

ARTICLE

## Judicial Populism and Corruption Prosecutions in the *Mani Pulite* Operation

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### Abstract

I provide a new analytical framework to understand the effectiveness of corruption prosecutions in the so-called *Mani Pulite* (Clean Hands) operation by showing how this operation was rooted in a populist interpretation of criminal rules and criminal procedure. The Clean Hands operation represented a successful breakthrough against the vast and complex corruption system that had sustained Italian politics for decades. I show that prosecutors in the Clean Hands operation interpreted legal rules through the lens of a deep-seated hostility between a vague conglomerate of “corrupt elites” and “virtuous citizens.” This populist interpretation of criminal and procedural rules introduced significant legal innovations that empowered judicial actors against systemic corruption by creating unprecedented incentives for defendants to cooperate with legal authorities. Consequently, the judicial professionals leading the Clean Hands operation also felt the need to shield themselves against retaliation for the use of these novel approaches to corruption prosecution by bringing their fight before the court of public opinion. To this end, the Clean Hands prosecutors made use of targeted media interventions to rally public support around their investigation and protect their work from political interference.

**Keywords:** Judicial Populism; Corruption Prosecutions; *Mani Pulite*

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In May 1992, a large group of citizens gathered in Milan's main square with banners and signs to show support for an ongoing investigation into a massive bribery scheme. The so-called *Mani Pulite* (Clean Hands) operation was finally bringing to light the corruption system that had permeated Italian politics for more than fifty years. The prosecutorial team leading the operation uncovered a vast bribery scheme involving civil servants, businessmen, and elected officials at every government level. In the end, the Clean Hands prosecutorial team achieved 1,254 convictions (Di Nicola 2003, 120; Manzi 2023, 154). Among these, 609 convictions resulted from *patteggiamento* and *rito abbreviato* (Di Nicola 2003, 120; Manzi 2023, 154).<sup>1</sup>

The symbolic march from the Milan courthouse to the city's main square celebrated the individuals in the Clean Hands prosecutorial team, which the crowd praised like celebrities by chanting their names and asking them to go all the way (Ravelli 1992; Barbacetto, Gomez and Travaglio 2012, 32–33). The crowd that gathered in Milan's Piazza del Duomo felt that their grievances about the pervasive degree of corruption poisoning Italian politics had found an answer in the work of the Clean Hands prosecutors. One of the signs carried by protestors stated: "Institutions belong to the people, not to bribe lords."<sup>2</sup> Thus, the work of the Clean Hands prosecutorial team gave voice to the crowd's outrage against "partitocracy," or political parties' pervasive control over state agencies and state bureaucracy, which was the very foundation of the Italian corruption system (LaPalombara 1989, 215–16; Lazar 2013, 324).

The public mobilization in support of the Clean Hands prosecutors speaks to the unique features of this investigative effort. Not only did the Clean Hands prosecutors achieve a long-awaited breakthrough against the corruption system, but they also introduced a novel and highly effective legal strategy against corruption crimes and rallied unprecedented levels of public support around them. In this article, I rely on several sources of data, such as semi-structured interviews with prosecutors and journalists, in addition to extensive archival research into national newspapers and the journals of local civil society organizations, to explore the unique features of this new type of legal interpretation with populist features. I show that this form of "judicial populism"<sup>3</sup> fueled the aggressive prosecution of systemic corruption in the Clean Hands operation and produced the latter's unprecedented breakthrough against the Italian corruption system.

The Clean Hands operation relied extensively on a novel interpretation of criminal rules and criminal procedure based on an antagonistic understanding of the relationship between politics and society—the well-known dichotomy "us versus

<sup>1</sup> *Patteggiamento* and *rito abbreviato* can be considered the closest equivalent of plea bargains within the Italian legal system. William Pizzi and Luca Marafioti (1992) translate "patteggiamento" as "bargain" (22) and "rito abbreviato" as "summary trial" (23). Andrea Di Nicola (2003, 115) considers corruption charges under Articles 317, 318, 319, 319ter, 320, and 321 of the Italian Penal Code, c. p. art. 317, 318, 319, 319ter, 320, 321, which cover *concussione* (roughly translated as "forced participation in corruption"), *corruzione attiva* (active participation in corruption), *corruzione passiva* (passive corruption), and *istigazione alla corruzione* (inducement to corruption).

