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Toga Party: The Political Basis of Judicial Investigations against MPs in Italy (1983–2013)

Andrea Ceron and Marco Mainenti

Scholars agree that ideology affects judicial decision-making. We demonstrate that this proposition holds true even when the judiciary is independent of political control. Focusing on Italy (1983–2013), where the politicisation of the judiciary was an issue well before the entry of Berlusconi into politics, we estimate judicial orientations according to the support for factions within the National Judiciary Association. The results show that ideology affects trial court activity against deputies. As the support for left-wing factions increases, prosecutors are more likely to investigate right-wing parties. Conversely, as the share of right-leaning factions grows, investigations of moderate or rightist parties decrease.

Keywords: Italy; Judiciary; Prosecutions; Parliament; Corruption; Berlusconi

It is well established that courts are political institutions consisting of individuals with contrasting ideologies. Although judicial behaviour is not influenced exclusively by ideological values (e.g., Baum 1994; 1997; Posner 2008; Epstein & Knight 2013), scholars have demonstrated that these values may nonetheless exert a considerable influence on judicial decisions (e.g., Nagel 1961; Segal & Cover 1989; George & Epstein 1992; Brace & Hall 1997; Humphries & Songer 1999; Kulik, Perry & Pepper 2003; Sunstein 2006; Clark 2009; Kstellec 2011; Garoupa, Gili & Gómez-Pomar 2012; Garoupa, Gómez-Pomar & Grembi 2013; Beim & Kstellec 2014).

However, most studies in this field have focused on judges who are appointed by political institutions or chosen in competitive elections. The literature emphasises the effects of ideology in political systems in which judges are incentivised to align with a political party and behave according to its preferences in order to be reappointed or maintain their position. Conversely, scholars have not focused on systems in which judicial careers are independent of electoral and political institutions. Does ideology

matter in these latter cases, or is its overall impact on judicial behaviour negligible when judges are not associated with electoral or political institutions?

The present study attempts to fill this knowledge gap by focusing on trial courts in Italy, where judges and public prosecutors¹ are selected through exams and political institutions are not involved in the process of appointment and reappointment (Guarnieri 1992; 2004; 2011). Nevertheless, members of the judiciary are typically divided into factions whose alignment reflects the traditional left–right conflict within Italian society (Freddi 1978; Guarnieri 1992; Morisi 1999; Della Porta 2001). In addition, the Italian case is intriguing because public prosecutor behaviour has fuelled a heated debate on the politicisation of the judiciary.

This debate, and the concurrent clash between politicians and the judiciary, took shape at the end of the First Italian Republic (1946–93), when all the ruling parties were swept away after a corruption scandal popularly known as *Tangentopoli* (Bribesville) (Della Porta 2001); the debate has persisted during the Second Republic (1994 to present), particularly when the former prime minister Silvio Berlusconi was charged with various crimes. In recent decades, Berlusconi has repeatedly claimed that he is being victimised by left-wing judges (*toghe rosse*), and the centre-right coalition has tried to pass legislation meant to prevent this alleged ‘judicial persecution’ of Berlusconi and his collaborators² (Edwards 2005; Pasquino 2007, p. 49; Sartori 2002).

Despite the partisan nature of Berlusconi’s claims (Taruffo 1998), it is true that famous prosecutors have often revealed their political affiliation upon retiring from the bench to run for Parliament. For instance, in 2013, the anti-Mafia prosecutor Antonio Ingroia created his own left-wing electoral cartel with former prosecutors Antonio Di Pietro and Luigi de Magistris, which revived the debate about a so-called ‘toga party’ (*partito delle toghe*) of left-wing judges targeting Berlusconi.

Estimating the ideological divisions within the judiciary based on the strength of support for rival factions within the National Judiciary Association (Associazione Nazionale Magistrati, ANM), we find that political leanings have significantly affected the prosecution rate of Italian parties between 1983 and 2013, which is measured by considering the members of the Chamber of Deputies charged with crimes against the public administration. As the support for left-wing factions grows, prosecutors are more likely to act against parties on the right side of the political spectrum. Conversely, as the share of right-leaning factions increases, we observe a decrease in the rate of investigations against moderate and right-wing parties. These results hold when one controls for other relevant factors, such as conflict within Parliament, relations between Parliament and the judiciary, the degree of alternating political leadership, the expected level of corruption within each party, and institutional changes.

In the next section, we examine the relationship between judicial orientation and appointment mechanisms. Then, we examine the peculiar features of the Italian case, present our arguments about the effect of ideology on investigations against members of Parliament and describe the data. Finally, we present our results and discuss the main findings.

Judicial Behaviour and Appointment Mechanisms

Judicial behaviour is driven by multiple motivations, such as making public policy consistent with certain preferences, maximising court resources and autonomy, earning respect and achieving popularity in the legal community, and being promoted to a higher court (e.g., Baum 1994; 1997; Posner 2008; Epstein & Knight 2013). These are the main career goals that judges can reach under the institutional arrangement (Gibson 1983) and based on their personal attributes. As a consequence, judicial behaviour is influenced by the relationships among judicial professionals and the executive and legislative institutions (Segal 1997; Vanberg 2001; Ferejohn, Rosenbluth & Shipan 2004; Carrubba & Zorn 2010), the structure of the court (Bonneau et al. 2007; Carrubba et al. 2012; Kastellec 2011) and judges' personal attributes, such as gender, race or ideological positions (Kulik, Perry & Pepper 2003; Kastellec 2013).

