists and the Social Democrats collapsed, other parties of the governing coalition, such as the Liberals and the Republicans, suffered severe electoral set-backs and lost much of their previous political weight (Pederzoli and Guarnieri, 1997). The increasing media-driven popularity of the Milanese prosecutors reached its peak when the Enimont scandal exploded and the related trial was televised in prime time⁴. Notwithstanding the critical stance adopted by some commentators, the fame of the prosecutors did not seem to fade even when two well-known people involved in that case committed suicide. According to the data presented by the General Prosecutor of Milan, by the end of 1994, 2,497 people were under investigation, and 593 of them were subject to preventive detention (Canosa, 1996: 207). Meanwhile, however, other prosecutors' offices had begun to follow in the tracks of Milan and the scope of investigations expanded further.

Table 1

Categories and numbers of accused persons in the first two years of the Clean hands investigations (February 1992 – February 1994)

<i>categories</i>	<i>accused persons</i>	<i>persons in preventive custody</i>
deputies and senators	438	not available
regional, provincial, and municipal politicians	1,978	"
entrepreneurs, top managers, and executives	2,246	"
others	1,397	"
total	6,059	2,993

Source: adapted from A. Mincuzzi, *Dalla mazzetta alla maxitangente tra mille arresti e suicidi eccellenti*, *Il sole 24 ore*, February 17, 1994.

⁴ Enimont was a large chemical corporation with private and public stockholders. For the issues raised by this televised proceeding see par. 5.2.

The quantitative dimension of the prosecutors' initiatives is illustrated in Table 1, which accounts for the number of persons involved in the first two years of the "crusade" against political corruption. On the whole, more than six thousand people were accused of serious crimes, mainly but not exclusively related to the illegal financing of political parties. The politicians were hit hard both at the national and local levels with heavy implications for the credibility and legitimacy of the whole political class. Data also show that about one half of the people under investigation underwent more or less prolonged periods of preventive custody⁵. Indeed, in late 1994 and especially thereafter some of the newspapers which had previously supported the judicial action against political corruption began to introduce some criticisms regarding the massive use, and the alleged misuse, of this coercive measure⁶. As will be discussed later on, this changing attitude toward the magistracy seems to mark a turning point in the relationship between justice and the media.

Of interest are also the figures concerning immunity granted to members of Parliament. Until 1993, deputies and senators could be prosecuted only upon authorisation of the legislative chambers⁷. Comparison of the various legislative terms over a period of about 45 years shows that the requests to waver parliamentary immunity

⁵ For serious crimes, preventive detention during preliminary investigations may range from six months to one year. However, when considering also the subsequent stages of criminal proceedings (trial, appellate judgement, and cassation), preventive detention may be requested for up a maximum of six years. Elaboration of the data supplied by the National Institute of Statistics (Istat) shows that in the period 1991-98 the detainees subject to this measure represented on average 82% of the total prison population.

⁶ This point was already stressed by a special commission of the *Fédération Internationale des Droits de l'Homme*, an organisation of the United Nations. In 1992 the commission drafted a report on the administration of justice in Italy that raised concerns, among other aspects, about the high rates of persons kept in preventive custody pending trial. The media did not pay any attention to that report, notwithstanding their previous commitment to publicise similar denounces of human rights violations in other countries (Gismondi, 1996: 92).

⁷ After that date, art. 68 of the Constitution, which regulates this procedure, was amended. At present, Parliamentary authorisation is required only when restrictions on personal liberties (such as imprisonment, wire tapping, etc.) are requested before the trial.

Table 2

Requests to Parliament of authorisation to prosecute its members
and percentage of requests accepted

<i>legislatures</i>	<i>years</i>	<i>total requests</i> <i>N</i>	<i>accepted</i> <i>requests (%)</i>
I	1948-53	659	12.7
III	1958-63	398	16.3
V	1968-72	229	19.2
VIII	1979-83	277	33.2
IX	1983-87	406	29.3
X	1987-92	380	9.5
XI	1992-94	898*	23.3

* Only up to the end of 1993 (the new elections took place in April 1994).

Source: Cazzola and Morisi (1996: 23-24).

more than doubled in the period 1992-93 (Table 2). However, when considering the percentage of authorised requests, it is interesting to note that in the X legislature Parliament made a far more extensive use of its prerogatives than was the case both in the previous and following legislative terms in order to stop judicial investigation of its members⁸.

4. The opening of the justice system to the media

The media furnished a massive coverage of the Tangentopoli affair during the course of its unfolding. This may come as no surprise, given the increasing magnitude of the events reported, namely the apparently unending succession of politicians and

⁸ As Cazzola and Morisi (1996: 24) indicate, Parliament displayed a negative attitude toward the prosecutors' initiatives especially when the government coalitions were led by the Socialist party. During this period, characterised by confrontation between the Socialists and the magistracy, on average one request out of two was rejected or simply ignored.

businessmen publicly notified of being under investigation or even arrested. Also obvious is the fact that the media constantly sought to have access to confidential sources of information. What appears less obvious, however, is their rate of success in doing so. The journalists repeatedly succeeded in disclosing prejudicial information that under the existing rules of criminal procedure should be protected against public dissemination. Even less obvious, and most important, is the attitude that the magistracy has displayed toward the press and television. Interviews, official statements, press conferences, articles signed by members of the magistracy in newspapers and periodicals, and even autobiographies are almost countless.

Judges and especially prosecutors were not hesitant to voice their views (sometimes in quite unusual terms⁹) about the scandals and a number of scandal-related issues: the individual cases at hand and their prospects for development in the future, the causes explaining the emergence of systemic corruption in the country, and not least the proposal to enact a moratorium for the people involved¹⁰. In particular, the prosecutors did not refrain from using the media as a means of strengthening their personal prestige, increasing public support for the investigations they were pursuing, and challenging the reactions of the political class to those initiatives (Racinaro, 2000). Hence, via the media, they were able to establish channels of communication with public opinion on the one hand and the relevant political actors on the other hand. On many occasions, in the midst of the institutional crisis fuelled by the “judicial revolution”, the prosecutors clearly attempted to rely directly on popular support so as to reinforce their own role and bypass, or at least dam, the influence of the political party representatives (Righettini, 1995). Although definite evidence is lacking, it is also

⁹ For example, Pier Camillo Davigo, one of the prosecutors in Milan, declared “we will turn Italy inside out like a sock”.

