

**The Determinants of Judicial Independence:
Evidence from the Italian Constitutional Court (1956-2002)**

*Nadia Fiorino**

Dipartimento di Sistemi e Istituzioni per l'Economia, Università degli Studi dell'Aquila
and Center for Research on the Economics of Institutions – Università Roma Tre

Fabio Padovano

Dipartimento di Istituzioni Politiche e Scienze Sociali, Università degli Studi Roma Tre
and Center for Research on the Economics of Institutions – Università Roma Tre

Grazia Sgarra

Centro Studi Confindustria
and Center for Research on the Economics of Institutions – Università Roma Tre

July 14, 2007

JEL Classification: D72, H1

Keywords: Judicial independence, political fragmentation, checks and balances, limited dependent variable analysis.

* Corresponding author, Nadia Fiorino, Dipartimento di Sistemi e Istituzioni per l'Economia, Università degli Studi dell'Aquila, Piazzale del Santuario 19, 67040 Roio Poggio - L'Aquila, ITALY. Tel: +390862434850; Fax: +390862434803; E-mail: fiorino@ec.univaq.it. Paper presented at the Seminars of the Center for Economics of Institutions, Università Roma Tre and the European Public Choice Society Meeting. We would like to thank Carlo Colapietro, Domenico da Empoli, Emma Galli, Luis Gonzalez, Roberto Ricciuti, Alessandro Terzulli, George Tridimas, Marco Ventura and Stephan Voigt for comments. The usual *caveat* applies.

Abstract

This paper tests the explanatory power of alternative theories on the determinants of judicial independence using annual and decision-based data on the Italian Constitutional Court. The estimates show that structural measures of judicial independence, such as the share of constitutional judges elected by the ranks of professional judiciary and the age of justices, are positively correlated with an independent behavior of the Court. Contrary to previous studies on a similar sample, we find that the Court matches a greater cohesion of the other government branches with more independent behavior, improving the effectiveness of the system of checks and balances.

1. Introduction

Interest in empirical analyses of the independence of Supreme (or Constitutional) Courts from other political bodies is growing parallel to the development of new theoretical explanations on the matter, starting from the seminal contribution by LANDES and POSNER [1975], to the more recent ones of MCNOLLGAST [1987], [1999], RAMSEYER [1994], TSEBELIS [2000] and those conceived in the economic theory of checks and balances [PERSSON, ROLAND and TABELLINI, 1997; PADOVANO, SGARRA and FIORINO, 2003]. Most empirical works focused on the American Supreme Courts, both at the Federal and the State level; tests based on non-American institutional settings are comparatively fewer, e.g., RAMSEYER and RASMUSEN [1997], SANTONI and ZUCCHINI [2004], FELD and VOIGT [2003], [2006] among others.

The Italian Constitutional Court provides an especially interesting sample for testing theories of the independence of Supreme Courts. While most theories are based on the idea that supreme justices outlive legislators or governments, in Italy the opposite case applies. Constitutional judges hold office for a non renewable 9 year term (Chief Justices for a much shorter one), while the political system is much more stable than that. From the end of World War II to the early 1990s, the Italian Constitutional Court operated within a parliamentary democracy and a so-called “blocked political system” [ZAGREBELSKI, 1997]. Italian governments were supported by the same coalition of parties, always led by the Christian Democrats, and often composed by the very same people. That because the Communist Party, the second largest political force in the Italian Parliament, was considered unsuitable to participate to the government, thereby making it impossible a real alternation of political forces in the executive, as well as in the highest-level institutional offices [PAOLINI and DOUGLAS SCOTTI, 1995; GRILLI, MASCIANDARO and TABELLINI, 1991]. Only after 1993, with the upheaval of the old parties and the birth of two new political coalitions of center-left (*Ulivo*) and center-right (*Polo*), has the Italian political system begun to resemble a two-party system with alternation in government. In this respect, the political upheavals of the 1990s represent

a structural break that supplies an interesting test for the robustness of theories of judicial independence. These changes might have affected the balance of powers between the executive, the legislative and the judicial branches of government, hence the *de facto* independence of the Court, over and above what the Italian Constitution foresees *de jure*. Finally, and more generally, the extension of empirical verification of models of judicial independence to other judicial systems increases the validity of these theories.

This paper aims to verifying what kind of factors, if any, affect the slack in the principal-agent relationship between the Italian Constitutional Court and the other two government branches, thereby assuring a certain degree of independence of the Court in its decisions and the functioning of a mechanism of checks and balances within the Italian institutional system. Specifically, this paper attempts to provide an econometric analysis of the most relevant determinants of structural independence indicated in PADOVANO, SGARRA and FIORINO [2003] and to compare the predictions of that model with others considered in the related literature, such as the special interest group theory of government [LANDES and POSNER, 1975] and the veto-players model [TSEBELIS, 2000]. The data refer to the decisions of constitutional illegitimacy of the Italian Supreme Court from 1956, when the Court first sat, to 2002.

The rest of the paper is organized as follows. Section 2 reviews the literature. Section 3 illustrates the main features of the Italian politico-institutional framework, the structure and decision making procedures of the Italian Constitutional Court. In Section 4.1 we describe the variables pertinent to the empirical restrictions emerged from the theoretical literature. We then present the results of estimates on both decision-based and annual data. Section 5 offers some concluding remarks.

2. The sources of judiciary independence: review of the literature

In this section we focus on the most relevant theoretical and empirical issues that arise from the economic literature on the sources of judiciary independence. We analyze three different strands of literature, namely the interest groups, the political economics and the veto players models.

Interest groups models focus on why, and to what extent, rational politicians guarantee independence to the judicial branch. LANDES and POSNER [1975] apply this approach to the determinants of the independence of supreme or constitutional courts. They argue that an independent judiciary is an institutional mechanism aimed at increasing the durability of the enacted legislation. Since the present value of legislative contracts between legislators and interest groups is a positive function of their durability, legislators have an *ex ante* interest to grant judges independence. They may do so by extending the length of judges' tenure and/or by insulating their selection and salaries from political interference. Landes and Posner base their argument on the observed fact that independent judges tend to interpret laws in terms of the intent of the enacting legislature, rather than the current one. An independent Court thus ensures that legislative acts outlive the enacting legislators. The durability of legislative deals thus increases and so does the amount of resources and support that current legislators may elicit from interest groups in return to the enacted laws.

ANDERSON, SHUGART and TOLLISON [1989], SPILLER and GELY [1992] and GORINI and VISCO COMANDINI [1998] tested the LANDES and POSNER's [1975] model, and others in the same vein [CRAIN and TOLLISON, 1979; SALZBERGER, 1993; BOUDREAUX and PRITCHARD, 1994] in a wide variety of contexts and samples. The results generally show some degree of empirical support for the hypothesis.

Yet, interest groups theories fail to explain how the independence of the judicial power arises from - or is limited by – the *interactions* between the judiciary and the other two government branches. LANDES and POSNER [1975] features two agents only, while MCNOLLGAST [1987] among others show how the executive and the legislative may affect the behavior of the Court. Political

economics models of the separation of powers and political accountability are the natural starting ground for this analysis. PADOVANO, SGARRA and FIORINO [2003] elaborate a theory of how judicial independence enhances political accountability and assures the operation of the system of checks and balances. In presidential democracies an independent judicial branch uses its information advantage over voters to forbid abuses of power by the executive, which fraudulently diverts a positive amount of resources from voters' welfare. A fully independent judicial branch can subtract from the executive these unlawfully appropriated resources, thereby ensuring accountability and restoring the welfare of the voters. In parliamentary democracies the independent judiciary obtains these results by making collusive agreements between the executive and the legislative unstable. In both regimes an accommodating judiciary instead participates to the sharing of the rents with the other government branches, disregarding the interests of the voters. PADOVANO, SGARRA and FIORINO [2003] relate judicial independence to the possibility for the legislative and executive branches to affect the selection and the career paths of judges. The lower such a possibility, the higher is the independence of the judiciary. To the extent that the legal (or constitutional) system makes the career path of judges independent from the other branches, it does not pay for judges to be accommodating.