As for personal attributes, scholars agree that ideology may significantly affect judicial decision-making. Although judicial behaviour also depends on other factors, many studies have found that judges' ideological orientation influences their decisions (Nagel 1961; Segal & Cover 1989; George & Epstein 1992; Brace & Hall 1997; Humphries & Songer 1999; Kulik, Perry & Pepper 2003; Sunstein 2006; Clark 2009; Kastellec 2011; Garoupa, Gili & Gómez-Pomar 2012; Garoupa, Gómez-Pomar & Grembi 2013; Beim & Kastellec 2014). However, these scholars have typically investigated the relationship between political leanings and judicial behaviour in common-law jurisdictions, where judiciary members are appointed by political institutions or selected through competitive elections. Thus, the literature demonstrates that ideological stances matter in political systems in which judges are likely to have an interest in aligning with a political party and behaving thereafter according to its preferences.

When judicial appointment directly or indirectly involves political institutions, ideology is likely to influence judicial behaviour. In these cases, political parties may select judges who are closer to their ideological positions, and judges will have an interest in deferring to the positions of the ruling parties to enhance their chances of being appointed or reappointed or reaching high-ranking positions (Ramseyer & Rasmusen 2001; Shepherd 2009). Judicial behaviour is also affected by political pressures when judges are selected through competitive elections, particularly when their position depends on partisan elections and judges require the support of party leaders (Hall 1992; Hanssen 1999; Huber & Gordon 2004; Shepherd 2009). In addition, recent studies indicate that judges face substantial political pressures even when their appointment depends on non-partisan ballots (Caldarone, Canes-Wrone & Clark 2009; Canes-Wrone, Clark & Kelly 2014).

However, the relationship between ideology and judicial decisions in contexts in which judges are not elected and their careers are independent of political institutions has remained understudied. Recent studies have begun to explore this topic. For example, scholars have shown that judicial behaviour in the Spanish Supreme Court is influenced by judges' political orientation, although judicial careers are not directly connected to executive and legislative powers (Garoupa, Gili & Gómez-Pomar 2012).

The present study investigates the relationship between ideology and judicial behaviour when careers do not depend at all on political parties and voters. To achieve this objective, we focus on the activity of trial courts in Italy, where the judiciary enjoys the highest degree of formal independence among the Western democracies (Guarnieri 1992; 2004; 2011)

Independence and Politicisation: The Judiciary in Italy

In Italy, trial court judges and public prosecutors are appointed independently of the machinations of political institutions. Such positions are selected using competitive exams administered by the Higher Council of the Judiciary (*Consiglio Superiore della Magistratura*), and the procedure of appointment does not involve Parliament or the Ministry of Justice. Judicial careers depend only on decisions made by the judiciary itself. The Higher Council, which consists mostly of members elected by judges, makes all decisions concerning recruitment, appointment, promotion, transfer and disciplinary proceedings regarding the judiciary. Since the 1980s, this independence has been effectively consolidated as collusive practices between the judiciary and politicians have progressively been eradicated (Della Porta 2001). Consequently, unlike other civil-law countries in Europe, Italy has exhibited a clear model of judicial self-government (Guarnieri 1992; 2004).

Such independence has its roots in the beginning of the democratic experience in Italy, when the constituent assembly agreed to consolidate the formal independence of the judiciary to insulate judges from the pressures of the executive power. However, this independence did not rid the Italian judiciary of ideological influences. With no external institutional control, judges could drift from neutral positions and interpret their roles consistently with their ideological orientation or their individual social and cultural background. In fact, independence laid the foundation for the politicisation of the Italian judiciary in its broad discretionary power (Guarnieri 1992), and the alignment of the judiciary reflected the polarised ideological stances that characterise Italian society.

Far from having limited influence, judicial politicisation is clear in the divisions within the ANM (Freddi 1978; Morisi 1999; Della Porta 2001). Since the 1960s, the ANM has been organised like a parliament: it holds regular congresses and internal elections contested by rival factions that present lists of candidates who are attached to different motions, i.e., written documents that aim to shape the ideological views and behaviour of the association. These factions are similar to parties, with their own conventions, membership cards and publications (Pepino 2002). Three main subgroups have emerged: *Magistratura Indipendente* (Independent Judiciary, MI), the most conservative faction; *Magistratura Democratica* (Democratic Judiciary, MD) and the *Movimento per la Giustizia* (the Movement for the Justice), the two progressive factions, which came together to form the *Area* alliance; and *Unità per la Costituzione* (Unity for the Constitution or *Unicost*), the largest subgroup, which consists primarily of moderates.

Although the ANM factions are ideologically focused and polarised, they tend to behave idiosyncratically (Pepino 2002). The leftist MD overtly defines itself as a left-wing group, based on a progressive cultural and political background that supports underprivileged citizens and cooperates with other left-wing organisations. It actively supports referenda and demonstrations that promote civil rights, peace, antifascist values and policies in defence of the poor, workers, immigrants and the environment. Contrary to MD, MI asserts that it adheres to the apolitical nature of the judiciary and demands a strict partition from politics, although this professed apolitical nature becomes political per se when set against the overt politicisation of left-wing factions. In fact, MI judges share conservative values and are frequently linked to the right-wing press, parties, interest groups and other organisations.

Judges and prosecutors have strong incentives to align with a faction. Although judicial careers are supposed to rely only on seniority and merit (Guarnieri 1992; 2004), the ANM plays a central role within the Higher Council, and ANM factions are able to affect internal decisions regarding judges' careers. Factions increased their influence within the judiciary after the introduction of proportional representation in ANM elections in 1975 (Guarnieri 2004, p. 177). Hence, because even high-ranking positions have gradually been reduced, judges and prosecutors are prone to support a faction to increase their chances of promotion to higher courts (Guarnieri 2004, pp. 176–177).