¹⁰ After having successfully contrasted the attempt of the Berlusconi government (July 1994) to enact a moratorium for people involved in corruption, the prosecutors of Milan elaborated a project of their own aimed at providing a legislative solution to Tangentopoli. The project was presented by the public prosecutor Antonio Di Pietro at a meeting of businessmen held in Cernobbio (September 4th, 1994) and was widely amplified by the media.

likely that in order to amplify the potential impact of their inquiries they have used “their ability to make public information about the bringing of criminal charges, sometimes (illegally) leaking the story to compliant journalists” (Nelken, 1996a: 196).

Needless to say, in the Italian case the traditional assumption according to which the third branch should speak exclusively through judicial acts has eroded – at least its descriptive value has. Judges and prosecutors have engaged in a proactive strategy characterised by widespread resort to non-judicial channels of communication which has allowed them to play a far from minor role in the “*cirque médiatico-judiciaire*”¹¹. Due also to the growing public frustration with the ineffectiveness of politics and the decline of the classic political channels (Amoretti, 2000), this strategy has resulted in a self-sustaining and co-operative game between a considerable part of the news media and the magistracy (Marafioti, 1994). For a couple of years, this was a game in which both sets of institutions have gained benefits: increased audience or circulation, and the building up of a reservoir of public support for the judges’ and prosecutors’ work, a reservoir from which the magistracy has recurrently drawn during confrontation with the political branches. Along with other fundamental resources of institutional independence that will be considered later on, this has enabled the magistracy to operate as a relatively unconstrained actor and to successfully resist any attempt on the part of the legislature to enact reforms affecting the status of both judges and prosecutors (Di Federico, 1998).

Several scholars have remarked that the close interaction between the magistracy and the media is one of the keys to Tangentopoli, or at least one of the aspects to take into account in order to explain the wave of popular support for the prosecutors’ initiatives (Righettini, 1995; Giglioli, 1996; Nelken, 1996b). With some exceptions, however, this point has not been closely examined. The next section explores the judicial side of this interaction by drawing on existing literature. Various elements account for the strategic use of the media by judges and prosecutors. Here, attention will be paid in particular to those features of the Italian

¹¹ This is the title of a book by Soulez Larivière (1994).

judicial organisation that may illuminate changing patterns of the magistrates behaviour.

4.1 The organisational setting of the Italian magistracy: tradition and change

The opening of the Italian magistracy to the media can be understood as part of a more general trend toward judicial activism. In turn, this is related to the progressive emancipation of judges and prosecutors from institutional controls, both internal and external. Indeed, cross-country analysis shows that, compared to other democratic polities, the Italian magistracy enjoys particularly high levels of institutional independence (Guarnieri and Pederzoli, 1996).

The roots of this evolution are to be traced back to the 1948 Constitution. With the aim of shielding the administration of justice from the abuses that characterised the Fascist regime, the framers designed a peculiar institutional set-up. In particular, two distinct features emerge from the constitutional design. First, as mentioned above, judges and prosecutors belong to the same organisation, share therefore the same career, and are allowed to change roles if they so wish (and they often do). Second, they enjoy the same strong guarantees of institutional independence from both the executive and the legislature, thanks to an overarching mechanism of "self-government". While these general features are still in place, the institutional setting of the magistracy has undergone over the years a deep process of change in its internal structure. The bureaucratic arrangement of the judicial corps that Italy traditionally shares with the other civil law countries has been dramatically altered. This has produced long-term implications for the role the magistracy plays in, and the relationships it establishes with, its social and political environment¹².

For a long while the Italian magistracy has retained its traditional bureaucratic setting and, therefore, the social control structure typically associated with that institutional pattern. As is generally the case with pyramid-like organisations, hierarchy of

¹² What follows relies mainly on Di Federico (1976, 1989) and Guarnieri (1992).

authority was the most important formal device to monitor individual conduct and to exert influence over professional performance. True enough, recruitment by public competition granted (and still grants) high levels of external independence, which protect judges and prosecutors from the intervention of other political branches. But the rigid hierarchy and the system of career advancement represented a source of pressure from within the judicial organisation, which undermined internal independence.

Promotions were the most significant variable for characterising the organisational set-up of the magistracy until the 1960s. Despite the emphasis on the principle that judges are subordinate only to the law, promotions operated in fact as a powerful vehicle of influence of superiors on their lower-ranking colleagues. Advancements were granted on a competitive basis according to formal criteria combining seniority and merit, and the higher echelons of the hierarchy assessed the latter with wide margins of discretion. Thus, the judicial elite was in a position to control the material and psychological gratifications connected with the advancement of the career. The researches undertaken on this subject indicate that senior judges were able to significantly affect the professional performance of their younger colleagues (Di Federico, 1976). Other relevant devices of direct and indirect influence of hierarchical superiors should be mentioned, such as discipline and the allocation of cases. On the whole, however, the bureaucratic frame made available a number of rather effective mechanisms of behavioural controls. In particular, this arrangement was instrumental in reproducing commitment to the traditional values of the profession, as they were represented by the predominant legal doctrine. These depicted the magistrate as the mouth of the law, namely a technician fulfilling an executive function "aloof from the social and political context" (Di Federico and Guarnieri, 1988: 165). The organisational set-up of the magistracy reflected, and to some extent concurred in, achieving those values. In sum, a complex net of bureaucratic constraints was likely not only to induce conformism to the prevailing professional ethos, but also to promote an organisation-oriented role perception. In Gouldner's terms, it could be said that the magistracy was mainly composed of "locals" (1958) seeking recognition within the judicial organisation, and especially its top, rather than outside it.

This picture began to change in 1959 when the Higher Council

of the Magistracy (*Consiglio Superiore della Magistratura*) was created. In fully achieving the principle of judicial self-government, the establishment of this institution marked the first step of an important evolution, which led to a substantial alteration of the traditional setting of the magistracy. Since that date, the Council is responsible for making all relevant decisions (recruitment, appointments, promotions, transfers and discipline) concerning the professional status of both judges and prosecutors. Moreover, such a concentration of tasks is placed in the hands of an institution where magistrates make up the overall majority. According to the Constitution, the Council consists of a two-thirds majority of judicial members directly elected by the whole corps, and one third of lay members directly elected by Parliament among university law professors and experienced lawyers¹³.

Of crucial importance to understand the internal operation of the Council are some further elements. As a result of reforms altering the methods for electing the judicial members, the Council now consists of middle- and lower-ranking magistrates who nonetheless concur in making decisions affecting not only their peers but also their senior colleagues. Unquestionably, this implies a major breach of the traditional principle of hierarchy. Moreover, the Council activities are strongly affected by the internal factions of the National Associations of Magistrates (Anm), a union-like association that includes the vast majority of the whole judicial corps. These factions, which essentially reflect the Left-Right ideological spectrum¹⁴, are able to control the lists of the judicial candidates who run for election, thanks to the adoption of a proportional system. As a consequence, they play a crucial role in the decision making process (including the appointment of the heads of courts and prosecution offices), a factor that also explains why the magistrates feel the need for affiliating with one faction or another.