<sup>2</sup> The sign read "Le istituzioni sono della gente, non sono dei signori della tangente" in Italian (Ravelli 1992; author's translation).

<sup>3</sup> As I explain in more detail later in the article, Italian prosecutors are part of the judicial branch. For this reason, I apply the terms "judicial" and "prosecutorial" interchangeably throughout the article.

them" that characterizes populism of any ideological stripe. For instance, new legal concepts such as *dazione ambientale* (environmental sanction) essentially rendered differences in criminal responsibility between bribe givers and bribe receivers legally irrelevant in light of both actors' acceptance of the corruption system's informal rules (Manzi 2023, 145–46).<sup>4</sup> This conceptualization fit the populist understanding of "corrupt elites" collectively responsible for harm caused to the "virtuous citizens." At the same time, considering every actor equally responsible for their participation in the corruption system afforded prosecutorial actors a new informal way of negotiating charges depending on a defendant's willingness to "switch sides" and aid prosecutors in their efforts (Manzi 2023, 146). Therefore, this populist legal strategy was also prone to introducing legal innovations that significantly empowered prosecutors against systemic corruption.

Furthermore, the unprecedented success of the Clean Hands prosecutors also called for a new style of handling investigations that would simultaneously counteract attacks from the political class and strengthen popular support for the anti-corruption operation. This new style of prosecutorial behavior extended to actions that clearly defied traditional expectations about prosecutorial conduct. Above all, the Clean Hands prosecutors did not shy away from interactions with the press, which led to an unprecedented information cycle about the ongoing investigation into the corruption system, partially as a result of targeted media interventions propped by judicial professionals. Consequently, public opinion rallied around the Clean Hands prosecutors as the leading figures in an ongoing fight against the corrupt Italian "partitocracy" (LaPalombara 1989, 215–16; Lazar 2013, 324).

The focus on judicial populism and its application to the Clean Hands investigation provides a new perspective on this crucial juncture in recent Italian legal history and the reasons for its success. Extant analyses of the Clean Hands operation tend to focus less on its legal aspects and more on the surrounding institutional factors. For instance, Carlo Guarneri (2003) explains the Clean Hands operation's success as the result of the extraordinary degree of institutional autonomy guaranteed to Italian prosecutors. However, his analysis completely disregards the novel ways in which the Clean Hands prosecutors applied criminal rules to corruption investigations. Salvatore Sberna and Alberto Vannucci (2013), on the other hand, consider some of the legal aspects inherent in the Clean Hands operation, but their analysis only highlights the prisoner's dilemma that ensued from the application of criminal rules adopted by the Clean Hands prosecutors. Therefore, Sberna and Vannucci do not explore the nature of this new type of legal interpretation. In this article, I explore the Clean Hands prosecutors' novel interpretation of criminal rules and highlight its populist features. In doing so, my analysis sheds light on how this new legal interpretation could produce such unprecedented effects.

Finally, Donatella Della Porta (2001, 4, 16) asserts that prosecutorial behavior in the Clean Hands operation clearly represented an instance of "role substitution" mentality where prosecutors took upon themselves a political mission that naturally

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<sup>4</sup> Milanese prosecutors used this new legal concept to describe what they believed to be the systemic nature of corruption. In their opinion, corruption had become an inescapable necessity that actors needed to engage in if they wished to participate in any business transaction (Di Pietro 1991; Manzi 2023, 146).

pertains to other political actors—namely, to extirpate systemic corruption from Italian politics (see also Manzi 2023, 147). Della Porta's analysis rightfully focuses on some unique features of prosecutorial behavior in the Clean Hands operation (Manzi 2023, 5, 147–48). The analysis in this article builds on Della Porta's (2001) assertions and clarifies the unique features of prosecutorial behavior in the Clean Hands operation through the paradigm of judicial populism. Thus, my analysis provides a new framework through which to understand prosecutorial success in the Clean Hands operation by showing how a new populist legal strategy helped produce this long-awaited breakthrough against the Italian corruption system.