The support of each group has shifted over time, and no faction has gained a permanent plurality of votes. The turnout for judicial elections was always approximately 90 per cent. MI was the main group throughout the 1960s and the 1970s, but its support declined over the next two decades. The left-wing MD (*Area*) was a tiny faction until the end of the 1980s, but it grew until it won a plurality of votes in 1999 and 2003. Finally, *Unicost* held an unchallenged lead only in the 1980s, although it never won a full majority of votes. Furthermore, as shown in Figure 1, judges' orientations vary across both time and space. Since the 1980s, the left-wing factions have been stronger in the North of Italy (in Milan, Genoa, Venice, Florence and Bologna) than in the South, with a few exceptions such as Palermo and Apulia.

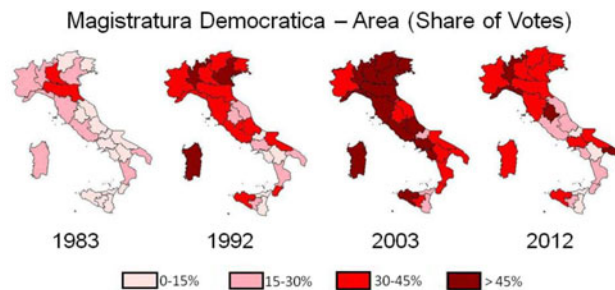


Figure 1 Share of Votes Won by Area in Various Regions
 Source: Personal computation of electoral consultations in ANM.

The significant rise of the MD does not seem directly related to Berlusconi's entrance onto the political stage because the rise began before the Tangentopoli scandal (1992) and continued in 1996 and 1999 (when Berlusconi was not in office) before declining after 2003.

The present analysis investigates the extent to which the politicisation of the Italian judiciary affects judicial behaviour. Indeed, if judges and prosecutors adhere to factional values and preferences, we should notice that factional divisions have a clear impact on the administration of justice. More precisely, we expect that factional divisions will help explain differences in judicial behaviour across trial courts. To test the impact of political affiliation on judicial behaviour, we focus on investigations of MPs.

The Politics of Judicial Investigations of MPs

Judicial activity investigating MPs is a salient issue in Italy, as public prosecutors have played a prominent role in the Italian political system. Their popularity and impact became particularly important after 1992, when the *Mani Pulite* (Clean Hands) judicial inquiry shed light on the illegal links between politics and business and revealed that political corruption permeated the party system (Ricolfi 1993; Della Porta & Vannucci 1999; Curini & Martelli 2009, p. 177). The ensuing *Tangentopoli* scandal initiated the transition to the Second Republic, and the landscape of the Italian party system was irrevocably altered with the dissolution of all the ruling parties, including *Democrazia Cristiana* (Christian Democracy) and the *Partito Socialista Italiano* (Italian Socialist Party). During the Second Republic, a clash occurred between politicians and the judiciary, particularly with respect to Berlusconi, who was repeatedly under accusation.

Politicians have frequently complained about the effect of political bias stemming from charges and prosecutions and have debated the existence of a 'toga party' (*partito delle toghe*) consisting of judges driven by political aims. Indeed, several judges and prosecutors have revealed their political leanings directly by jumping into politics following retirement from the judiciary.³ This list includes MPs with a variety of ideological views⁴ (see Paciotti 1999) and also former Heads of State or Presidents of the House/Senate (Oscar Luigi Scalfaro, Luciano Violante, Pietro Grasso) and ministers or junior ministers from the right (Giacomo Caliendo, Franco Frattini, Alfredo Mantovano, Nitto Palma and Enrico Ferri, former leader of MI) to the left (Giuseppe Ayala, Antonio Di Pietro, Anna Finocchiaro).

Scholars claim that trials of politicians generally have ideological foundations (e.g., Kirchheimer 1961). Accordingly, we will assess whether public prosecutors investigate some parties more than others according to their own ideological leanings. Because prosecutors have wide discretion in appropriating resources and selecting cases based on reports and complaints (Fabri 1997), they may choose to focus more on investigations of MPs whose ideological views are opposed to their own positions.

Prosecutors must decide whether to pursue or discard an investigation against an MP.⁵ If they choose to pursue an investigation, according to the Italian Constitution

they must request that Parliament lifts immunity. To protect Parliament and its activities from accusations that are potentially baseless or grounded in partisan affiliation, prosecutors in the trial courts cannot proceed against an MP without prior parliamentary authorisation, unless the MP is actually caught in an illegal act. It follows that prosecutors must submit a formal request to Parliament – and to the *giunta per le autorizzazioni*, in particular – asking to lift the parliamentary immunity of the MP under investigation. Upon receiving such a request, Parliament votes by simple majority to approve or reject the proceedings.⁶

Ideology may introduce bias into proceedings against MPs in two ways. First, when prosecutors' ideological orientations strongly diverge from those of the MP under investigation, they are more likely to send Parliament a request. Therefore, *as prosecutors' ideological positions diverge from the positions of a party, they are more likely to bring cases against that party*. Second, if prosecutors' ideological orientations are close to the political position of the deputy under investigation, they are less likely to submit a request to lift immunity because they may prefer to use the resources at their disposal for other matters. Hence, we expect that *as prosecutors' ideological stances converge with the positions of the party under investigation, they are more likely to avoid prosecuting that party*.