In their analyses of the English Courts of Appeal and of the Israeli Supreme Court, SALZBERGER and FENN [1999] and SALZBERGER [2003] offer empirical support to predictions akin to those of PADOVANO, FIORINO and SGARRA [2003]. They find that the rules that secure the independence of individual judges and the institutional framework in which the courts operate affect the jurisprudence of the courts¹. BRETON and FRASCHINI [2003] look at the offices that the Presidents and the Vice-presidents of the Italian Constitutional Court served after the end of their tenure and conclude that the Italian Court is as independent as any other corresponding court of other

¹ Among the elements of individual independence, the most significant are rigid arrangements regarding tenure, immunity from wage decreases and judges' age. With respect to the institutional environment, the presence of special procedures for the appointment and the promotion of judges and the mechanisms for the allocation of cases to judges carry the greatest explanatory power.

democratic countries. BRETON and FRASCHINI [2003], however, do not provide any statistical test for their claim.

In TSEBELIS [2000] the behavior of the judiciary depends on the policymaking of the “veto players”, i.e., the political agents whose agreement is required to implement a legislative act. Applied to legislative production [TSEBELIS, 2000], the veto players model consists of a sequential game in two steps. Given a legislative *status quo* that results from an agreement between the legislative veto players, the Court decides whether to modify it through a decision of constitutional (il)legitimacy. If the decision of the Court falls within the Pareto set of the legislative veto players, the game ends. If, instead, the decision lies outside the Pareto set, the players may modify the move of Court agreeing on a new proposal that changes the legislative *status quo*. This model assigns the Court essentially a passive role, with a low checks and balances potential, since the probability that the Court’s decision may be the end of the game is conditional to the size of the Pareto set of the legislative veto players. Thus, the higher the number of the legislative veto players or the wider the ideological distance that separates them, the larger is the Pareto set and the higher is the probability of an overthrowing of the legislative *status quo* by the Court. The impossibility for the legislative veto players to change the *status quo* may lead justices to be more active and independent from the other political bodies. We should then observe a higher percentage of decisions of constitutional illegitimacy when the fragmentation and/or the ideological polarization of the legislative veto players increase².

SANTONI and ZUCCHINI [2004] test TSEBELIS’ theory [2000], [2002] on data drawn from the Italian institutional and political framework and focus especially on the relationship between the Parliament and the Constitutional Court. They reach two main conclusions. First, the introduction of the Court in 1956 appears correlated with lower legislative output and lower likelihood of policy

² MCNOLLGAST [1999] use a similar multistage model to explain how the executive and legislative branches strategically create new federal judgeships to affect the equilibrium doctrine of the Supreme Court.

changes – a fact, however, which can also be explained by the nearly absolute majority of parliamentary seats held by the Christian Democrats during the first two legislatures, which end more or less at the same time. Second, the level of intervention by the Court, used as a proxy of judicial independence, is an increasing function both of the number of veto players (political parties) in the Italian Parliament and of their ideological differences. The most evident theoretical shortcoming of this analysis is the consideration of judicial independence as a function of the effective number of parties in the Parliament and of the power game played among them only. This is at best an *indirect* way to catch such independence, as it is not based on structural characteristics of the Court, such as tenure length, procedures of appointment of the justices, justices' age and the like. As we shall see, these characteristics are not constant through time. At the empirical level, Santoni and Zucchini test the veto players model in isolation, without comparing its predictions with those of alternative models of judicial independence. This makes it impossible to evaluate the relative explanatory power of the veto players model and exposes their findings to the risk of observational equivalence with other theories. Furthermore, the jurisprudence of the Italian Constitutional Court has not been stable, having been affected by exogenous factors, like the need to focus on pre-Republican legislation, the cases of impeachment of ministers and the call for absorbing the backload of cases in different periods of its activity. A more correct empirical analysis should consider a greater set of theoretical contributions and pay attention to the stability of the estimated correlations through time.

Recent empirical research stress the importance of political competition [RAMSEYER and RASMUSEN, 1997; HANSEN, 2002] and of features of structural independence *à la* PADOVANO, SGARRA and FIORINO [2003] [HAYO AND VOIGT, 2007; FELD AND VOIGT, 2003, 2006] to explain judicial independence.

The literature reviewed in this section suggests that a fruitful line of empirical research on judicial independence must satisfy two conditions. First, it must pay attention to the institutional

details of the jurisprudence of the court, focusing on formal and substantial provisions of independence and the effects of changes thereof on the behavior of the court itself. Second, it must compare the predictions of alternative theories of judicial independence. To satisfy the first condition, a single country sample seems more appropriate than a cross-country. The aim of this paper is to advance on both dimensions, using data about the Italian Constitutional Court.

3. A closer look at the Italian Constitutional Court

3.1. The Italian Constitutional Court in the Constitution. Judicial independence is an important feature of the Italian political and institutional system. The Constitution of 1948 asserts that "...The judiciary constitutes an autonomous and independent branch of government not subject to any other" [art. 104 sec. 1]. Yet, as for any other general principle embodied in the Constitution, what matters is how political and institutional interactions have been shaped in accordance with such a principle. In other words, both the "formal" and the "material" Constitution, i.e., the transposition of the Constitution into a real context, should be considered. This aspect calls for empirical analyses of the decisions of judicial bodies and of their actual interactions with the other two government branches, the legislative and the executive. Furthermore, as the Italian judicial system is organized hierarchically, with higher courts being able to overrule decisions of lower courts, it is important to analyze the independence of the highest court, the Constitutional Court. To clear the analysis from problems of semantics, in this paper we deem the Constitutional Court "independent" insofar as it is not the agent of either the executive, or the legislative branch, or of both.

The textual analysis of the current Italian Constitution suggests that the Italian Constitutional Court enjoys a significant degree of independence from the other two branches [ZAGREBELSKI, 1997; PALADIN, 1998]. The main role of the Constitutional Court is to protect citizens from unconstitutional actions and rules by the other bodies (Art 134). To this end, the Constitution provides conditions of structural independence to Constitutional justices, such as: the longest tenure

among the Italian public officials (9 years, Art. 135 sec. 3); a constitutional protection for “... conditions, forms, and terms for challenging the constitutionality of a law and (for) the independence of the justice” [art. 137, sec. 1]; the unappealability of the Court’s decisions (art. 137 sec. 3); and, last but not least, the general conditions that “...justice is administered in the name of the people” [art 101, sec. 1] and that “... judges are only subject to the law” [art 101, sec. 2].

3.2. Composition of the Court. Fifteen justices compose the Italian Constitutional Court. They must come from the ranks of either active or retired judges, or professors of law or lawyers with at least twenty years of career. They hold the office for 9 years and cannot be reappointed.

One third of the total of 15 is elected with a simple majority by the members of the three highest Courts (the Supreme Court of Cassation, the Council of State and the Court of Audit)³; another third by the two Houses of Parliament (Chamber of Deputies and Senate) in joint session; the President of the Republic appoints the remaining third (art. 135 of the Constitution). A qualified majority of two-thirds of the total membership of the two Houses is required for the election of Constitutional justices. After three ballots this qualified majority is reduced to three-fifths. During the so-called First Republic (1948-1993), the presence of such a high *quorum* induced the main parties to reach an informal agreement for the election. On the basis of such an agreement two candidates were usually chosen by the Christian Democratic Party, one by the Communist party, one by the Socialist party and another one by the smallest parties [RODOTÀ, 1999]. In 1993 the introduction of the majoritarian system and a wave of scandals overturned the Italian political framework. The result was the creation of two coalitions and, as regards to the election of constitutional judges, the disappearance of the informal agreement. Yet, an agreement between the governing and the opposing coalition is still needed, as the majority usually finds it difficult to elect five judges without the support of the opposition.

