

Illegality and Italy's new government



The coalition that has just taken office in Rome did not begin well. But as [Andrea Capussela](#) writes, among its proposals is a plan to strengthen the rule of law, which could improve Italy's unfair and inefficient system. Its opponents lie not only among the country's establishment, however: tension also exists within the coalition between the Five Star Movement and the League. These obstacles can only be overcome through an open political battle, which could lead the coalition to a more productive path.



Giuseppe Conte with the new Italian government on 1 June, Credit: [Presidenza della Repubblica](#) (Public Domain)

One trait that distinguishes Italy from her Western peers is the gravity and coexistence of corruption, tax evasion, and organised crime. One encouraging trait of the new governing coalition, among many concerning ones, is its pledge to fight those criminal phenomena. But one member of it, the League, was often involved in [corruption scandals](#), has governed for nine years under the leadership of a [convicted tax evader](#), Silvio Berlusconi, and has generally been tolerant with white-collar crime.

Damaging though they are, those criminal phenomena are not the sole or even the main causes of Italy's worrying decline. In a [book](#) on this subject, I argue that they are components of the country's politico-economic equilibrium, whose logic is the primary cause of low growth and political discontent. Besides its immediate effects, therefore, achieving a perceptible reduction of illegality would both attest and strengthen the country's capacity to shift herself onto a fairer and more efficient equilibrium.

A legislative policy that weakened the rule of law

Corruption and tax evasion have been systemic problems for decades. In 1992-94, the political parties that had ruled Italy since 1948 were swept away by popular anger at the pervasive bribery unveiled by the so-called 'Clean Hands' judicial investigations. But the centre-right and centre-left coalitions that succeeded them were equally tainted by corruption, albeit to a different degree. Suffice it to say that they effectively sought to prevent a repeat of those investigations by passing a line of laws aimed at obstructing, not strengthening, the repression of white-collar crime (see, e.g., an earlier [post](#) on this blog).

Although respectable arguments were also used to defend this legislative policy, such as the autonomy of politics from the judiciary, the post-1994 political establishment undercut them by failing to clean its own house. To quote but one recent example, on 16 March 2017 a bipartisan senate majority [refused](#) to expel from its ranks, as the law required, a senator convicted – by an irrevocable third-instance judgment issued by the supreme court – of embezzlement of public funds. This goes some way towards explaining the high level of political distrust as well as the popularity of the Five Star Movement, whose foundational message was precisely a call for greater public integrity.

Criticism of the new coalition's anti-corruption proposals

This part of the programme elicited sceptical reactions not just in centrist and centre-right circles, those traditionally most closely associated with bribery and tax evasion, but also among centre-left ones. In part, the criticism is persuasive. For instance, the proposal to use US-style integrity tests – namely, having policemen disguised as businessmen offering bribes to public officials, to test their loyalty to the public good and punish those who accept – is certainly problematic.

More importantly, the coalition's overall approach suggests an excessive reliance on prison sentences, which ignores the deplorable conditions of some of Italy's prisons and neglects the questions that anyway exist on the effectiveness of imprisonment as a means to prevent crime and re-educate criminals (both arguments which do not concern only white-collar crime, naturally, but ought to stimulate a wider debate on criminal justice). Stiffer financial penalties and tougher rules on the confiscation of ill-gotten or unexplained assets would seem a better policy.

Other critiques are less well founded. One example is the [claim](#) that the coalition's plan to encourage whistleblowing is comparable to an autocracy's requirement that citizens inform against each other. But even those more reasonable reservations are often used as a lever to usher in a sweeping critique of the whole part of the programme devoted to the rule of law, which seems to target the very intention of fighting white-collar crime with greater determination than in the past.

The background: tax evasion and corruption

Little data is needed to set this criticism against its proper background. The total amount of taxes that are evaded each year is now [estimated](#) at between 7 and 8 per cent of GDP. This is equivalent to about one sixth of actual government revenue, a level considerably higher than in Italy's peers. Within that larger aggregate, VAT, which has a uniform EU-wide regime, allows a narrower but fairly reliable cross-country comparison: according to the latest [estimate](#), in Italy unpaid VAT is 28 per cent of theoretical revenue, a level twice the EU average and between two and three times higher than in Britain (10), France (14), Germany (10), and Spain (9).

Turning to corruption, all available indicators place Italy much closer to the average Balkan country than to her peers (see, e.g., figure 9 of this [post](#) on this blog). And, to quote but one pointer to the scale of the direct costs, the [European Commission](#) recently remarked that over the past two decades in Italy the per-kilometre construction cost of high-speed railway tracks was – at constant prices – between four and ten times higher than in either France, Japan, or Spain.

One important reason why white-collar crime is so widespread is that it is rarely punished. A comparison with one of the world's least corrupt countries, Finland, will suffice. [Council of Europe data](#) show that in 2015 the number of people serving a prison sentence for white collar crimes was about six times greater in Finland than in Italy, in per capita terms, and that, inversely, the share of the total population serving a prison sentence (for any crime) was 20 per cent greater in Italy than in Finland. This suggests that Italy's law-enforcement system is not comparatively lenient, but is particularly tolerant with white-collar crime: about seven times more tolerant than Finland's.