Data

Dependent Variable

We measure judicial activity against MPs using information about the requests sent by public prosecutor offices to the Chamber of Deputies (*Richieste di Autorizzazione a Procedere*, RAP). Other scholars have used judicial requests to measure the involvement of MPs in cases involving political corruption (Golden & Chang 2001; Chang 2005) and the effect of this involvement on the chances of re-election (Chang, Golden & Hill 2010). Although requests can be useful in examining the mechanism of political corruption, they are related to alleged crimes only. For this reason, and because of prosecutors' discretionary power, RAP is an accurate indicator of judicial activity against political parties. In particular, we claim that if party *i* is involved in more requests than rival parties, this involvement does not necessarily imply a higher level of corruption in party *i*. Instead, this activity may demonstrate that the judiciary is more interested in prosecuting this party than other parties.

We focus on the requests submitted to the Chamber of Deputies between 1983 and 2013, a period during which the judiciary was formally independent and not prone to colluding with politicians through informal relationships. During this period, public prosecutors sent to Parliament 1,256 requests to lift immunity, involving 1,399 deputies. However, we do not retain requests concerning opinion crimes related to political activity because prosecutors have little discretion in these cases. Requests to lift immunity in connection with opinion crimes – in which political adversaries are vilified in the media or in public speeches – typically rely on hard evidence and do not

require additional investigation. Moreover, opinion crimes have also been excluded due to their ‘backlash effects’ that can frustrate judicial attempts to damage the reputation and vote share of the party under investigation (van Spanje & de Vreese 2013).

The data include information regarding requests to lift immunity for MPs charged with public administration improprieties, such as corruption, misappropriation and abuse of power, in addition to illegal party funding, which is frequently related to other public administration crimes in Italy (Rhodes 1997; Hopkin 2004). This is the main category of non-opinion crimes related to political activity. We discard violations involving organised crime (Mafia) because these charges follow specific procedures that provide additional resources to courts. Thus, from 1983 to 2013 we considered 526 requests involving 589 deputies. The number of MPs involved reached its peak in 1993, in the middle of *Tangentopoli*, and decreased thereafter because of the constitutional reform approved by Parliament in 1993, which limited the circumstances in which Parliament must be asked to lift immunity. Indeed, since 1993 prosecutors have had to request that parliamentary immunity be lifted only to arrest or detain an MP, undertake a search of an MP’s body or house, intercept an MP’s conversations or seize an MP’s mail.

Given the nature of our hypotheses, political parties are the units of analysis. The dependent variable, RAP, is the ratio of the number of party i ’s MPs receiving a request to lift immunity in year j and the total number of MPs belonging to the same party in that year. Certain MPs are involved in several requests during the same year. Because they often receive multiple requests to lift immunity involving the same crime, we account for the number of MPs involved each year rather than the number of requests. A different operationalisation that considers the overall number of requests does not alter our results.

Independent Variables

The effects of prosecutors’ political affiliations are tested through an interaction between the policy position of party i and the share of votes won by judicial factions in internal elections. Because we observe variations across time and space, we measure the ideological orientations of the prosecutors in different districts. Utilising the data provided by ANM on judicial elections, we examine the ideological orientation of courts in the same region. Because of ballot secrecy, information on the individual political orientations of judges and prosecutors is not available, which also means that we cannot measure the orientations of prosecutors separately from the orientations of judges. However, because the careers of judges and prosecutors are not distinctly separate in Italy, overall vote share is a relevant measure to test the effects of judicial politicisation on investigations of MPs.

We provide two different variables. *Leftist Courts* measures the average share of votes won by left-wing factions in the courts that proceed against party i in year j . *Rightist Courts* records the average share of votes won by the most right-wing faction (MI) in

the same courts that proceed against party i in year j . When parties do not receive any RAPs in a given year, *Leftist Courts* and *Rightist Courts* measure the average share of votes won by left- and right-wing factions at the national level. The results are robust with respect to alternative operationalisations of these two variables.

Party Position is measured based on the Italian Legislative Speeches Dataset (ILSD) using the categories traditionally included in the Right–Left (RILE) scale (e.g., Ceron 2012; Curini 2011; Curini & Ceron 2013; Curini & Martelli 2009).⁷ These data are built by manually coding all the investiture debates of the Italian governments using a coding scheme similar to that of the Comparative Manifesto Project.⁸ Negative values indicate left-wing parties, and right-wing parties retain positive values.

We control for the effects of ideology with respect to certain confounding factors. The dummy variable *First Republic* controls for the post-1993 reforms. In the Second Republic, the Italian political system has experienced institutional changes that are particularly relevant for our analysis, such as the procedure that prosecutors must follow to request that the immunity of an MP be lifted, the organisation of public administration, and the electoral system.⁹ In addition, because the largest number of RAPs were sent in 1993, we include a dummy variable to detect the role of *Tangentopoli*.

Next, we focus on the impact of external institutions and take into account the relations between the judiciary and Parliament. The *Coalition Size* variable measures the share of seats belonging to party i and its allies (if any) and accounts for the ability of each party to resist and reject judicial requests to lift immunity. This variable measures the party's strength and its links with other allies. In addition, we control for the attitude of Parliament as a whole towards judicial activity. The *Attitude Toward Judiciary* variable is based on the ILSD data and records the average position on the justice dimension, weighted by the number of seats of all parliamentary parties but the one involved in the judicial request, under the assumption that each party always protects its members. Negative values indicate that Parliament generally favours greater control by the cabinet, while positive values indicate that MPs support the autonomy of the judiciary. Therefore, lower values imply that MPs are more willing to protect their colleagues from judicial investigations, whereas higher values indicate that MPs are more open to judicial investigations.