¹³ Moreover, the Constitution provides for three *ex officio* members: the Head of State, who presides over the Council, the President and the General Prosecutor of the Court of Cassation. At present, there are twenty judicial members and ten lay members.

¹⁴ From left to right of the ideological spectrum, the most important of them are: *Magistratura indipendente*, *Unità per la costituzione*, *Movimento per la giustizia*, and *Magistratura democratica*.

Finally, the lay members sitting in the Council, who represent the main institutional link between the magistracy and the political system, are chosen to reflect the strength of the various political parties represented in Parliament, including the opposition.

Another important factor in the dismantling of the hierarchical principle emerged from a series of reforms brought in from 1963 to 1979 which have transformed the previous pattern of career advancement. The traditional system of promotion, based on competitive examinations or on assessments of the magistrates' work performed by higher-ranking magistrates, has been replaced by a system of automatic career advancement. Formally, promotions should now follow from a combination of the two usual criteria, seniority and merit, the latter being assessed by the Higher Council and no longer by senior magistrates. In fact, professional evaluations now no longer hold any practical significance, as they are almost invariably positive or at least drafted in such a way as not to prevent promotion (Di Federico, 1987: 19-26). Mainly due to the way the Council has interpreted those reforms¹⁵, career advancement depends exclusively on seniority. Obviously, the peculiar structure of the self-governing body of the magistracy goes a long way to explaining why promotions are actually managed in this way. However, the corporate logic permeates most of the Council decision-making, and appears particularly evident in the sphere of judicial discipline. Not surprisingly, the pressure toward conforming to the ethical rules of judicial conduct is significantly relaxed.

The evolution briefly described here points out that the bureaucratic setting of the Italian magistracy has undergone a deep transformation resulting in a momentous increase of institutional independence, both internal and external. The very conditions that fostered commitment to the traditional ethical values of judicial conduct are no longer operating and the mechanisms of behavioural

¹⁵ The lack of any effective selection is strictly connected with the cornerstone of the reforms, namely a clear separation of judicial rank from the functions magistrates perform. In other words, those who meet the seniority requirements are promoted, draw their pay at the higher scale, but can continue to perform the functions associated with their previous rank.

control underpinning the previous arrangement have weakened or disappeared. The higher-ranking magistrates have lost much of their former power to influence their younger colleagues. Automatic advancements have almost cut the connection between the unfolding of the career and professional performance. In particular, the certainty of promotions and of their economic gratifications has produced an apparent paradox: the levels of individual identification with the judicial organisation have lowered and external, additional gratifications are now quite actively sought. Indeed, judges and prosecutors do look for social and political support outside the judicial organisation. Such an involvement in a larger net of external relations is evidenced primarily, but not exclusively, by their propensity to engage in part-time and full-time extra-judicial activities¹⁶. As a consequence, the Italian magistrates appear now only loosely coupled with their own organisation and a "cosmopolitan" orientation (Blau and Scott 1962: 66) has slowly emerged. In other words, a displacement has occurred in the traditional points of reference of the magistracy. While in the past they were represented mainly by the judicial organisation and the higher-ranking magistrates, today they are found elsewhere: in the Higher Council, the factions of the Anm which monopolise the judicial representation therein, but also the political parties which are given a voice within the Council via its lay members, and increasingly in the larger social environment (Guarnieri and Pederzoli 1996). It is precisely in this deeply modified context that the opening of the magistracy to the media can be placed. The declining significance of organisational constraints, the strong guarantees surrounding both judges and prosecutors, along with the broad changes in the political environment (Guarnieri, 1992) have provided the conditions conducive to promoting a sort of justice-media partnership.

¹⁶ Institutions with magistrates on staff include Parliament, the central government (especially the Ministry of Justice), the Presidency of the Republic, regional and provincial governments, as well as a range of administrative agencies. This is a phenomenon that has grown substantially because such activities, even when full-time, do not prevent magistrates from being promoted or reassigned to their previous position (Zannotti, 1981).

5. The media and the Clean hands scandal

The interaction between justice and media may be analysed from two perspectives: in fact the attention of the media to crimes, investigations and judgements sentences is in itself a variable strongly influencing in turn prosecutorial initiatives and judicial decisions. Nevertheless, the research on the influence of the media on investigations and judicial decisions is fraught with methodological and practical difficulties. Certainly some indications may emerge at the macro level but so far very few empirical researches have been carried out.

Our research data and the available surveys on media coverage of Clean hands are limited but may provide a general overview of the "judicial storm" which since 1992 has involved local and national politicians at the highest levels of the government, both in the role of accused and as witnesses. As "all the observers agree that the media had a decisive role in publicising the affair and in influencing public opinion" (Giglioli, 1996: 383), we shall consider two main aspects: first, the press coverage of the Clean hands investigations in 1992-94, and then the TV coverage of the first criminal trial concerned with these investigations in 1994. It must be noted, however, that very often press and TV reports focus on the same issues: news which has been broadcast in prime time invariably occupies the most important place in the newspapers.

Some features of the Italian media must be taken into account. First of all, the newspapers are the megaphones of their respective sponsoring entrepreneurial groups. Among the dailies with the highest circulation, for example, *La repubblica* is leftist, supported by the Olivetti group; *Corriere della sera* is centrist, supported by the editorial group Rizzoli; *La stampa* is liberal, supported by the Fiat group and so on. Moreover, until 1992 the press and television supported the political parties which protected their economic interests. At the time the public broadcasting service RAI was divided in 3 sectors corresponding to the political areas of influence¹⁷. Consequently, TV news reports "were strongly ideologically biased, especially when dealing with political subjects"

¹⁷ In particular the TV news TG1 was dominated by the Christian Democratic Party, TG2 by the Socialist Party and TG3 by the Communist Party.

(Giglioli, 1996: 386). On the other hand the press itself did not appear totally “clean” and uncorrupted. Some authors remark that the negative features of the Italian press outlined in the 70s were still in place in the period 1992-94 (Castronovo and Tranfaglia, 1994). In particular “corruption of the press is simply a part of the endemic corruption in both the political and economic sectors in Italy (...) It unfortunately combines with the tendency toward the politicisation of practically everything making a raging cynism about all establishments” (Porter, 1983: 35)¹⁸.