### **The many meanings of populism and its application to corruption prosecutions**

Recent political events have fueled scholarly inquiry into populism once again, rekindling interest in an already burgeoning literature on the topic (Levitsky and Ziblatt 2018; Norris and Inglehart 2019). However, there has been comparatively little scientific discussion around the application of categories and concepts borrowed from this literature to judicial behavior and jurisprudence. Current uses of the term “judicial populism” seem to describe a type of judicial decision-making that centers on public sentiments concerning the law and its application. Richard Jochelson and Kirsten Kramar (2014), for instance, use the term “judicial populism” when reviewing the Supreme Court of Canada’s jurisprudence on admitting evidence at trial. Within this context, Jochelson and Kramar define judicial populism as a court’s intention and capacity of “divining populist sentiments in criminal trials” and therefore subjecting the law—including criminal law—to a constant reinterpretation based on the presumed “will of the people” (550).

The central goal of the jurisprudential approach that Jochelson and Kramar (2014) propose seems to be overcoming the “counter-majoritarian” problem inherent in judging by more closely aligning judicial decisions with the public’s preferences. On the one hand, the direct relationship between a populist leader and their base is one of the central characteristics of populism broadly defined. According to Kurt Weyland (2001, 14), at the heart of populism lies an “unmediated, uninstitutionalized” relationship with a group of supporters, who rally around the populist leader as a result of a powerful “plebiscitarian” appeal (5). On the other hand, current definitions of judicial populism like Jochelson and Kramar’s (2014, 550–51) seem to offer a quite nuanced understanding of the relationship between courts and the public, with the former leaning into an intellectual exercise to divine public opinion rather than engaging with civil society in more direct or “uninstitutionalized” ways (Weyland 2001, 14). However, equally significant elements of populism, such as the radical dichotomy between “virtuous” people and “corrupt” elites, do not appear to be part of Jochelson and Kramar’s (2014) definition of judicial populism.

Interestingly, recent analyses of populism have looked at its effects on a country’s foundational legal framework—namely, its constitution. Jan-Werner Müller (2017) argues that populist leaders will look to enshrine their understanding of who constitutes “the people” into the country’s constitutional text. According to Müller, this goal aligns with populist leaders’ aversion to principles such as diversity and multiculturalism. Therefore, far from considering legal institutions to be an obstacle to their project, populist leaders and populist forces will instead seek to model legal

institutions after their own narrow understanding of which groups actually constitute “the people” (Müller 2017). Therefore, Müller’s argument about populism touches on this phenomenon’s legal consequences. However, paradoxically, his analysis seems to significantly narrow the range of legal dispositions that can be considered “populist.” According to Müller, the latter only include those constitutional provisions that populists have introduced to limit a country’s diversity in its ethnic and racial makeup. Consequently, Müller’s understanding of populism and its legal consequences would seem to apply more often to right-wing populist forces, which tend to have a nativist agenda.

Other legal studies have instead offered an application of the word “populism” to grievances against specific criminal justice practices. “Penal populism” represents a rhetorical and political strategy that aims to provoke widespread resentment against a supposedly “soft on crime” approach (Pratt 2007; Jennings et al. 2017). However, it is worth noting how legal actors only appear to have a secondary role within this framework. The main actors relying on this populist rhetoric tend to be elected officials who have strategic reasons, such as seeking re-election, to fuel populist resentment against criminal justice authorities (Jennings et al. 2017). This application of the word “populism” to a criminal justice issue does contain an echo of the fundamental dichotomy at the center of any populist idea—us versus them—in this case, the people versus “corrupt” prosecutors. However, political actors’ centrality within penal populism qualifies the latter as a political strategy rather than as a judicial phenomenon. Thus, it is more appropriate to think of penal populism as one more political strategy that populist leaders may pursue rather than a version of populism that directly applies to legal practice and jurisprudence.

Therefore, current uses of the word “populism” in relation to judicial or criminal justice issues either disregard most of populism’s main features or do not really focus on judicial and prosecutorial actors. These definitions cannot help us make sense of the new type of legal interpretation visible in the Clean Hands operation. Consequently, I build on Cas Mudde and Cristóbal Kaltwasser’s (2017) work to offer a definition of judicial populism that may shed light on the populist features of the Clean Hands operation. While acknowledging that there will remain ongoing disagreement among scholars on the precise meaning of “populism,” Mudde and Kaltwasser offer an “ideational approach” to this phenomenon (5–6). These authors define populism as a “thin” combination of political ideas with a “moralistic” understanding of politics at its center (6). According to Mudde and Kaltwasser, populism’s main ideological component is an insistence that politics consists in the existential hostility between a virtuous citizenry and a “corrupt” but vaguely defined group of “elites” (6). Importantly, they clarify that populism is not inherently left wing or right wing. Instead, populist leaders may apply their moralistic understanding of politics either to a progressive or a conservative agenda. Consequently, they may identify either one as truly reflective of the preferences they believe the “virtuous people” to hold.