We utilise certain control variables to assess the potential involvement of each party in corrupt practices. The link between political corruption and governments in which parties do not regularly alternate power is well established (Horowitz, Hoff & Milanovic 2009; Tavits 2007; see Pellegata [2012] for the Italian case). Parties that have been in office for long periods are more likely to be affected by higher levels of corruption. Therefore, we include the variable *Years Spent in Office*, which records the number of years that each party spent in office in the previous decade.

Furthermore, parties whose support is rooted in particular areas of the country may be more exposed to political corruption. Because it has been shown that politicians in the southern regions of Italy frequently rely on clientelistic relationships between voters and elected officials to gain consensus (Putnam 1993; Caciagli 2006), we include

the variable *Share of Southern MPs*, i.e., the ratio of deputies elected in southern Italy to the total number of party MPs.

Intra-party politics is another relevant determinant of political corruption. Internal competition among rival party factions may foster recourse to illegal party funding and clientelism (Golden & Chang 2001; Chang & Golden 2007; Kato & Mershon 2006). This factor can lead to increased corruption and the incentive to investigate it because judges can take advantage of intra-party divisions to get the request approved. We control for the level of intra-party fragmentation through the *Effective Number of Factions* (Ceron 2011). This index analyses the congresses held by Italian parties and measures the number of factions that contest each congress, weighted by the respective share of votes won in the internal election.¹⁰ This variable is equal to 1 if parties are not factionalised or their congresses are unchallenged and increases as the number and size of minority factions grow. Summary statistics of the variables included in the analysis are available in the Appendix.

Analysis and Results

The dependent variable RAP is a proportion whose values are bounded by 0 and 1. As a consequence, the assumptions required by the ordinary least squares (OLS) regression may not hold due to heteroskedasticity or because errors may not be normally distributed (Wooldridge 2002). In addition, the predicted values may fall outside the unit interval. Accordingly, data have been analysed with a fractional logit model (Papke & Wooldridge 1996). Because the dataset contains repeated observations nested within parties, we cluster observations by party and provide standard errors accordingly. Clustering observations per legislature or using an OLS with fixed effects does not alter the results.

Four different models have been provided. In Model 1, we focus on *Leftist Courts* and include only the variables directly related to the politicisation of the judiciary along with two control variables, *First Republic* and *Tangentopoli*. In Model 2, we add the other control variables related to parliamentary equilibria and the potential degree of corruption of each party. Models 3 and 4 are similar to Models 1 and 2 but focus on the size of right-wing judicial factions. The results are reported in Table 1.¹¹

The empirical analysis provides strong evidence for the role of ideology. The interaction between party position and ideological preferences within the judiciary is significant across all models, and this finding holds even after several control variables are included.

Figure 2, based on Model 2, provides a substantive interpretation of this result and plots the marginal effect of an increase in *Leftist Courts* as a party's ideological placement changes. When support for left-wing factions increases, courts shift to the left and prosecutors act more against parties on the right side of the political spectrum. For instance, any ten per cent increase in the share of MD (and *Movimento per la Giustizia*) raises the RAPs sent against centre-right parties by 1.5 points and the requests related to centrist parties by 0.5, compared with left parties, which do not

experience an increase in RAPs sent after growth in the support of left-leaning factions.

Politicisation not only affects left-wing courts' investigations. Models 3 and 4 confirm that ideology also matters in right-wing courts, although the effect is different. As the support for right-leaning factions increases, we observe a decrease in the rate of investigations of MPs of moderate and right-wing parties. Indeed, these parties seem to be protected by right-wing courts. As indicated in Figure 3, all else being equal, if the vote share of the rightist MI faction increases by ten per cent, right-wing parties will receive 1.2 per cent fewer requests to lift immunity than left parties.

Figure 4 provides a more substantive interpretation of these results. For the two most relevant parties in the Italian First Republic (1948–93), it displays the predictive

Table 1 Determinants of Judicial Investigations against MPs in Italy (1983–2013)

VARIABLES	(1)	(2)	(3)	(4)
<i>Party Position</i>	−0.019 (0.031)	−0.081*** (0.019)	0.060*** (0.022)	0.023 (0.020)
<i>Leftist Courts</i>	7.129** (2.803)	3.852* (2.322)		
<i>Leftist Courts × Party Position</i>	0.169* (0.090)	0.246*** (0.054)		
<i>Rightist Courts</i>			−11.734*** (3.288)	−7.258** (3.241)
<i>Rightist Courts × Party Position</i>			−0.150* (0.081)	−0.130* (0.076)
<i>First Republic</i>	3.862*** (0.593)	3.162*** (0.629)	3.274*** (0.452)	2.987*** (0.651)
<i>Tangentopoli</i>	1.787*** (0.366)	1.849*** (0.355)	1.676*** (0.314)	1.856*** (0.248)
<i>Coalition Size</i>		1.522 (1.097)		0.401 (0.932)
<i>Attitude Toward Judiciary</i>		0.248 (0.242)		0.106 (0.207)
<i>Years Spent in Office</i>		0.185*** (0.031)		0.186*** (0.035)
<i>Share of Southern MPs</i>		3.758*** (0.724)		4.163*** (0.903)
<i>Effective Number of Factions</i>		0.087 (0.181)		−0.009 (0.124)
Constant	−9.531*** (1.328)	−10.945*** (1.046)	−3.996*** (0.680)	−7.379*** (0.924)
Observations	344	344	344	344
AIC	0.118	0.136	0.116	0.136
BIC	−1964.935	−1939.856	−1965.859	−1939.807
Log pseudo-likelihood	−14.381	−12.319	−13.919	−12.344

Source: See section on Data. Dependent variable: Personal Computation of Richieste di Autorizzazione a Procedere.