5.1 *The press coverage in 1992-94*

The number of articles regarding judicial initiatives on political and administrative corruption published yearly in dailies in the period 1992-94 is unprecedented. Suffice it to recall that in 1960 the dailies with highest circulation published no more than 30 articles on corruption issues. This figure doubled in 1970, and in 1988 one of the two major newspapers (*Corriere della sera*) published around 300 articles and the other (*La repubblica*) about 400.

The preliminary results of our research on the press coverage of the Clean hands scandal will be examined by grouping the data in two distinct periods, 1992-93 and 1993-94, since at this writing complete data are available only for *La repubblica* (Table 3).

The analysis of the 1992-93 press coverage was conducted in the period from February 17th 1992 to the same date in 1993, by examining 5,332 articles published in five newspapers (Table 3): *La repubblica* and *Corriere della sera* and three official organs of the main political parties – *L'avanti* (Socialist Party), *Il popolo* (Christian Democratic Party¹⁹) and *L'unità* (Communist Party²⁰). At the time, the Socialist Party and the Christian Democratic Party were in the majority coalition while the Communist Party was in the opposition.

In 1992-93 the number of articles published by *La repubblica* (1,213) and *Corriere della sera* (1,150) was almost equivalent. It is

¹⁸ Quoted in Castronovo and Tranfaglia (1994: 562).

¹⁹ At present it represents the Popular Party, a small portion of the previous Christian Democratic Party.

²⁰ At present named Democratic Party of the Left.

Table 3

Press coverage of the Clean hands scandal (1992-94):
articles examined

<i>newspapers</i>	<i>articles</i> <i>1992-93</i>	<i>articles</i> <i>1993-94</i>
<i>La repubblica</i>	1,213	1,832
<i>La stampa</i>	*	1,366
<i>Corriere della sera</i>	1,150	*
<i>Il popolo</i> (Christian Democratic Party)	660	*
<i>L'avanti</i> (Socialist Party)	961	*
<i>L'unità</i> (Communist Party)	1,348	*
total	5,332	3,198

* not yet analysed.

not surprising that the newspapers owned by political parties reflected the political scenario. In fact, the lowest number of articles was published by the newspapers of the political parties heavily implicated in the corruption scandal (the Christian Democratic and Socialist parties) – *Il popolo* (660 articles) and *L'avanti* (961) – while the highest number of articles was published by *L'unità* (1,348), which used the information on the investigations instrumentally against its political opponents. We shall examine here the following topics: headlines, content and authors.

The headlines clearly show the different representations proposed by the five newspapers: three of them (*La repubblica*, *Corriere della sera*, *L'unità*) emphasised the information by means of sensational headlines (e.g. "rain of arrests", "crumbling of the bribes wall", etc.), while *L'avanti* and *Il popolo* used essential and descriptive statements and words (e.g. "Kickback city: three new arrests").

The content of the articles was mainly a description of the investigations and/or of the arrested and/or involved persons (83%). Very frequently the articles contained "gossipy" details concerning the private lives of those arrested or otherwise involved, patently disregarding their rights to the protection of honour and reputation. No criticisms were advanced by the five newspapers regarding the

investigations conducted by the Milanese prosecutors: instead, the focus was always on their initiatives and their persons. *La repubblica*, *Corriere della sera* and *L'unità* – more or less deviously – suggested to the readers a positive, quasi heroic representation of the public prosecutors as crusaders against a corrupted political class. Often the content of the articles was only generic information such as the announcement of a new wave of arrests on the part of the public prosecutors, or their menacing declarations regarding the future developments of the investigations: a Milanese public prosecutor, for example, declared that “new and unexpected fronts are about to be opened”²¹.

The journalistic style of the articles shifted from an ironic and/or sarcastic tone to a moralistic and/or indignant one, giving also rise to some neologisms, including the well known “Tangentopoli”²².

The analysis shows that 91% of the articles were written by journalists; the remaining 9% show interesting differences among the newspapers. *L'unità* and *La repubblica* appeared as the more favourable towards the magistrates, having published the highest number of articles written by magistrates themselves (respectively 18 and 13). Mainly they were articles by, and interviews of, the five most famous public prosecutors of the so-called “Milanese pool” (Borrelli, D’Ambrosio, Colombo, Davigo, Di Pietro). *L'avanti* published 12 articles by defence lawyers and only one by a magistrate; the *Corriere della sera* occupies an almost central position (with nine articles by magistrates and five by defence lawyers), while *Il popolo* did not publish any article by either group.

The simplified reconstruction of reality shaped by the press – and offered to public opinion – represented a sort of fight to the death between a handful of heroes and a great crowd of powerful and treacherous thieves. Such a dichotomous and stereotyped representation – the good and honest magistrates against the bad and corrupt politicians – was particularly effective in touching collective emotions. In particular the campaign carried out by *La*

²¹ “... stanno per aprirsi fronti nuovi, inaspettati ...”, M. Brando, Interview to Gherardo Colombo, *L'unità*, August 2nd, 1992.

²² D. Messina, Si chiamava Milano, oggi è Tangentopoli, *Corriere della sera*, August 3rd, 1992.

repubblica stressed that the magistrates had to “sink” the entire political system, which was then labelled as the “First republic”. Indeed, one year later, in Spring 1994, the results of the political elections confirmed that the previous political frame had completely vanished: the governing parties lost the elections, while the voters favoured new parties such as the Northern League (led by Umberto Bossi) and Forza Italia (led by Silvio Berlusconi who had founded the party only a few months before the elections).

The analysis of the following period – from February 1993 to February 1994 – was carried out by examining 3,198 articles published by *La stampa* and *La repubblica* (Table 3).

In this period *La stampa* published 1,366 articles while *La repubblica* published 1,832 articles, that is about 1/3 more than in the first year. The contents of the articles are widely consistent with those discussed above: 85% of the content of both newspapers regarded the description of the investigations (2,716 articles out of 3,198 were summaries of the investigations), the daily list of accused and arrested politicians and entrepreneurs, as well as gossip-laden details of their private lives. Often the articles were also concerned with judicial provisions not yet executed or notified to the accused, revealing direct interaction between the inquiring magistrates and journalists in absolute defiance of the law on secrecy concerning all pre-trial investigation. Very rare were the articles criticising investigative initiatives and procedures (5%). With respect to the previous period some new issues emerged: a few articles (17%) were concerned with the actual problems of the Italian judicial system, and with the new idea that the media had contributed to create an inquisitorial climate against the persons who were touched – even lightly – by the investigations, often by using information obtained illegally.