³ The Supreme Court of Cassation elects three justices, while the Council of State and the Court of Audit one each. If no candidate obtains the majority after the first ballot, those with largest number of votes in the first ballot are admitted to the second. The number of participants to the second ballot equals twice the number of justices that every court elects; hence six for the Court of Cassation and two for the Court of Audit and the Council of State.

As for the five justices appointed by the President of the Republic, constitutional theorists [ZAGREBELSKY, 1997] maintain that the procedure that the Constituent Assembly established in 1946 ensures the autonomy of the decision of the President. Differently from the usual decrees of the President of the Republic (the so-called D.P.R.), which are proposed by the government or by single members thereof and then signed by the President, the decree that appoints the constitutional judges is of Presidential initiative and signature; it only needs to be countersigned by the Prime Minister. However, the autonomy of the President of the Republic to select the justices may in fact be more limited than what constitutional theorists assert. One must bear in mind that both Chambers (as well as representatives of the Regional Councils) elect the President of the Republic by absolute majority after three ballots. He may thus be seen as the agent of the parliamentary majority, even as regards to the appointment of justices. Informal consultations with the political parties and the government in fact precede the appointment of the five “Presidential” justices.

In order to guarantee the independence of the Court, the Italian law establishes a number of requirements, in addition to the procedures that regulate their election and appointment. Constitutional justices cannot be members either of the Parliament, or of the Regional Councils; they cannot exercise professional, commercial or industrial activities or be managers or auditors of for-profit corporations. Neither they can work as prosecutors or as university professors or participate to the activities of political parties. Once their term expires, justices are reinstated in their previous positions – or to any other activity - with a lifetime pension (in addition to the regular salary, unchanged in real terms). Even though many justices leave the Court in old age, many of them are called to other “prestigious” positions after their service in the Constitutional Court [BRETON AND FRASCHINI, 2003].

3.3. The Court’s decision making process. The details of the procedures through which the Court in fact reaches its decisions allow understanding the changing degrees and the actual sources of structural independence of the Constitutional Court. First, the 15 justices elect a President among

themselves who holds office for a renewable 3-year term. The President holds a significant agenda setting power: he sets the agenda of the cases to be reviewed, selects the “Justice Reporter” (*Giudice Relatore*) whose task is to prepare the first draft of each decision and holds a double voting weight in case of ties.

Another important driving feature of the Court’s decision-making process is the so-called “Panel of Justices” (*Collegio di Giudici*). Although the Court formally decides as one acting body – dissenting opinions are not published – a Panel of Justices does in fact take each decision. The Panel is appointed anew by the President of the Court for every case, is composed by at least 11 justices, and decides by simple majority on the draft decision submitted by the judge reporter. The minimum size of 11 ensures that a coalition of 5 judges of the same extraction (presidential, parliamentary or judicial) may never hold the absolute majority. This is a first evidence that the appointment process is considered relevant for the type of decisions that the Court makes; in other words, it is expected to influence the sort of jurisprudence and the degree of independence of the Court. The structural independence of the Court thus varies for every decision according to the composition of the Panel; it is not a constant characteristic. Absences may affect the independence of the Court too; they may cause the effective composition of the Panel at the moment of the decision to differ from the one originally selected by the President; hence they may affect the relative weights of each type of justice within the Panel and, by that, the relative independence of the Court. Vacancies play a similar role to absences, but on a somewhat greater scale. Justices who end their tenure are not always promptly substituted. This is more often the case for parliamentary or presidential justices than for “judicial” ones. During its history, the Court has gone through times, often much longer than a year, when less than 15 justices stood. This thwarted the equal weights of each type of justices within the Court, thus affecting its expected independence.

Figure 1. Yearly average of % of justices elected by the Higher Courts serving in Panels