Note: Fractional logit. Clustered standard errors in Parentheses. *** $p < 0.01$; ** $p < 0.05$; and * $p < 0.1$, two-tailed test.

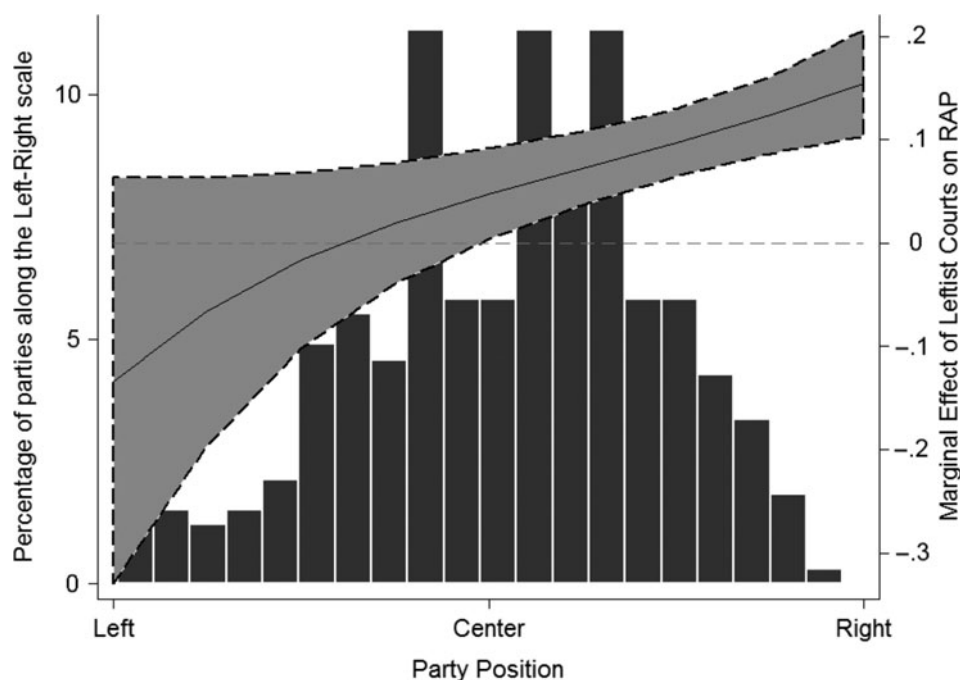


Figure 2 The Marginal Effect of Left-Wing Courts on Judicial Investigations Based on the Different Policy Positions of Italian Parties

Source: See section on Data. Dependent variable: personal computation of *Richieste di Autorizzazione a Procedere*.

Note: Model 2 in Table 1. Average marginal effects of *Leftist Courts* conditional on the values of *Party Position*. Other variables are set at their means. Dotted lines mark the 90 per cent confidence interval.

value of RAPs as support for MD, the leftist faction, grows. The number of RAPs received by the left-wing *Partito Comunista Italiano* (Italian Communist Party) (grey) is constant, whereas the prosecutions of members of the centre-right Christian Democracy (black) sharply increase when more judges support leftist positions. There is a similar pattern in the Second Republic: the number of RAPs against the centre-right coalition *Casa delle Libertà* (People of Freedom) sharply increases, while the growth of those against the centre-left *Democratici di Sinistra/Partito Democratico* (Democrats of the Left/Democratic Party) is trivial and the predictive value of RAPs for left-wing parties is never significantly different from zero.

Regarding the control variables, *Tangentopoli* and *First Republic* are both positive and significant, which indicates that the number of requests was higher during the First Republic, particularly in 1993. Two out of three variables related to the expected level of corruption within each party are also significant. The number of *Years Spent in Office* increases the number of judicial requests. Because of the higher potential for corruption, prosecutors intervene more frequently against parties that have been in

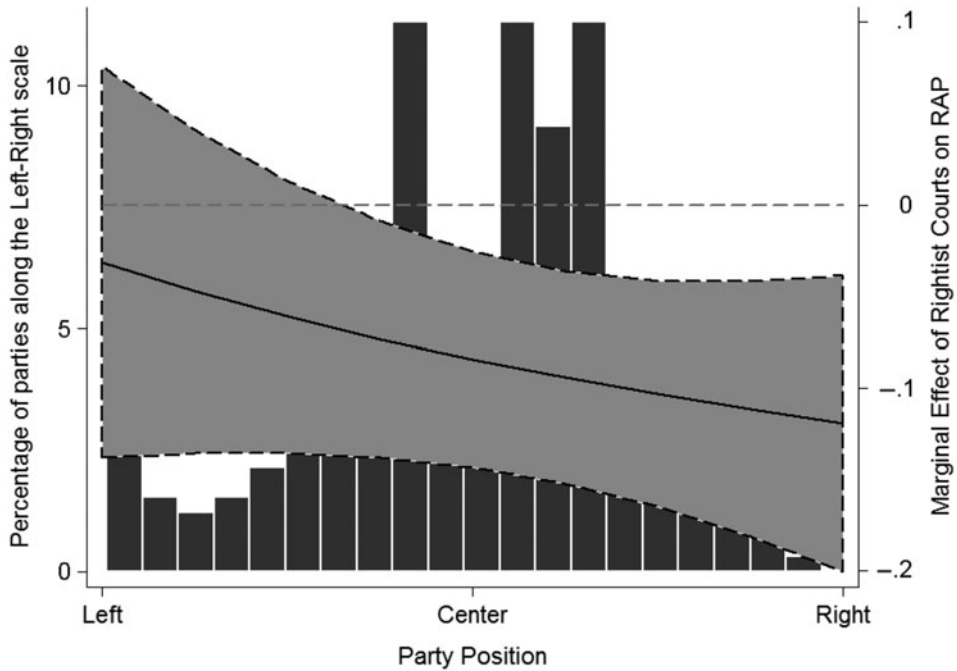


Figure 3 The Marginal Effect of Right-Wing Courts on Judicial Investigations Based on Different Policy Positions of Italian Parties

Source: See section on Data. Dependent variable: personal computation of *Richieste di Autorizzazione a Procedere*.