In particular in our corpus 195 articles (107 *La repubblica*, 88 *La stampa*) dealt with the behaviour of magistrates and the public's response to it. The content of these articles was checked against seven statements: 1. Magistrates do not respect the law; 2. Magistrates are partisan; 3. Magistrates use criminal initiative with persecutory intention; 4. Magistrates are not heroes; 5. Magistrates are the governing body; 6. Disapproval of the “rule” of the magistrates; 7. Magistrates are too “tough”. Suffice it to stress that 70% of them express the conviction that the public prosecutors use criminal initiative with persecutory intentions, and the same

percentage denounce the illegal behaviour of the investigating magistrates. It is interesting to note a disagreement between *La stampa* and *La repubblica* regarding the magistrates' behaviour: the negative opinions expressed in *La stampa* were 76% but only 59% in *La repubblica*. Mistrust of the magistrates' impartiality reaches 60% in the first and 40% in the second newspaper. *La repubblica* was clearly more favourable by supporting – indeed like the leftist political wing – the magistrates' investigations.

Another 107 articles permitted us to explore one of the most controversial issues: opinions regarding the responsibility of entrepreneurs or politicians in the corruption process. The content of the articles was examined by means of the question: "Are the entrepreneurs victims of politicians?" The general results show a slight majority in agreement and a strong minority not in agreement (Table 4). But the two newspapers show different positions: according to the majority of articles published by *La repubblica* the entrepreneurs were responsible for corruption (i.e., 53.5% respond negatively to the question), while the majority of articles in *La stampa* offered the opposite representation stressing that the politicians were responsible (i.e., 55.1% agree with the statement).

Finally the analysis of a further 31 articles (*La repubblica* 13, *La stampa* 18) permitted us to check that 90% were in agreement with the identification of the "judicial storm" with a real "revolutionary" phenomenon. But if Clean hands was a sort of political revolution, one might ask whether there was in Italy a democratic regime. This issue appeared 52 times (*La repubblica* 36, *La stampa* 16) in the 3,198 articles examined and 98% of these were

Table 4

"Are the entrepreneurs victims of politicians?" (107 articles)

	<i>La stampa</i>		<i>La repubblica</i>		total	
	N	%	N	%	N	%
in agreement	27	55.1	26	44.8	53	49.5
not in agreement	20	40.8	31	53.5	51	47.7
no opinion	2	4.1	1	1.7	3	2.8
total	49	100	58	100	107	100

in agreement with the statement that in Italy there did not exist a democratic regime.

In conclusion, in the first period of investigations on political corruption, with limited exceptions, the media had been particularly supportive of the magistracy and in particular of the activities of the public prosecutors operating in the area. The scandal was represented to a large extent in moralistic terms, as a degeneration of political life, while the public prosecutors were the heroes “fighting” in order to establish a new public morality. According to Giglioli “the story of Tangentopoli told by the media was that of a cautionary tale, a moral drama where virtue triumphed” and where the “real heroes” were represented by the investigating magistrates of the Milanese public prosecution office (1996: 388)²³. In the second year the same representation continued to prevail, but some timid criticisms of the working of criminal justice and of the work-habits of public prosecutors began to appear. Moreover, the media contributed to construct a representation of the people as honest, indignant and surprised by the scandal, exaggerating and emphasising the protest of small groups of citizens supporting the investigating magistrates in front of the *Palazzo di giustizia* in Milan.

5.2 *The TV coverage of the Enimont trial in 1994*

In discussing the issue of TV coverage we come to grips with the central issue of the reconstruction of reality²⁴, a phenomenon that happens in the courtroom as in many other situations. Obviously

²³ Giglioli argues that the main reasons why the media favoured a representation of the reality of “Clean hands” in moral terms were: i) “the ease with which it can be symbolically condensed and expressed in short and effective phrases” (such as “Clean hands”, “Tangentopoli”, etc.); ii) the strong social and cultural resonance of the moral argument; iii) the economic benefits for the press itself (1996: 389).

²⁴ The sociology of knowledge has stressed that reality is a socially constructed phenomenon (Berger and Luckman, 1967). Without going deeply into this matter here – object of much research and discussion in the social sciences – mention must be made of a theoretical approach specific to social psychology which can be usefully applied to research on media and justice. European social psychologists introduced the concept of social representations, starting from the idea that individuals and groups create representations whenever and wherever

in the courtroom the defence lawyer will tell a different story from the public prosecutor, but reality is reconstructed also through the social interaction among different actors fulfilling various roles (defendant, witnesses, judges, etc.) by means of a series of formal and informal procedures. The TV story of the criminal trial, however, and the representations socially constructed in the courtroom will be very different for many reasons. Even setting aside any partisan or malicious interpretations, TV must shorten the amount of time dedicated to the representation of the event and keep it simple for the audience. Moreover, any interaction among individuals and groups is subject to alteration and filtered according to the media needs and objectives. Also the aims of the courtroom and TV reconstruction of the events are different, as the function of television is to inform and to keep viewers interested. Thus TV coverage of a criminal trial emphasises only some aspects of courtroom interaction and, in turn, will influence – more or less directly – interaction between the defence and prosecuting attorneys.

If the media represent the most powerful tools in the process of the construction of reality, it must also be underlined that each of them – press, radio and television – has its own distinctive “format” (i.e. guidelines for the selection, organisation and presentation of news reports). Some authors indicate that TV alters the logic and practices of professional sports, religion, and politics as well as the content of the news (Altheide and Snow, 1979). Certainly several studies have noted that as events are formatted for TV news presentation, their meaning and significance change, and as Altheide (1984) points out, “the research has documented the systematic discrepancies between numerous news reports of events and the meaningful and relevant dimensions of those events”. Thus TV alters the criminal trial as it does every other event.

For our present purposes we shall briefly consider the special TV coverage of the first criminal process on political corruption held in Milan, the so-called “Enimont trial” concerned with the investigations on Clean hands. Research data on this subject have been provided by a careful sociological analysis of national TV coverage which started on December 20th 1993 (Giglioli, Cavicchioli and Fele, 1997). The trial immediately gained great public attention, similar to the O.J. Simpson trial in the United States. It was a real “media event” (Dayan and Katz, 1992) that the public RAI TV

offered daily for several months as a serial broadcast to the Italian population in prime time, with an emphasis recalling very different media events such as Royal weddings, Olympic games and so on.