One important reason for this is the legislative policy I mentioned earlier. And although no equally egregious misuse of the legislative function was observed during the past parliament, tolerance for illegality nonetheless persisted. In December 2015, for instance, the (centre-left) government trebled – from 1,000 to 3,000 euros – the threshold within which cash payments are permissible. This choice, which reversed a policy of the 2011-13 technocratic government, is less anodyne than it might seem. As Kenneth Rogoff has persuasively [argued](#), in fact, limiting the use of cash can be an effective measure against tax and regulatory evasion: indeed, that same year France, where the shadow economy is less than half the size it is in Italy as a share of GDP, lowered that same threshold from 3,000 to 1,000 euros.

Public debate and credibility

Reasoned debate may therefore allow Italian public opinion to distinguish between the reasonable reservations raised against the coalition's rule-of-law programme, and those critiques that conversely disguise a defence of the status quo I just sketched. For the same reason, the coalition would have every interest in stimulating such a debate and imposing that programme on the nation's agenda.

I mentioned the League's tolerance for white-collar crime, however. Admittedly, this position was more closely associated with the party's previous leaderships. But the coalition's contract does contain a revealing sign of continuity, because it reproduces the League's electoral pledge of a one-off measure of 'fiscal peace'. This is an amnesty for tax evasion, in fact, which the League linked to its flat-tax proposal, which was in turn justified also with the argument that it will improve tax compliance. Even leaving the merits and the very feasibility of that proposal aside, the argument is very dubious. It seems more likely that a fresh amnesty will, just like the country's many past ones, raise the incentives to evade taxes. Especially if it will be accompanied by the lifting of any restriction on the use of cash, as the League's leader has [proposed](#) in one of his first speeches after taking up the function of interior minister.

Enacting such measures is also highly likely to undermine the coalition's proposed anti-corruption measures. For their effects largely depend on changing firms' and citizens' expectations on how the state will enforce those measures and how their own peers will react to them, and they will eschew corruption in appreciable numbers only if the state's determination to fight it is judged credible: but a state whose first act in the fight against white-collar crime is a tax amnesty is hardly credible. In other words, the tension between the defence of the status quo and the aspiration to change it, which traverses both society and, apparently, also the coalition, could sink this part of its programme.

A political battle: imposing the rule of law on the national agenda

Only an open political battle, fought before public opinion, can solve that tension credibly. And, at present, only the Five Star Movement can take up the flag of the rule of law and begin such a battle. But although such a move would flow directly from its foundational message, and would be certain to receive wide support among civil society, it is unclear whether the party has the ideas, the organisation, and even the will to wage that battle.

First, the party has obvious weaknesses. It lacks a recognisable political culture and a meaningful political selection system, in particular, and internal debate and democracy both seem very constrained. One consequence is that its strategy will be decided, in relative isolation, by a largely unaccountable leadership, whose competence and convictions are effectively untested.

Second, having acceded to national office, the party also appeared tactically inept. Despite being the coalition's senior partner, in fact, it was thoroughly side-lined by the League's activism, not just on migration policy. By opening a battle on the rule of law the Five Star Movement could regain the initiative, therefore, and push the League into the position of the defender of the status quo. For the same reasons, however, such an initiative could break up the coalition: and it is unclear whether in the eyes of the party's leadership the rule of law is a higher priority than retaining power.

Finally, the Five Star Movement is not untainted. It was involved in some corruption scandals: in Rome, most notably, which it has governed since 2016. And although this did not dent its emphasis on the rule of law, its response to the investigations – especially the [latest ones](#) in Rome – was not without ambiguity.

Should the Five Star Movement open that battle, those who desire Italy to shift toward a fairer and more efficient equilibrium might consider supporting it. For all this party's shortcomings, if its apparent determination to fight white-collar crime prevails against its own partisan interests, the League's likely obstruction, and the political establishment's critiques, two important consequences could follow: a potentially serious attempt to strengthen the rule of law would begin, which the country has needed for at least three decades, and this priority could also gradually impose itself on the rest of the political spectrum.

The legislative policy I mentioned earlier was only possible, for example, because the rule of law effectively lacked a constituency in parliament. This would change if the Five Star Movement won that battle, thanks to the broad popular support that it is certain to elicit, and thereby forced the rest of the political spectrum to bow to that priority.

Should the party duck that battle, conversely, the vast political space that the collapse of Italy's establishment had opened, and which was hitherto filled by the Five Star Movement, would begin to open again. For this party would have effectively abandoned the message that underpinned its spectacular rise: but the widespread aspiration for 'cleaner' politics, and for a fairer and more efficient equilibrium, would not vanish, and might well stimulate the emergence of better political alternatives.

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