Note: Model 4 in Table 1. Average marginal effects of *Rightist Courts* conditional on the values of *Party Position*. Other variables are set at their means. Dashed black lines mark the 90 per cent confidence interval.

office for much of the previous decade. Similarly, parties rooted in the southern regions of Italy tend to be more involved in prosecutions, most likely because of the stronger role of clientelism and patronage in those areas of the country. Intra-party politics does not seem to matter. Finally, the effect of the variables related to Parliament is not significant. Neither *Coalition Size* nor *Attitude Toward Judiciary* indicates that Parliament is able to affect judicial activity against MPs.

Conclusion

This study examines the political basis of judicial activity. The effect of judicial politicisation is tested on the case of the Italian judicial system (1983–2013) through a dataset containing updated information on formal requests for prosecution that were sent to the Chamber of Deputies and the ideological positions of the factions within the judiciary, which are determined according to the vote share won by rival factions within the ANM.

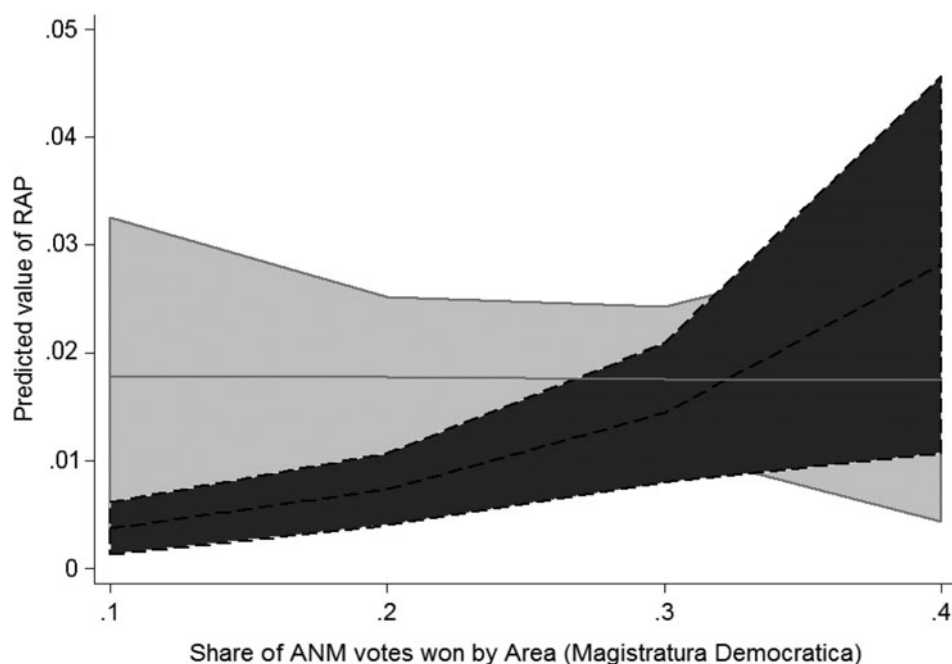


Figure 4 The Predicted Value of Judicial Investigations against Christian Democracy (Black) and the Italian Communist Party (Grey) Based on Differently Sized Left-Wing ANM Factions

Source: See section on Data. Dependent variable: personal computation of *Richieste di Autorizzazione a Procedere*.

Note: Predicted probabilities of investigations against Christian Democracy and the Italian Communist Party (with 90 per cent confidence interval) conditional on the values of *Leftist Courts*. Other variables are set at their means.

Our results provide evidence for the impact of prosecutors' ideological positions on judicial investigations, even after controlling for several variables related to the potential level of corruption within each party, such as the number of years spent in office, the connection with southern regions, and the degree of intra-party competitiveness. Moreover, our findings hold even when one considers the Italian First and Second Republics separately.

As for Berlusconi's claim that 'part of the judiciary has swept away an entire political class' and that MD 'formed a tendency which carried out political activity in the form of investigations, trials, sentences ... so as to attack political enemies' (Edwards 2005, p. 27), our findings indicate that this claim does not reflect the entire story. First, we show that politicisation of the judiciary began well before *Tangentopoli*. Second, the problem of politicisation does not involve only left-wing ANM factions.

In fact, the politicisation of the judiciary affects both sides of the ideological continuum, although judicial factions adopt different styles of behaviour. All else being equal, courts with more left-leaning members who support the ANM faction

Area (MD and *Movimento per la Giustizia*) act against right-wing parties more frequently. Conversely, courts with more right-leaning members tend to protect right-wing parties. When the MI vote share increases, judicial activity against these parties shrinks. These two styles of behaviour are consistent with the different approaches towards politicisation expressed by left- and right-wing ANM factions. Whereas *Area* overtly defines itself as a left-wing group and attacks rival parties, the politicisation of MI is more subtle and clandestine and consists of protecting right-wing parties by reducing the number of investigations involving them.