In this article, I apply Mudde and Kaltwasser’s (2017) ideational approach to prosecutorial behavior in the Clean Hands operation to make sense of the legal innovations effectively deployed by Italian prosecutors to hold corrupt politicians accountable. However, while Mudde and Kaltwasser’s definition is purely “ideational,” focusing on the ideas and rhetoric used by populist leaders, the definition of

judicial populism that I apply to the Clean Hands investigation has two prongs: a legal aspect, strictly associated with a novel interpretation of extant criminal rules, and a behavioral aspect, connected to legal actors' strategic attempt to protect their work against possible interferences from both within and outside the judicial branch. As I explain in what follows, the legal and behavioral aspects of judicial populism in the Clean Hands investigation were intimately connected to one another.

Before delving into the definition of judicial populism that I intend to apply in my analysis of the Clean Hands investigation, it is worth explaining why I am using the term "judicial" to describe the behavior of a group of Italian prosecutors in charge of a vast anti-corruption campaign from 1992 to 1996. From a comparative perspective, prosecutors' institutional status changes depending on the criminal justice system in which they find themselves. Within the American criminal justice system, for instance, prosecutors are generally considered to be an arm of the executive branch, being either appointed by the president at the federal level or elected by citizens at the state level. However, Italian prosecutors are members of the judiciary based on both their appointment and career trajectory. In accordance with the predominant civil law model of judicial bureaucracy, where members of the judiciary hold a status that is similar to that of civil servants, Italian law graduates who wish to become either prosecutors or judges must take the same state exam to be accepted in the judicial branch. Moreover, after joining the judiciary, prosecutorial as well as judicial careers follow the same rules under the supervision of the same institution, the Consiglio Superiore della Magistratura.<sup>5</sup> Thus, Italian prosecutors enjoy the same institutional status as Italian judges since they are both members of the same institution. For this reason, I apply the term "judicial populism" to the interpretation of criminal rules and the professional behavior of Italian prosecutors in the Clean Hands investigation, and I use the terms "prosecutorial" or "judicial" interchangeably throughout the article.

As I mentioned before, the definition of judicial populism that I apply to my analysis has both a legal and a behavioral aspect. In order to define the legal aspect of judicial populism in the Clean Hands investigation, I argue, like Mudde and Kaltwasser (2017, 6), that judicial populism is a "thin-centered ideology." More specifically, judicial populism is a legal ideology that requires interpreting and applying the law according to a "moralistic" understanding of the relationship between politics and society based on the persistent hostility between virtuous citizens and an undefined conglomerate of corrupt elites (6). In other words, prosecutors in the Clean Hands investigation read and applied extant laws in light of the existential dichotomy between a "pure" civil society and corrupt officials in positions of political and/or economic power. This type of legal interpretation inevitably resulted in the introduction of significant legal innovations, which reflected a moralistic understanding of the law as it applied to the relationship between civil society and public officials. This moralistic legal interpretation also clearly echoed a new conception of the legal profession where prosecutors are not simple enforcers of the

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<sup>5</sup> Essentially, both prosecutorial and judicial careers depend on seniority. The Consiglio Superiore della Magistratura (High Council of the Judiciary), whose members are for the most part elected by judges and prosecutors, controls all appointment and promotion decisions. For more details on how the Italian judicial branch is internally organized, see Guarneri and Pederzoli 2002; Guarneri 2003.

law as it is written but, rather, represent the stewards of popular will, taking up the fight against corrupt elites—a conception that scholars like Della Porta (2001, 4) have previously labelled “role substitution” (Manzi 2023, 5, 147).