The Enimont trial was represented – and perceived by the audience – as a “symbolic trial” channelling a strong emotional popular wave, and actually the public opinion interpreted it more as a moral and political judgement than as a criminal proceeding (Cavicchioli, 1997). Many of the politicians and heads of the governmental political parties who appeared on the TV screen very often played the role of witnesses, but de facto their testimony was perceived by the citizens as that of incriminated parties under questioning by the public prosecutor Antonio Di Pietro (now Senator) who acquired great fame and popularity. Giglioli and colleagues argue that the Enimont trial was a public ritual ceremony of degradation where moral rather than judicial problems played a role, but it was also “the last step in the social construction of the meaning of Tangentopoli” (Giglioli, 1996). It was a clear example of what we can define a real “joint venture” characterising the close interaction between justice and media in Italy which was aimed – more or less consciously – to build up a “social representation”²⁵ of the judicial media event named Clean hands.

What was the citizens’ opinion about the TV coverage of criminal trials? In the course of our analysis of the press coverage we found 42 articles published by *La stampa* and *La repubblica* in 1993-94 concerned with this issue²⁶ and the majority was unfavourable.

In Italy the relationship between justice and media is the subject of much debate between two conflicting positions: those who think that the media damage the way of administering justice and those who think that they play a positive role both with respect to the

they communicate and cooperate (Farr and Moscovici, 1984). According to Serge Moscovici, who introduced this approach, social representations are based on the theories and ideologies which collectivities “transform in shared realities, relating to the interactions between people” (1984: 19). All the research in social psychology has considered social representations as a means of creating and re-creating reality, recognising that in this process when issues of public interest are concerned the media play a significant role.

²⁵ See the note above.

²⁶ Most of these articles were published before the Enimont trial broadcasting.

citizens, and in encouraging a more transparent relationship among the institutional powers. Nonetheless the debate often neglected a third relevant aspect, that is, the individual rights of both the accused and the witnesses. In fact, the TV coverage of the Enimont trial not only shows the co-operation between justice and media but also the total disregard of the rights of defendants and witnesses to their reputation and honour. Indeed with few exceptions, and these from the academic world (Di Federico, 1998), very rarely did the protection of human rights become an issue.

6. The citizens' confidence in the justice system

After the judicial storm and the overwhelming presence of magistrates in the media, the second half of the 90s witnessed a new rise in the citizens' mistrust of the justice system, as may be seen in the official surveys carried out by Ispo²⁷. Table 5 shows that in 1995, in the degree of confidence of Italian citizens in the media and institutions, the magistrates were in second position, preceded only by the police and followed even by the church. Since then they have continued to lose points until 1998: in 1997 the church moved to the second position and in 1998 the magistrates had lost 15% with respect to 1995 (from 59% to 44%). Confidence in the church appears steady while confidence in the government is highly unsteady. As far as the media are concerned confidence in television has grown (the State RAI by 2%, the private networks by 5%), while newspapers lose 3%.

Undoubtedly the surveys confirm a constant decline in the confidence in magistrates which took place between 1995 and 1998. This might be related to the TV coverage of the Enimont trial. Perhaps it was a specific event, itself showing the close interaction between justice and media, which caused the turning point of the new wave of citizens' mistrust of the justice system: the accusation of corruption made against Silvio Berlusconi by the public prosecution office in Milan in November 1994 while, as Prime

²⁷ The surveys by Ispo (Istituto per gli Studi sulla Pubblica Opinione) were carried out only starting from 1995. Any comparable data are available on the previous period.

Table 5

Degree of confidence of Italian citizens in the media and institutions
(national sample over 17 years of age; answers *much* and *very much*)

<i>Institutions and media</i>	%	%	%	%
	<i>May 1995</i> (N 2,894)	<i>May 1996</i> (N 4,635)	<i>May 1997</i> (N 4,556)	<i>May 1998</i> (N 3,557)
Police	65	72	60	60
Judges and prosecutors	59	58	45	44
Church	57	56	56	58
Government	34	49	31	36
State TV (RAI)	25	32	25	27
Private TV (Fininvest)	23	30	28	28
Newspapers	25	27	23	22

Sources: adapted from the surveys by Ispo (Istituto per gli studi sulla pubblica opinione).

Minister, he was presiding over the "World Ministerial Conference on Organized Transnational Crime", held in Naples. Berlusconi read the news of the accusation of corruption together with all Italian citizens on the first page of the *Corriere della sera*, before receiving the formal communication of his indictment from the Milanese public prosecution office. This article aroused bitter controversy in the following months and a wide part of the public opinion was convinced that the news had been given by the magistrates first to the journalists and then to the accused person.

Popular favour and trust in the magistrates' investigations on political corruption has probably declined also because of the great and increasing number of acquittals in some of the cases most followed by the media in the first half of the 90s. The two most well known examples are those of Silvio Berlusconi and Giulio Andreotti. Criminal initiatives and trials had plagued Silvio Berlusconi, now head of the major opposition party, since he decided to present his candidature a few months before the political elections (April 1994). The main charges against him are those of corruption and of having illegally financed the Socialist Party in exchange for favours for his flourishing and multi-billionaire business. The endless succession of these cases in the last four years has sharply divided public

opinion between those who firmly believe in Berlusconi's guilt and those who have equally strong beliefs that he was unjustly persecuted in order to wipe him off the political scene. The latter seem recently to be increasing since many trials have resulted in acquittals.

Moreover, in recent years public mistrust might have been increased by the conclusion of the judicial trials involving Giulio Andreotti, one of the most prominent political leaders of the Christian Democratic Party during the last 45 years, many times minister and Prime Minister from 1946 to 1993. His judicial case has made the headlines and had a great impact on the public. It also follows in the wave of judicial attacks on important politicians, entrepreneurs and representatives of the institutions which since 1992 brought the investigating magistrates to the front pages of newspapers and in TV news headlines. In one of the two trials which were initiated several years ago Andreotti was accused of having inspired the killing of a journalist who was about to reveal Andreotti's wrongdoings. In the other trial he was accused of illegal dealings with the major *Padrini* of the Sicilian Mafia. Both trials have resulted in acquittals for lack of evidence and much criticism has been raised against the public prosecutors who initiated the investigations (Jannuzzi, 2000).