Despite such differences in style, if we assume a uniform distribution of corruption along the left–right dimension, both behaviours seem to reveal a bias in the direction of ideological preferences. However, because we do not know the actual latent distribution of corrupt politicians along the left–right scale and we can only adopt certain control variables as proxies, our findings suggest either that left-wing ANM factions over-attack right-wing MPs due to their ideological bias or that right-wing ANM factions over-protect right-wing MPs even when they are corrupt. In any case, at least one faction displays biased behaviour; thus, the politicisation of the judiciary seems to matter.¹²

The fact that judges' behaviour is affected by their ideological leanings may not be surprising. Previous studies have revealed similar results in other countries, particularly in the United States, where judges are often directly elected. This study extends those findings and demonstrates that a similar pattern applies to the Italian case, which is peculiar (and notable) because of the non-elective appointment of judges and the striking formal independence enjoyed by the Italian judiciary. Despite such peculiarity, the theoretical framework and the results of the present analysis can provide useful insights to understanding the relationship between politicians and judges in other political systems in which judges are organised in ideological factions.

Judicial politicisation would not necessarily threaten the quality of democracy if pluralism were guaranteed and a virtuous equilibrium were reached among left-leaning prosecutors investigating right-wing parties and vice versa. However, the strong autonomy of the judiciary combined with potential ideological biases might become troublesome with respect to equilibria among different political institutions. In fact, the absence of control mechanisms leads the judiciary to exploit its independence, but such independence does not necessarily imply impartiality.

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Notes

1. We use the term ‘judges’ to define public officers appointed to try cases in a law court, and the term ‘public prosecutor’ refers to public officials entitled to initiate legal proceedings against an individual or entity. Unlike in some other judicial systems, judges and prosecutors in Italy are selected by the same institution (the Higher Council of the Judiciary), and their career paths are not distinctly separate from one another.
2. The Constitutional Court has struck down most of these laws.
3. This issue was so salient that, in an attempt to re-establish its reputation in 1987, the ANM decided to prohibit its members from joining political parties.
4. For instance, famous members of the *Mani Pulite* (Clean Hands) team, such as Gerardo D’Ambrosio, Gherardo Colombo and Francesco Saverio Borrelli, were subsequently elected as MPs or openly affiliated with centre-left parties, whereas Tiziana Parenti quit the same team to support Berlusconi and was elected MP with Forza Italia (Go Italy).
5. We assume that investigations are randomly assigned to prosecutors at the trial court. In particular, as chief prosecutors are requested to focus on the efficiency of the administration of justice (on the duties of public prosecutors, see Minisci & Curreli 2011), we assume that they assign investigations to prosecutors who are not as busy investigating other cases.
6. Members of the judiciary cannot prosecute MPs for opinions expressed or votes cast in the exercise of their parliamentary duties. Parliament approved approximately 20 per cent of the requests between 1948 and 1987 (Cazzola 1988, p. 113) and approximately one-third between 1994 and 2013.
7. The results hold when using the ‘vanilla method’ developed by Gabel and Huber (2000) to estimate left–right positions. ILSD data are strongly correlated with alternative sources such as expert surveys (0.9) and Comparative Manifesto Project estimates (for details: Curini 2011; Curini & Ceron 2013).
8. For each debate, the speech released by the party leader (or by a relevant representative) plus the prime minister’s programme speech have been codified. The method adopted to codify speeches was similar to that employed by the well-known Comparative Manifesto Project (CMP) to analyse the contents of party electoral programmes (for a detailed description, see Budge et al., 2001). In each legislative speech, a number of quasi-sentences is identified, and each is assigned to pre-established categories that form the classification scheme. To better account for the Italian political context, the original 56 categories of the CMP dataset were increased to 68. The dataset contains the percentage of the total text of each legislative speech which addresses these categories and has been updated up and including December 2013. Given the high number of cabinets (61 in 67 years), ILSD data based on investiture speeches allow us to track changes in party policy positions on the RILE scale and on the justice dimension almost year by year. Furthermore, compared with CMP data, ILSD data enable us to assess the positions of parties that form between elections (i.e., due to party splits) and to distinguish parties that run the election as a cartel and split afterwards.
9. On the relationship between corruption and the electoral system, see Chang (2005), Kunicová and Rose-Ackerman (2005), Chang and Golden (2007) and Tavits (2007).
10. The index is measured by applying the formula of Laakso and Taagepera (1979) to intra-party politics.
11. The dataset and replication materials are available at <http://andreaceron.com>
12. Politicisation would not yield a bias in the investigations if we assumed only a higher number of left-wing corrupt politicians in districts with a majority of right-wing judges and vice versa. However,

such a distribution seems unlikely because we observe a lower number of left-wing judges in southern Italy (where centrist and right-wing parties are stronger) and a higher number in the two main 'red regions' (Tuscany and Emilia) where left-wing parties have long been in power.

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Appendix. Table A1 Summary Statistics of the Variables Employed in the Analysis

VARIABLES	Minimum	Maximum	Mean	Standard deviation
RAP	0	0.500	0.014	0.054
Party Position	– 59.790	37.720	– 1.600	20.362
Leftist Courts	0.089	0.484	0.334	0.099
Rightist Courts	0.072	0.457	0.249	0.063
First Republic	0	1	0.349	–
Tangentopoli	0	1	0.035	–
Coalition Size	0.006	0.600	0.437	0.171
Attitude Toward Judiciary	– 0.974	1	0.185	0.553
Years Spent in Office	0	10	2.910	3.154
Share of Southern MPs	0	1	0.299	0.198
Effective Number of Factions	1	4.861	1.382	0.716

Source: See section on Data. RAP: personal computation of Richieste di Autorizzazione a Procedere.