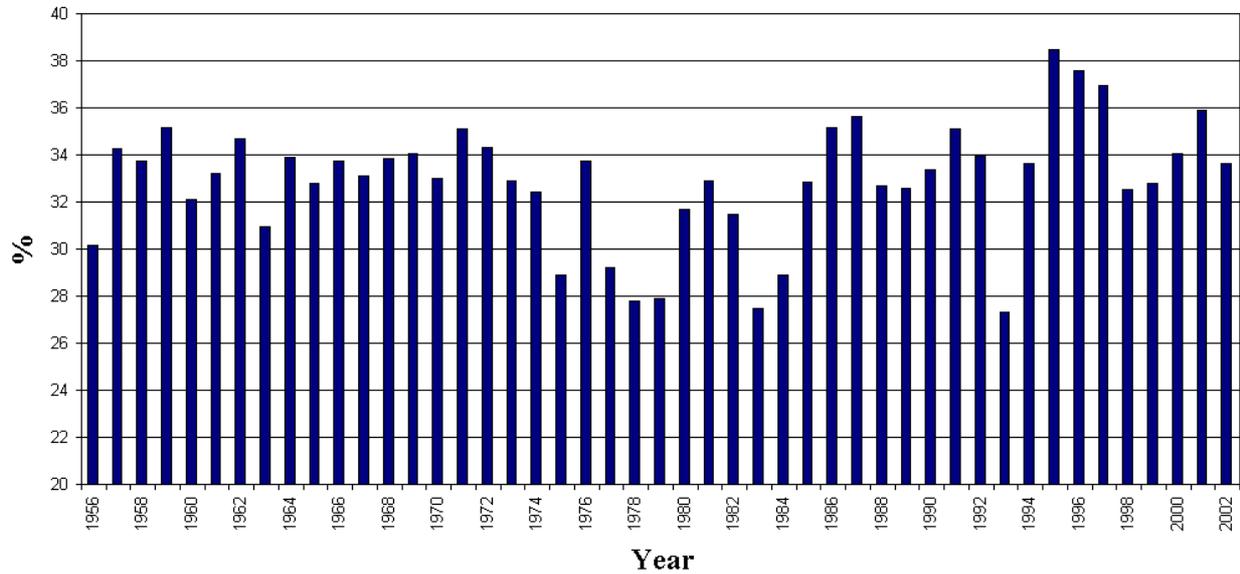


Figure 2. % of justices elected by the Higher Courts per decision

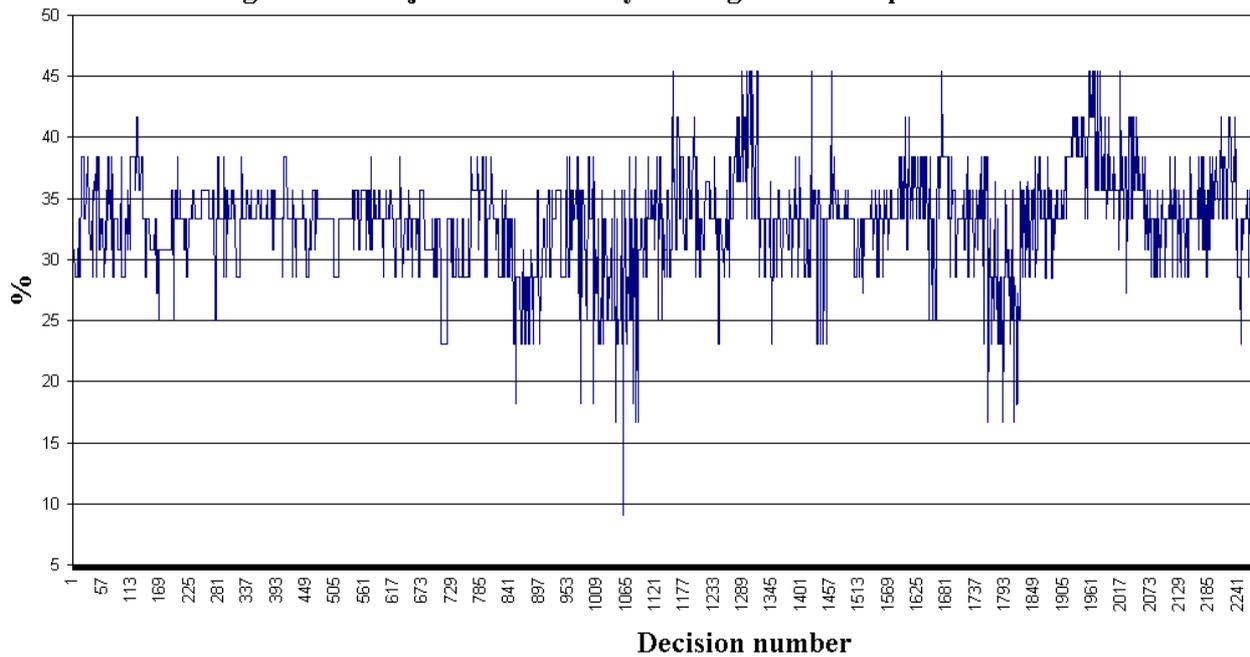


Figure 1 and 2 show the variability of the composition of the Panel of justices. Figure 1 shows the yearly averages of the shares of justices elected by the three Highest Courts participating in the panels of every year. The percentage varies from 27% in 1983 to almost 39% in 1995. Figure 2 in a sense disaggregates those averages by displaying the share of judges elected by the three Highest

Courts participating in each panel for every decision of the Court. Incidentally, from 1956 to 2002 the Court has promulgated 2,267 decisions relevant for our analysis. Here the minimum value is below 10% and the maximum above 45%. Even more telling is the persistently high volatility of the series. The internal composition of the panels varies significantly from decision to decision. Hence, the claim that the independence of the Court cannot be assumed to be a constant characteristic is empirically relevant.

4. Empirics

4.1. Selection and description of the raw variables. The review of the literature and the description of the structure and functioning of the Italian Constitutional Court allow selecting a limited set of variables that, according to each theory, capture a distinct determinant of judicial independence. All models point to a different source of independence. It is possible to relate each explanatory variable of our empirical model to a single theoretical explanation, avoiding problems of observational equivalence.

PADOVANO, SGARRA AND FIORINO [2003] stress that the impossibility of the executive and legislative branches to affect the selection process and the future career paths of the justices is an important source of independence for the Court. We relay these theoretical indications to the actual functioning of the Italian Constitutional Court by means of two variables: *SHAREMAG* and *AGE*. *SHAREMAG* is the percentage of Constitutional justices elected by the highest Courts who are present in each Panel when the decision is voted⁴. To reinforce the explanatory power of our test, we estimate the same model using also *SHAREPRES* and *SHAREPARL*, respectively, the percentage of justices appointed by the President of the Republic and by the Parliament. Theory suggests that justices elected by the highest Courts are relatively more independent from political interferences than those elected by the political parties in the Parliament or appointed by the

⁴ Data sources are described in the Appendix.

President of the Republic. In other words, we compare a population of potentially independent justices against a population of potentially dependent ones. The variable *AGE* is the age of the President of the Constitutional Court, calculated at the beginning of his mandate. It is an indicator of independence for the Italian Constitutional Court much in the same way as life tenure is for the American Supreme Court. When tenure length is limited, justices must seek another position afterwards, e.g. ministries and membership of authorities. As the other government branches control many of these offices, justices may try to obtain them in return of an accommodating jurisprudence. Relatively older Presidents should be less likely to seek another public office after their service in the Court, and thereby less prone to bend the jurisprudence of the Court to the interferences of other government bodies. We focus on the age of the President only because of his agenda setting powers. Since the President allocates the cases to the various members of the Court and appoints the justice reporter, he holds greater influence than the regular justices. As FELD and VOIGT [2003, p. 8] put it, “... in such an institutional environment, it could be interesting to try to “buy” just the chief justice”⁵.

To capture the implication of the theory of LANDES and POSNER [1975], we control for the durability of the legislative acts that undergo the review of the Court. Specifically, we use the square of the number of days elapsed between the date of the promulgation of the law and the date when the President of the Court sitting for the decision received his justiceship. We call this variable *TIMELP*⁶. All else equal, higher values of *TIMELP* indicate greater durability and, according to theory, higher degrees of Court independence.

TSEBELIS’ [2000] veto players model is the third theory considered in our analysis. The empirical restriction is that the independence of the Court is a function of the dimension of the Pareto set of

⁵ We have also tried *POSTOCC*, a dummy equal to 1 when the President of the Court has taken another public office after the end of his justice tenure. It has performed worse than *AGE*, its continuous variable counterpart.

⁶ In the decision-based model we square the difference in order to have only positive numbers; some laws declared illegitimate by the Court were approved by the Parliament *after* the President of the Court became a justice. In the annual model we consider the yearly average of the variable. We have also estimated the same models removing the negative values of *TIMELP* from the sample and leaving the values unsquared. The results did not change significantly.

the legislative veto players. We proxy such dimension with the Herfindhal index of the fragmentation of parties in the government coalition, named *HGOV*⁷. War of attrition models [ALESINA and DRAZEN, 1991; PADOVANO and VENTURI, 2001] suggest that the “power” of a coalition (governing or opposing) increases with the concentration of its parliamentary seats. The higher the share of seats that a single member of the coalition holds, the lower is the variety of interests that the coalition must represent, and the smaller is the Pareto set of the coalition⁸. Therefore, the more concentrated is the government coalition, the higher is the probability that the government changes the legislative *status quo*. This index is distributed in the [0, 1] interval. It equals 1 in one-party majority parliamentary governments, while approaches 0 when the number of parties tends to infinity. The closer to 1 is *HGOV*, the more concentrated is the government coalition and the closer to its lower limit is the Pareto set of the legislative veto players; and vice versa. According to theory, a larger Pareto set endows the Constitutional Court with more possibilities to intervene.

Finally, we take into consideration changes in the institutional, political and legislative environment that might have occurred with the transition from the so-called First to the Second Republic, approximately around 1993. We do so by means of a dummy variable, *SECREP*, which takes the value of 0 between 1956 and 1992 (First Republic) and 1 from 1993 to 2002 (Second Republic).

Our measure of Court independence, the dependent variable, takes two forms. In the decision-based analyses, it is a matrix of three vectors of dummy variables S_{1i} , S_{2i} and S_{3i} . S_{1i} takes the value of 1 if each decision i is of constitutional legitimacy and 0 otherwise; S_{2i} equals 1 when the decision

⁷ To calculate this index, we sum the seats of the party i in the Chamber of Deputies and in the Senate, calculate the percentage s that these represent on the total number of seats held by the government coalition in the Parliament and compute the Herfindhal index: $HGOV = \sum_{i=1}^g s^2$ where the superscript g is the total number of parties in government coalition. We have also considered the concentration of the opposition (*HOP*), as discussed in PADOVANO AND VENTURI [2001], but it never turned out statistically significant.

⁸ We have also tried a measure of ideological polarization of the Italian government coalitions, from WOLDENDORP, KEMAN and BUDGE [1993, 1998], but it never showed up statistically significant in the estimates. The likely explanation

i is *in parte qua*, i.e., it declares the illegitimacy only of sections of a law and the legitimacy of other sections, and 0 otherwise; S_{3i} is 1 if the Court decides for constitutional illegitimacy and 0 otherwise. The objects of the decisions are the acts approved by the legislative and executive branches, namely primary laws, legislative decrees and law-decrees. Finally, we limit our analysis to the decisions *in via incidentale* (*incidental review procedure*) namely, those regarding issues raised to the Court from ordinary tribunals, as they are the most relevant for the issue of the independence of the Court⁹.