On the other hand, even magistrates and lawyers seem to share with the citizens a low confidence in the judicial system. In the first half of the 90s we conducted a research in a sample of 133 respondents of three professional groups: public prosecutors, judges and lawyers (Berti *et al.*, 1998; Palmonari *et al.*, 1998). The results have shown that the interviewees adopt the citizens' perspective when they answer to the question: "*On the basis of your experience may people have a reasonable degree of confidence in the judicial system of our country?*". It is meaningful – and certainly distressing – that 50% of defence lawyers and 41% of judges and public prosecutors think that people cannot reasonably be confident in the Italian judicial system. Moreover criticisms and negative feelings emerged from 76% of responses, thus confirming a low degree of confidence in the justice system shared by the majority of interviewees and attributed to the citizens. According to the authors, these negative feelings of magistrates and defence lawyers may be traced back to a common sense factor: the widespread traditional lack of confidence of the Italian people in the justice system, judges,

prosecutors, lawyers and police. The same feelings have been noticed also in other European countries of similar judicial traditions. Suffice it to recall French citizens' well known distrust of the police and judicial institutions (Garapon, 1996b).

A crisis in the confidence in the legal system has emerged in many countries. However, in Italy the severe crisis in citizens' trust and confidence in the judicial system is longstanding. In the mid-80s a widespread popular dissatisfaction with the administration of justice even led to a referendum on the civil liability of magistrates, a unique event which had never before occurred elsewhere (Di Federico, 1989). The distrust was strongly mitigated by the new wave of popular favour and trust connected with the magistrates' investigations of political corruption which in the first half of the 90s gave rise to a different political scene, by striking the political parties which promoted the referendum. This event had broken in some way the long lasting pact between magistrates and politicians, and it created a new connection between the media and the magistrates, who were looking for legitimacy through the support of public opinion.

7. Concluding remarks

We have presented some preliminary results of a research in progress concerning the relationship between the Italian magistracy and the national news media during the development of the scandals on political corruption. Both sides of this relationship have been dealt with.

First, we have considered the role played by the Italian magistrates themselves in the relationship with the media. To be sure, their willingness to use the press and the television as channels for communicating with the public and the relevant political actors is not an entirely new phenomenon in Italy²⁸, but it reached unprecedented levels during the development of the

²⁸ This point is stressed by Di Federico. The action undertaken against political terrorism in the 1970s and organised crime in the 1980s witnessed the "inclination of various public prosecutors to be visibly active and in search of fame through their criminal initiatives" (1995: 239).

scandals. The ability of the judges and prosecutors to engage in an active strategy of communication for increasing public support has been here interpreted as an integral part of a broader trend toward judicial activism. Among other relevant factors that have concurred in this evolution, attention has been paid in particular to the deep changes in the organisational setting of the magistracy, which have dismantled step by step the traditional structure of behavioural controls over the professional performance of the magistrates.

Second, we have focused on press coverage of the scandals in the years 1992-94 with regard to the frequency and content of articles published in some newspapers with nation-wide circulation and different political orientation. The sample provides a sufficiently reliable basis for beginning to explore a field in which empirical analysis remains largely absent, at least in Italy. As regards the quantitative dimension, the press has understandably devoted a massive attention to the cases of political corruption. In the first year of the Clean hands affair, the press reports examined here overwhelmingly and often acritically supported the intervention of public prosecutors. As could be expected, the main exception in this landscape is represented by newspapers owned by the political parties most involved in the investigations. Broadly speaking, an unbalanced representation of events has prevailed. In the most outstanding case, that of *La Repubblica*, this is documented by the much greater space dedicated to interviews and even articles signed by the magistrates themselves, than to those reporting the views of defence lawyers. It is likely that the reconstruction of Clean hands on the part of the media has concurred in channelling popular support to the magistrates' initiatives, also because the unfolding of the scandal has been often portrayed so as to strongly emphasise the action undertaken by the magistracy against a wholly corrupt political class apparently disconnected from the uncorrupt body of the society at large. Such a simplified representation of the scenario underlying the escalation of political corruption has been reinforced by the broadcasting of the Enimont trial in prime time, accomplishing thus the degradation of the whole political class (Giglioli, Cavicchioli, Fele, 1997). However, in 1993-94 concerns began to arise regarding a number of issues related to the rights of the defendants and the overall performance of the judicial system. The items discussed include the alleged misuse of criminal initiative on the part of the prosecutors, the high rates of preventive

detentions purportedly aimed at inducing guilty pleas and the involvement of other persons in the investigations, as well as the disclosure of prejudicial information potentially harmful to the rights of accused persons. As noted earlier, late 1994 can be said to represent a turning point in the relationship between justice and media. The declining confidence in judges and prosecutors that has taken place in the subsequent period may be interpreted as part of such a reversal of trend on the part of the media. In turn, this has been presumably fuelled by a stream of acquittals in the most publicised cases.

The close interaction established, at least for a couple of years, between the magistracy and a prominent part of the media is illustrated by the representation of events offered to the public opinion. As argued above, a sort of co-operative game has taken place in which both institutions have gained benefits. But this game has not been without costs. It might be asked whether the "fourth power" has been able to effectively fulfil its expected function, namely to check the political branches, including the magistracy itself. In this respect it has been argued that the Italian media have abdicated their prerogatives (Marafioti, 1994: 53), and this has occurred in the midst of a political crisis accelerated by the judicial revolution, and characterised by the decline of the legislature, the weakening of the executive, and the supremacy of the magistracy. Not less relevant have also been the implications for the actual operation of due process protections. The fact that judges and prosecutors belong to the same organisation is not without consequences for the way in which the media usually represent the operation of the justice system. The fundamental differences between those who are in charge of initiating criminal proceedings, supervising investigations, as well as pleading in the course of hearings, and those who have to make impartial decisions tend to disappear. In most cases, prosecutors are referred to as "judges", and their activities acquire therefore a judicial "flavour". Such a tendency toward conflating these two roles brings about the risk that the case of the prosecution appears to the uninformed reader much like a sentence. This major source of ambiguity in press and television reports is likely to seriously undermine the core principle of presumption of innocence and, more in general, the defendants' rights to fair and unbiased proceedings (Di Federico, 1995: 234). Last but not least, the individual rights of defendants to the

protection of their reputation and privacy, even though afforded by the Constitution and the law, have been recurrently overridden by a presumed unconstrained right of the media (and the magistrates) to free speech.