In the annual estimates, the dependent variable, named $ILLSENT_t$, is the ratio of all decisions of constitutional illegitimacy on the total number of decisions of the Court for every year t . Since each decision may contain a plurality of judgments, i.e. it can establish the legitimacy of a part of a law and the illegitimacy of another, and the decision *in parte qua* are in fact two decisions, in the annual analyses we calculate $ILLSENT_t$ by singling out all judgments that each opinion renders.

We choose the decisions of constitutional illegitimacy to proxy judicial independence for three main reasons. First, the literature generally uses this sort of decisions because they modify the current legislation in a definitive manner and, consequently, the equilibria between interest groups/voters and politicians.

Second, we reject the alternative view that takes a higher rate of judicial invalidation as an outcome of either political miscalculation or strategic choices by the disputants [Priest and Klein, 1984]. As for political miscalculations, this view moves from the idea that rational politicians would not approve statutes that they expect the Court to strike down. This interpretation, however, does not easily apply to the Italian case because: *i*) the high rate of variability in the internal composition of the panels of justices cannot be anticipated by policy-makers; *ii*) the time elapsed between the

is that between 1948 and 1993 there has been no alternation in government of the two main parties: the Christian Democrats were always in the government and the Communist Party at the opposition. Parties were thus induced to follow opportunistic, rather than ideological, policies in their strategic interactions.

⁹ We do not consider the decisions *in via principale* (principal review procedure), which deal with conflicts of interest between different levels of government, because, given their nature, they are not strictly related with the topic of our analysis. We also exclude the so called *ordinanze* (ordinances), as they are related to previous decisions by the Court.

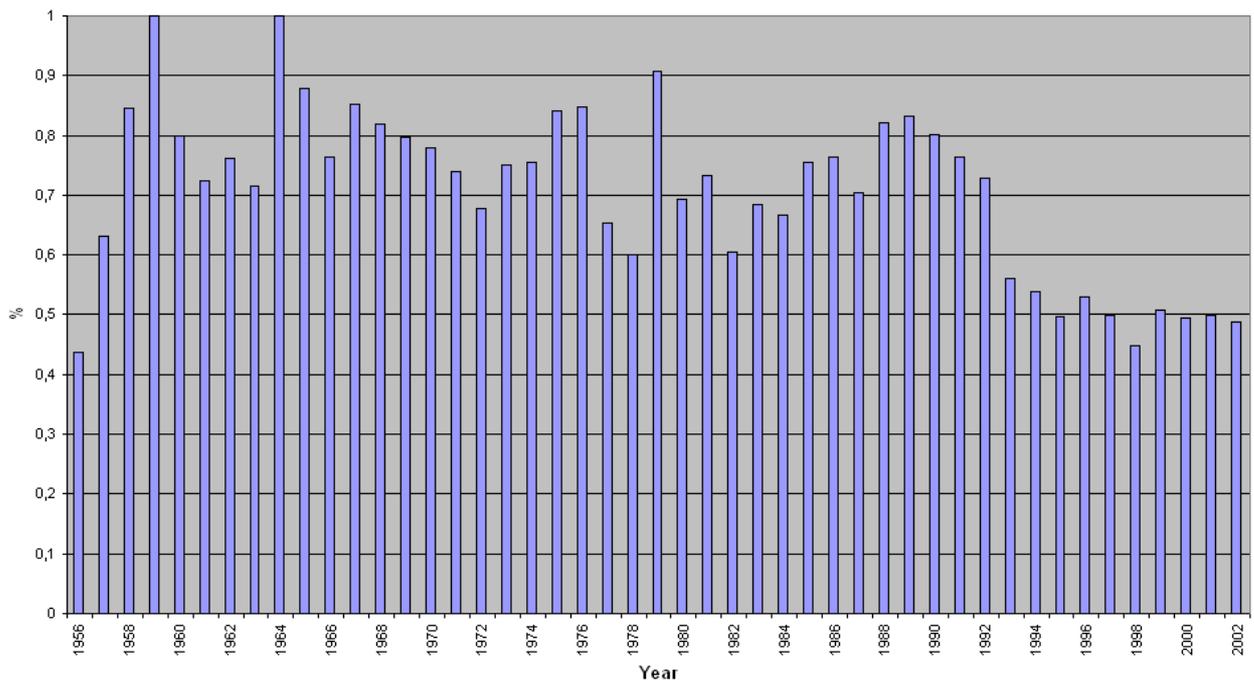
approbation of a law and the (possibly adverse) decision of the Court is generally very long. Politicians would thus prefer to enact a statute that voters want now, although they deem it likely that the Court will strike it down in the future. At least, they would gain short run electoral consensus. As for the strategic behaviour of disputants, one must bear in mind that the Italian Constitutional Court does not adopt a *certiorari* procedure. First, it is a local tribunal, not the original disputants, to decide to submit a case of potential illegitimacy to the Court. A justice evaluates whether the submission is plainly unfounded; else the Court must take on the case. At this point the justice reporter is selected and the panel of justices appointed. This multistage decision process makes it very difficult for the original disputants to form rational expectations about the final decision of the Court. PRIEST and KLEIN's [1984] claim that strategic disputants go to the Court when they are almost sure to win thus does not apply to the Italian context.

Third, it must always be kept in mind that the executive and legislative branches have always the lower cost alternative to abolish the law directly or to simply pass another law that resolves differently, rather than having the Court declaring the statute illegitimate. For all these reasons, decisions of constitutional illegitimacy can be viewed as the tool in the hands of the Court to oppose the will of the other government bodies, to enforce Constitution against the legislative and executive branches of government; in other words, to act *independently* from political interferences.

The consideration of all types of decisions that the Court may undertake in reviewing legislation makes our analysis more adherent to reality; it also distinguishes our dependent variable from that of SANTONI and ZUCCHINI [2004], who just focus on the decisions of constitutional illegitimacy. Truly, the Constitutional Court also has other means to innovate the legislative *status quo*; it may for instance reject a particular interpretation of the law through an interpretative decision. Although interpretative decisions as an instrument of jurisprudence are gaining importance and are used with increasing frequency, they are more difficult and arbitrary to model as a variable. We then exclude them from our analysis. In order to provide an outlook of the dynamics of the dependent variable,

figure 3 reports the yearly averages of the percentages of decisions of constitutional illegitimacy. The minimum value of the series is 44% in 1956, whereas in 1959 and 1963 the Court was particularly strict, deciding always for illegitimacy.

Figure 3. % of decisions of constitutional illegitimacy per year



As a higher percentage of decisions of constitutional illegitimacy indicates a greater independence of the Court, the expected signs on the coefficients for *SHAREMAG*, *AGE* and *TIMELP* are positive. A negative sign on *HGOV* is consistent with Tsebelis' [2000] view of a passive role for the Court, while a positive sign shows that the Court does counteract the acts of the legislative veto players. Finally, because no theory exists about the effects of the institutional and political changes taken place with the Second Republic on the behavior of the Constitutional Court, the sign on the *SECREP* dummy is open to interpretation.