Bibliography

- Altheide, D.L. (1984), "TV News and the Social Construction of Justice. Research Issues and Policy", in R. Surette (ed), Justice and the media, Springfield, Ill.: Thomas, pp. 292-304
- Altheide, D.L., Snow, R.P. (1979), Media logic, Beverly Hills Ca.: Sage
- Amoretti, F. (2000), Media and justice. The new actors of the post-electoral politics, paper presented at the XVIII World Congress of the International Political Science Association, Quebec, 1-5 August
- Berger, B., Luckman, T. (1967), The social construction of reality, New York: Anchor
- Berti, C., Mestitz, A., Palmonari, A., Sapignoli, M. (1998), Avvocati, magistrati e processo penale. Analisi socio-psicologica di una fase di transizione, Roma: Carocci
- Blau, P.M., Scott, W.R. (1962), Formal Organizations, San Francisco: Chandler
- Canosa, R. (1996), Storia della magistratura italiana. Da Piazza Fontana a Mani Pulite, Milano: Baldini e Castoldi
- Cartocci, R. (1997), "L'Italia di Tangentopoli e la crisi del sistema partitico", in C. Tullio Altan (ed.), La coscienza civile degli italiani, Udine: Gaspari, pp. 219-245
- Castronovo, V., Tranfaglia, N. (1994), La stampa italiana nell'età della TV. 1975-1994, Bari: Laterza
- Cavicchioli, S. (1997), "Processi in televisione", in P.P. Giglioli *et al.*, *op. cit.*, pp. 75-134
- Cazzola, F., Morisi, M. (1996), La mutua diffidenza, Bologna: il Mulino
- Dayan, D., Katz, E. (1992), Media Events: the Live Broadcasting of History, Cambridge: Harvard University Press
- Della Porta, D. (1992), Lo scambio occulto, Bologna: il Mulino
- Della Porta, D., Vannucci, A. (1999), Un paese anormale: come la classe politica ha perso l'occasione di Mani Pulite, Bari: Laterza
- Di Federico, G.
 (1976), "The Italian Judicial Profession and Its Bureaucratic Setting", The Juridical Review, The Law Journal of Scottish Universities, Vol. 1, pp. 40-57
 (1987), Preparazione professionale degli avvocati e dei magistrati: discussione su una ipotesi di riforma, Padova: Cedam
 (1989), "The Crisis of the Justice System and the Referendum on the

- Judiciary", in R. Leonardi, P. Corbetta (eds), Italian politics. A review, London & New York: Pinter, pp. 25-49
- (1995), "Italy, a Peculiar Case", in C.N. Tate, T. Vallinder (eds), *op. cit.*, pp. 233-242
- (1998), "Prosecutorial Independence and the Democratic Requirement of Accountability in Italy", British Journal of Criminology, Vol. 38, No. 3, pp. 371-87
- Di Federico, G., Guarnieri, C. (1988), "Courts in Italy", in J.L. Waltman, K.M. Holand (eds), The Political role of Law Courts in Modern Democracies, Hong Kong: Macmillan, pp. 153-180
- Farr, R.M., Moscovici, S. (eds) (1984), Social representations, Cambridge: Cambridge University Press
- Garapon, A.
- (1996a), "Justice out of Court: The Dangers of Trial by Media", in D. Nelken (ed.) Law as Communication, Aldershot: Dartmouth, pp. 231-245
- (1996b), Le gardien des promesses, Paris: Odile Jacob
- Giglioli, P.P. (1996), "Political Corruption and the Media: the Tangentopoli Affair", International Social Sciences Journal, Vol. XLVIII, No. 3, pp. 381-394
- Giglioli, P.P., Cavicchioli, S., Fele, G. (1997), Rituali di degradazione, Bologna: il Mulino
- Gismondi, A. (1996), La repubblica delle procure, Roma: Ideazione
- Gouldner, A. W. (1958), "Cosmopolitans and Locals", Administrative Science Quarterly, Vol. 2, pp. 444-480
- Guarnieri, C. (1992), Magistratura e politica in Italia. Pesi senza contrappesi, Bologna: il Mulino
- Guarnieri, C., Pederzoli, P. (1996), La puissance de juger, Paris: Michalon
- Jannuzzi, L. (2000), Il processo del secolo. Come e perché è stato assolto Andreotti, Milano: Mondadori
- Malleson, K. (1999), The New Judiciary. The Effects of Expansion and Activism, Aldershot: Ashgate
- Marafioti, D. (1994), A passo di giudice. Democrazia e rivoluzione giudiziaria, Napoli: Edizioni Scientifiche Italiane
- Moscovici, S. (1984), "The phenomenon of social representations", in R.M. Farr, S. Moscovici (eds), Social representations, Cambridge: Cambridge University Press, pp. 3-69
- Nelken, D. (1996a), "A Legal Revolution? The Judges and Tangentopoli", in S. Gundle, S. Parker (eds), The New Italian Republic. From the Fall of the Berlin Wall to Berlusconi, London and New York: New York University Press, pp. 191-205
- Nelken, D. (1996b), "The Judges and Political Corruption in Italy", Journal of Law and Society, Vol. 23, No. 1, pp. 95-112
- Palmonari, A., Berti, C., Mestitz, A. (1998), "Due Process and Crime

- Control in the Social Representations of Justice”, in A.V.D. Rigas (ed.), Social representations and contemporary social problems, Athens: Ellinika Grammata, pp. 214-227
- Pederzoli, P., Guarnieri, C. (1997), “The Judicialization of Politics, Italian Style”, Journal of Modern Italian Studies, Vol. 2 (3), pp. 321-336
- Porter, W.E. (1983), The Italian Journalist, Ann Arbor: University of Michigan Press
- Racinaro, R. (2000), Colonne infami. Presente e passato della questione giustizia, Venezia: Marsilio
- Ricolfi, L. (1993), L'ultimo parlamento, Roma: Nuova Italia Scientifica
- Righettini, S. (1995), “La politicizzazione di un potere neutrale. Magistratura e crisi italiana”, Rivista Italiana di Scienza Politica, Vol. XXV, No. 2, pp. 227-265
- Robertson, G. (2000), How Does the Media Support the Reform Process?, paper presented at the conference “Comprehensive Legal and Judicial Development”, World Bank (Washington D.C. June, 5-7)
- Slotnick, E.E. (1991), “Media Coverage of Supreme Court Decision-Making: Problems and Prospects ”, in S. Macaulay, L.M. Friedman, J. Stookey (eds) (1995), Law and Society: Readings on the Social Study of Law, New York: W.W Norton & Company, pp. 651-658
- Soulez Larivière, D. (1994), Du cirque médiatico-judiciaire et des moyens d'en sortir, Paris: Seuil
- Surette, R. (1992), Media, Crime, and Criminal Justice. Images and Realities, Pacific Grove, Ca: Brooks/Cole Publishing Company
- Tate, C.N., Vallinder, T. (1995), The Global Expansion of Judicial Power, New York: New York University Press
- Zannotti, F. (1981), Le attività extragiudiziarie dei magistrati ordinari, Padova: Cedam