We have tested the theories by means of two different estimating techniques: a multinomial logit model on decision-based data, to account for the three types of decisions that the Court may promulgate, and a maximum likelihood estimation on annual data, where the dependent variable

(the annual percentage of decisions of constitutional illegitimacy) has been censored between 0 and 100. Several reasons suggest the use of two estimation procedures in this analysis. First, since some of the raw variables are available on a yearly basis (such as *TIMELP* and *HGOV*), while others are originally decision-based (*AGE*, *SHAREMAG*, *SHAREPRES*, *SHAREPARL* and the dependent variable), we want to check whether the results are sensitive to the normalization adopted. Second, and more generally, the use of two estimating techniques provides a test of the robustness of the results. Third, on the one hand, the multinomial logit model yields estimates of the relationship between the dependent variable and the regressors using the most disaggregated level of observation: 2,267 observations in the sample are a guarantee of efficient estimates. On the other hand, the estimates on yearly data allow uncovering whether there is continuity in the jurisprudence of the Court¹⁰.

Table I shows some descriptive statistics of the variables normalized on an annual basis.

TABLE I - Descriptive statistics of the annual data (number of observations: 47)

<i>Variables</i>	<i>Mean</i>	<i>Median</i>	<i>Maximum</i>	<i>Minimum</i>	<i>St. Deviation</i>
ILLSENT	0.71	0.73	1.00	0.44	0.14
TIMELP	89,459	82,394	207,538	20,533	48,909
HGOV	0.62	0.6	1.0	0.23	0.18
HOP	0.49	0.50	0.87	0.005	0.16
AGE	66.15	68.0	78.0	46.0	9.89
SHAREMAG	32.93	33.21	38.49	27.31	2.54
SHAREPARL	32.87	33.38	38.06	23.62	3.01
SHAREPRES	34.35	34.19	38.38	29.16	2.04

¹⁰In the sample we have included decisions that invalidate legislation enacted before the promulgation of Republican Constitution (1948), by the Monarchy or the by fascist legislature. We have also estimated the model without those decisions, in order to take into consideration the so-called “de-fascistization” operated by the Court. As the results were similar, we have preferred to include all the decisions in order to have a larger set of observations.

4.2. Multinomial logit estimates. In order to exploit the full information of our sample – 2,267 decisions and related observations – we estimate a multinomial logit model where the dependent variable is a $3 \times 2,267$ matrix that takes the value of 1 in each column vector if the decision is, respectively, of constitutional legitimacy, *in parte qua* or of constitutional illegitimacy and 0 otherwise. In this model the estimated coefficients indicate how each explanatory variable affects the probability to obtain each type of decision, holding the other influences constant. The multinomial specification expands the explanatory power of the analysis with respect to empirical models that focus only on decisions of constitutional illegitimacy. The specification of the model is as follows:

$$\Pr(S_i = j) = \frac{\exp(\alpha_{0j} + \alpha_{1j}x_{1i} + \dots + \alpha_{nj}x_{ni})}{\sum_{k=1}^K \exp(\alpha_{0k} + \alpha_{1k}x_{1i} + \dots + \alpha_{nk}x_{ni})} = P_{ij} \quad (1)$$

where $j=1, 2, 3$ indicate the alternative forms of decisions, i is the number of decisions by the Court and k enumerates the regressors x ($K=5$ in the regressions illustrated below). Note that the parameters α are specific to each type of decision, so there are $j \times k$ parameters in this specification. In order to be all identified, however, the parameters must be normalized somehow [GREENE, 1997, chapter 19.7]; we thus impose the conditions that all parameters of the first alternative (constitutional legitimacy) be zero: $\alpha_{01}=\alpha_{11}=\alpha_{21}=0$. The estimated coefficients on the second and third alternatives indicate incremental probabilities. Finally, x_1 relates to *TIMELP*, x_2 to *SHAREMAG* (or *SHAREPRES* or *SHAREPARL*, according to the model), x_3 to *HGOV*, x_4 to *AGE* and x_5 to *SECREP*.

The estimates are displayed in Table II. A first general result is that the probability the Court decides for illegitimacy ($\text{Log}(P_3/P_1)$) is broadly in line with the theory of PADOVANO, SGARRA and FIORINO [2003]. In model 1 both restrictions *AGE* and *SHAREMAG* are positive and statistically significant, as expected. The coefficient on *AGE* demonstrates that panels with a higher percentage of relatively old justices - who are less likely to be interested in gaining future positions after the

end of their tenure and thereby less prone to accommodate the decisions of the other government branches – are more likely to take a decision of constitutional illegitimacy. Similarly, and importantly, panels with a higher percentage of justices elected by the professional judges also tend to take decisions of constitutional illegitimacy. In other words, a greater share of “justices that come from the profession” enhances the probability that the Court acts independently. The results on *SHAREPRES* (Model 2) and *SHAREPARL* (Model 3) reinforce the validity of the predictions of PADOVANO, SGARRA and FIORINO [2003]. The coefficients on these regressors are not significant; the share of justices appointed by the President of the Republic or elected by the Parliament are not relevant for the probability of an independent behavior of the Court. On the other hand, the coefficients on *AGE* are significant with the expected positive sign in both models. None of these regressors, instead, exerts a statistically significant influence on decisions *in parte qua* ($\text{Log}(P_2/P_1)$). This implies that the predictions of the theory are in fact specific to the decisions of the Court that signal a greater independence.

TABLE II. Multinomial logit estimates of equation (1)

Dependent variable: S_{ji}

Variable	Model 1				Model 2				Model 3			
	$Log(P_2/P_1)$		$Log(P_3/P_1)$		$Log(P_2/P_1)$		$Log(P_3/P_1)$		$Log(P_2/P_1)$		$Log(P_3/P_1)$	
	Coefficient	<i>p</i> -value	Coefficient	<i>p</i> -value	Coefficient	<i>p</i> -value	Coefficient	<i>p</i> -value	Coefficient	<i>p</i> -value	Coefficient	<i>p</i> -value
TIMELP	-2.18 ⁻⁰⁰⁶	0.00	-7.47 ⁻⁰⁰⁷	0.02	-2.19 ⁻⁰⁰⁶	0.00	-7.50 ⁻⁰⁰⁷	0.02	-2.18 ⁻⁰⁰⁶	0.00	-7.21 ⁻⁰⁰⁷	0.02
SHAREMAG	0.002	0.87	0.02	0.05								
SHAREPRES					-0.02	0.16	0.01	0.28				
SHAREPARL									0.02	0.12	0.008	0.47
HGOV	0.69	0.07	0.36	0.33	0.90	0.02	0.45	0.23	0.80	0.03	0.70	0.04
AGE	0.003	0.67	0.02	0.00	0.01	0.08	0.02	0.00	0.003	0.39	0.03	0.00
SECREP	2.25	0.00	-1.41	0.00	2.28	0.00	-1.39	0.00	2.25	0.00	-1.40	0.00
Log likelihood		-1663.2				-1661.1				-1665.3		
χ^2		1654.7 ^{***}				1658.8 ^{***}				1650.5 ^{***}		

Note: ^{***} stands for 1% level of significance, while ^{**} indicate a 5% significance level.

The coefficient on *HGOV* is not statistically significant, except when combined with *SHAREPARL*. In this case the sign on the coefficient is positive, which contrasts the prediction of the veto players model. Actually the estimates point out that a smaller dimension of the Pareto set, captured by a higher concentration of the government coalition, makes it more likely that the Court modifies the legislative *status quo*. In other words, when the decision making power of government coalition rises, the Court seems to respond by increasing the frequency of decisions of constitutional illegitimacy. The positive sign on *HGOV* can then be interpreted as the reaction of the Italian Constitutional Court against the decisions of the standing government coalition and as an indication of the functioning of the system of checks and balances within the Italian institutional system. Finally, the combination of the estimated coefficients on *AGE* and *SHAREMAG*, on the one hand, and on *HGOV*, on the other, sheds light on why SANTONI and ZUCCHINI [2004] obtain an opposite result about the behavior of the Court. Their model omits variables that directly capture the structural determinants of the independence of the Italian Constitutional Court and that hold a relevant explanatory power. The veto player model appears not only inconsistent with facts, but also insufficient to explain the behavior of the Court.

The negative sign on *SECREP* suggests that the probability of obtaining decisions of constitutional illegitimacy has recently decreased. Possibly, the exceptional turnover in the political forces after 1993 increased both the new legislative contracts between legislators and interest groups and the tendency of the Court to preserve the durability of these contracts, thereby lowering the probability of decisions of illegitimacy. An alternative explanation hinges on the proliferation of independent authorities that took place in Italy at the beginning of 1990s after the privatization of the state-owned enterprises, which expanded the demand for “*super partes*” technicians, thereby raising the possibility of obtaining a post-Court job for Constitutional justices. As either the government or the Presidents of the two Chambers of the Parliament make these appointments, it

may be the case that this new labor market in fact reduced the overall independence of the Court, which is consistent with a negative on *SECREP*¹¹.

The estimated coefficient on *TIMELP* is statistically significant but, being negative, contrasts with the LANDES and POSNER's [1975] predictions. Especially in the early years, this may be due to the need of the Court to focus on laws enacted before the promulgation of the 1948 Constitution, in order to ensure the consistency of the existing legislation with the spirit of the new fundamental charter [RODOTÀ, 1999]. Moreover, the Italian sample lacks the political and institutional stability that the LANDES and POSNER [1975] model presupposes; it may thus offer an unsuitable test for such a theory. Breaking the sample in different periods is of little help, as it is difficult to determine when (and whether) the Court was through dealing with legislation inconsistent with the spirit of the Republican Constitution of 1948. Be that as it may, the size of the coefficient on *TIMELP* is very small.

4.4. Stochastic properties of the annual series. Before estimating the structural equation on annual data, we analyze the stochastic properties of the series in order to a) establish whether $ILLSENT_t$ and each explanatory variable used in the regression model share a long or a short run relationship, b) specify the model so to avoid problems of spurious regression. To check whether the series are stationary or not, we use a standard Augmented Dickey-Fuller test (ADF) performed with a constant, a trend and a constant or none of the two, as appropriate. The Schwarz Bayesian Criterion suggests a lag structure of order 1 for all tests. A significant test statistic rejects the null hypothesis of nonstationarity of the series. The results, presented in Table III, allow concluding that none of the variables presents a unit root. The model must thus be specified with all the series in their levels.

¹¹ We thank a referee for this suggestion.

TABLE III. Unit root tests.

<i>Variable</i>	<i>ADF test statistics</i> (lags in parentheses)	<i>Specification</i>	<i>Order of integration</i>
ILLSENT	-4.55 (1)***	Trend and constant	I(0)
HGOV	-3.57 (1)**	Constant	I(0)
TIMELP	-4.71 (1)***	Trend and constant	I(0)
SHAREMAG	-4.02 (1)***	Constant	I(0)
SHAREPARL	-5.19 (1)***	Trend and constant	I(0)
SHAREPRES	-3.36**	Constant	I(0)
AGE	-3.09 (1)**	Constant	I(0)

Note: *** stands for 1% level of significance, while ** indicate a 5% significance level.

The theory and the tests performed in the last section lead us to specify the following equation:

$$\begin{aligned}
 ILLSENT_t = & \alpha_1 ILLSENT_{t-1} + \alpha_2 HGOV_t + \\
 & + \alpha_3 SHAREX_t + \alpha_4 TIMELP_t + \alpha_5 AGE_t + \alpha_6 SECREP_t + \varepsilon_t
 \end{aligned} \tag{2}$$

where ε denotes the error term and X indicates the share of the justices elected by the magistracy (*SHAREMAG*), the Parliament (*SHAREPARL*) or appointed by the President of the Republic (*SHAREPRES*), as appropriate. The lagged dependent variable is introduced to capture a possible persistence in the jurisprudence of the Court. There are reasons to expect continuity and reasons that suggest otherwise. The existence of common values and ideologies among justices and the agenda setting power of the President are possible causes of continuity of the jurisprudence of the Court. On the contrary, we may not expect persistence because a) the composition of the Panels changes from case to case, and the expected independence of the Court with it; b) the cases risen to the examination of the Court present a great deal of randomness.

Table IV reports the estimates of equation (2) by maximum likelihood with the dependent variable censored between 0 and 100.

TABLE IV. Maximum likelihood estimates of equation (2)

Dependent Variable: $ILLSENT_t$

Variable	Model 4		Model 5		Model 6	
	Coefficient	<i>p</i> value	Coefficient	<i>p</i> value	Coefficient	<i>P</i> value
$ILLSENT_{t-1}$	0.40	0.00	0.41	0.00	0.48	0.00
$TIMELP_t$	-1.16^{-06}	0.08	-8.93^{-07}	0.24	-1.64^{-06}	0.03
$SHAREMAG_t$	0.009	0.00				
$SHAREPRES_t$			0.006	0.11		
$SHAREPARL_t$					0.003	0.38
$HGOV_t$	0.12	0.06	0.16	0.02	0.145	0.08
AGE_t	0.0007	0.50	0.002	0.11	0.022	0.05
$SECREP_t$	-0.218	0.00	-0.19	0.00	-0.185	0.00
Log likelihood	54.41		49.81		49.37	
S.E.R	0.084		0.09		0.09	
N. of censored obs.	0		0		0	
N. obs.	47		47		47	

The estimated coefficients in equation (2) are almost always consistent with the related theory. Specifically, the coefficient on $TIMELP$ is, again, negatively correlated to the dependent variable and significant in all regression but Model 5, which features the share of presidential judges. Consistently with PADOVANO, SGARRA and FIORINO [2003], a higher percentage of justices elected by the magistracy in the panel that takes the decision ($SHAREMAG$, Model 4) is positively correlated with higher percentages of decisions of constitutional illegitimacy. In other words “magistracy justices” enhance the independence of the Court. Conversely, the coefficients on

SHAREPRES (model 5) and *SHAREPARL* (model 6) are not statistically significant. The estimated coefficients on *AGE* in the various models follow an interesting pattern. In model 4, where *SHAREMAG* is introduced, the age of the President of the Court does not have an additional effect on the percentage of decisions of constitutional illegitimacy. In model 5 and 6, instead, where the effects of *SHAREPRES* and *SHAREPARL* are considered, *AGE* becomes positive and is borderline significant: specifically, the p-values are 0.11 in Model 5 and 0.05 in Model 6. The age of justices and their extraction from the magistracy rather than from the political bodies are substitutes in assuring an independent behavior by the Court.

The coefficient on *HGOV* is positive and statistically significant in all models, thus reinforcing the results and interpretation of the estimates in the multinomial logit model. It must be kept in mind that *HGOV* as a raw variable is an annual series, so it performs best in regressions with yearly averages. Moreover, a positive coefficient on *HGOV* is consistent with the positive ones on *AGE* and *SHAREMAG* and can be considered as a further support to the PADOVANO, SGARRA and FIORINO [2003] theory. Finally, the positive and significant coefficient on the lagged dependent variable indicates persistence in the Court jurisprudence, while the negative sign on *SECREP* suggests that the number of decisions of constitutional illegitimacy has recently decreased. Two are the possible rationales for this trend. First, the exceptional turnover in the political forces after 1993 has increased the new legislative contracts between legislators and interest groups; the Court tries to keep the durability of these contracts high by reducing the number of decisions of illegitimacy. Second, for most of this period the Court suffered from two to three vacancies, which decreased its output.

5. Concluding remarks

On the basis of the model of PADOVANO, SGARRA, and FIORINO [2003], this paper analyses which factors, if any, contribute to make the Italian Constitutional Court independent in his rulings

so to effectively assure the functioning of the system of checks and balances. The results of both decision and annual based estimates point out that elements of structural independence, such as the presence of justices elected by professional judges rather than by government branches, and the age of justices, as a proxy of their will to seek other offices after their tenure, increase the independence of the Court. As a consequence, independence must not be considered as a constant characteristic, but a feature that changes according to the contingent relevance of these determinants. Moreover, the direct consideration of elements of structural independence shows that previous findings on the behavior of the Court, based on a single theory that measures independence in terms of the behavior of other political actors, such as SANTONI and ZUCCHINI [2004], are unsatisfactory. On the other hand, this paper provides a time series analysis of a single country, and our findings cannot be directly compared with those of cross-country studies on judicial independence, such as HAYO and VOIGT [2007].

Further research should focus on the changes of the behavior of the Court following major political and institutional transformations, like those occurred in Italy in the early 1990s, should try to include a broader class of instruments of jurisprudence of the Court in the explanatory process and possibly look at the behavior of other institutions within the judicial branch of government.

References

- ALESINA, A., AND A. DRAZEN, [1991], "Why Are Stabilizations Delayed?," *American Economic Review*, 81, 1170-1188.
- ANDERSON, G. M., W. F. SHUGART, AND R.D. TOLLISON [1989], "On the Incentives of Judges to Enforce Legislative Wealth Transfers," *Journal of Law and Economics*, 32, 215-228.
- BOUDREAUX, D.L., AND A.C. PRITCHARD [1994], "Reassessing the Role of the Independent Judiciary in Enforcing Interest-Group Bargains," *Constitutional Political Economy*, 5, 1-21.
- BRETON, A., AND A. FRASCHINI [2003], "The Independence of the Italian Constitutional Court," *Constitutional Political Economy*, 14, 319-333.
- CRAIN, W.M., AND R.D. TOLLISON [1979], "Constitutional Change in an Interest-Group Perspective," *Journal of Legal Studies*, 8, 165-75.
- FELD, L. P., AND S. VOIGT [2003], "Economic Growth and Judicial Independence: Cross Country Evidence Using a New Set of Indicators," *European Journal of Political Economy*, 19, 497-527.
- FELD, L.P., AND S. VOIGT [2006], "Making Judges Independent – Some Proposals Regarding the Judiciary," pp.251-287 in: R. Congleton and B. Swedenborg (eds.), *Democratic Constitutional Design and Public Policy - Analysis and Evidence*, MIT Press: Cambridge.
- GORINI, S., AND S. VISCO COMANDINI [1998], "Profili di Analisi Economica della Crisi della Giurisdizione Civile in Italia," *Rivista di Politica Economica*, 88, 61-102.
- GREENE, W. H. [1997], *Econometric Analysis*, McMillan Publishing Co: New York.
- GRILLI, V., D. MASCIANDARO, AND G. TABELLINI [1991], "Political and Monetary Institutions and Public Financial Policies in the Industrial Countries," *Economic Policy*, 13, 342-392.
- HANSEN, F. A. [2002], "Is There a Politically Optimal Level of Judicial Independence?," Department of Economics, Montana State University, mimeo.

- HAYO, B., AND S. VOIGT [2007], “Explaining de facto judicial independence,” *International Review of Law and Economics*, (forthcoming).
- LANDES, W. M, AND R. A. POSNER [1975], “The Independent Judiciary in an Interest-Group Perspective,” *Journal of Law and Economics*, 8, 875-901.
- MCCUBBINS, M. D., R. G. NOLL, AND B. R. WEINGAST (MCNOLLGAST) [1999], “The Political Origins of the Administrative Procedure Act,” *Journal of Law, Economics, and Organization*, 15, 180-217.
- MCCUBBINS, M. D., R. G. NOLL, AND B. R. WEINGAST (MCNOLLGAST) [1987], “Administrative Procedures as Instruments of Political Control”, *Journal of Law, Economics, and Organization*, 3, 243–77.
- PADOVANO, F., G. SGARRA, AND N. FIORINO [2003], “Judicial Branch, Checks and Balances and Political Accountability,” *Constitutional Political Economy*, 14, 47-70.
- PADOVANO, F., AND L. VENTURI [2001], “Wars of Attrition in Italian Government Coalitions and Fiscal Performance 1948-1994,” *Public Choice*, 109,15-54.
- PALADIN, L. [1998], *Diritto Costituzionale*, Cedam: Padova..
- PAOLINI, M., AND F. DOUGLAS SCOTTI [1995], *Da Badoglio a Berlusconi*, SugarCo.: Milano.
- PERSSON, T., G. ROLAND, AND G. TABELLINI [1997], “Separation of Powers and Political Accountability,” *Quarterly Journal of Economics*, 112, 1163-1202.
- PRIEST, G. L., AND B. KLEIN [1984], “The Selection of Disputes for Litigation,” *Journal of Legal Studies*, 13, 1-55.
- RAMSEYER, J. M. [1994], “The Puzzling (In)dependence of Courts: A Comparative Approach,” *Journal of Legal Studies*, 23, 721-747.
- RAMSEYER, J.M., AND M.E. RASMUSEN [1997], “Judicial Independence in a Civil Law Regime: The Evidence from Japan,” *Journal of Law and Economic Organization*, 13, 259-286.
- RODOTÀ, C. [1999], *Storia della Corte Costituzionale*, Laterza: Bari.

- SALZBERGER, E. [2003], "Temporary Appointments and Judicial Independence - Theoretical Analysis and Empirical Findings from the Supreme Court of Israel," *Israel Law Review*, forthcoming.
- SALZBERGER, E., AND P. FENN [1999], "Judicial Independence: Some Evidence from the English Court of Appeal," *Journal of Law and Economics*, 42, 831-847.
- SALZBERGER, E. [1993], "A Positive Analysis of the Doctrine of Separation of Powers, or: Why Do We Have an Independent Judiciary?," *International Review of Law and Economics*, 13, 349-79.
- SANTONI, M., AND F. ZUCCHINI [2004], "Does Policy Stability Increase the Constitutional Court's Independence? The Case of Italy During the First Republic (1956–1992)," *Public Choice* 120, 439-461.
- SPILLER, P. T., AND R. GELI [1992], "Congressional Control or Judicial Independence: The Determinants of U.S. Supreme Court Labor Relations Decisions, 1949-1988," *RAND Journal of Economics*, 23, 463-491.
- TSEBELIS, G. [2000], "Veto Players and Institutional Analysis," *Governance*, 13, 441-474.
- TSEBELIS, G. [2002], *Veto Players: Foundations of Institutional Analysis*, Princeton University Press: Princeton.
- WOLDENDORP, J., H. KEMAN, AND I. BUDGE [1993], "Political Data 1945-1990. Party Government in 20 Democracies," *European Journal of Political Research*, 24, 1-119.
- WOLDENDORP, J., H. KEMAN, AND BUDGE, I. [1998], "Party Government in 20 Democracies: An Update (1990-1995)," *European Journal of Political Research*, 33,1-119.
- ZAGREBELSKY, G. [1997], *La giustizia costituzionale*, Il Mulino: Bologna.

Appendix: Data sources

Data on the decisions, on the laws that the Constitutional Court reviews and on the judges who are present in each Panel of Judges are available on the website of the Constitutional Court, www.cortecostituzionale.it.

SHAREMAG, *SHAREPRES*, *SHAREPARL* and *TIMELP* have been calculated based on data by RODOTÀ [1999] and Corte Costituzionale (for the years up to 2002), as they indicate whether the President of the Court is nominated by the Parliament, the President of the Republic or elected by the magistracy and when he has been appointed as justice. The data on parliamentary used to calculate *HGOV* are from Senato della Repubblica Italiana (various years) and Camera del Deputati della Repubblica Italiana [1994]. BRETON AND FRASCHINI [2003] is the source of *AGE* and of *POSTOCC*.