However, this moralistic reading of current laws was not the only feature of judicial populism as it manifested itself in the Clean Hands investigation. The pursuit of this legal ideology also incentivized the Clean Hands prosecutors to adopt a new and unusual style of professional conduct. They started appealing directly to Italian civil society via the strategic use of the press and other similar mediums. This style of communication is consistent with judicial populism’s ideological assumptions about the “virtue” of the people. Because prosecutors in the Clean Hands investigation felt that they had a mission to uphold popular will against systemic corruption in the Italian political system, appealing directly to the public was ideologically consistent with a deep belief in the purity of civil society over the corruption of regular politics.

At the same time, this unusual appeal to the public via the media by the Clean Hands prosecutors, which clearly defied normal expectations about their professional role, was also the result of necessity rather than choice. Because judicial populism entails the pursuit of significant innovations in legal interpretation, appealing to the public directly via the press or other forms of communication may provide a shield against retaliation or criticism. First of all, the strategic appeal to the public via media coverage protected prosecutors in the Clean Hands investigation from retaliation from their immediate superiors. As the literature has abundantly shown, judicial professionals fear reversals on appeal (Klein and Hume 2003; Randazzo 2008). As I discuss in this article, the Clean Hands prosecutors introduced significant legal innovations due to their peculiar interpretation of Italian criminal rules. Because they found themselves in the lower ranks of the judiciary, rallying the public in their support via a strategic use of the media may have been a way to protect themselves from critical review of their work by higher courts. More importantly, a similar strategic reasoning may also apply to the relationship between judicial populists and political actors. As I show in this article, the Clean Hands prosecutors’ populist interpretation of the criminal rules led to an unprecedented level of efficacy in the prosecution of corruption. As a result, the Clean Hands prosecutors were fully aware that their investigative work would be met with harsh resistance from political forces at the center of the investigation. Thus, rallying public support around the investigation via a strategic use of media coverage allowed them to effectively protect themselves from retaliation from other government branches.

Other works have previously explored the strategic use of media coverage by judicial professionals (Vanberg 2001; Staton 2006). However, the attempt by populist prosecutors in the Clean Hands investigation to protect themselves via media appeals presents a significant difference with previous analyses. Building on Georg Vanberg’s (2001) work, Jeffrey Staton (2006) showed that supreme court judges will at times use the media and the press to disseminate information about their rulings. According to Staton, supreme court justices will do so when they anticipate defiance of their rulings from the executive branch (100, 110). Therefore, previous works have explained the use of media coverage by supreme court justices as an enforcement tool in the face of executive resistance.

While providing powerful insights into the causes of this strategic behavior, Staton’s (2006) analysis finds its greatest limitation in its scope, which is supreme

courts. Because Staton's (2006) and Vanberg's (2001) work focuses exclusively on high courts, these analyses fail to consider the possibility that lower-ranked judicial professionals may also make use of strategic media appeals. Indeed, lower-ranked judicial professionals may do so to protect their work from criticism, coming from both within the judiciary and outside the judicial branch, rather than out of fear of non-implementation by other branches. At the same time, it is possible that supreme court judges may also fear retaliation under specific circumstances, especially from other government branches. However, Staton's (2006) analysis does not fully consider this possibility, whose likelihood is low in well-functioning democracies and higher within weakly institutionalized democracies (Ríos-Figueroa 2007). As a result, Staton (2006) focuses primarily on the defiance of supreme court rulings as the main reason behind strategic media appeals. On the other hand, the strategic use of media coverage by populist prosecutors in the Clean Hands investigation clearly stemmed from an effort to protect their work from retaliation from both the executive and the legislative branch.

As I show in this article, when it became clear that the Clean Hands investigation would not stop at isolated corruption instances but instead expand to the whole corruption system, both branches set out on a course to undermine the ongoing inquiries into their members. Therefore, the strategic appeal to the media by populist prosecutors in the Clean Hand investigation does not fit previous explanations as it was not motivated by a simple fear of non-implementation. Instead, it resulted from the necessity for the Clean Hands prosecutors to protect their work and ensure its continuity by rallying public opinion in their support. Thus, although the strategic behavior of judicial professionals intentionally attracting media attention to their work may look similar across cases, the Clean Hands prosecutors' behavior clearly shows that judicial populists will do so for a very specific reason. This reason is to protect their work and the legal innovations it entails from retaliation from both within and, more importantly, from outside the judiciary.

In addition to Staton (2006) and Vanberg's (2001) studies, a flourishing literature has recently started exploring the relationship between judicial professionals and the press within the American context. A few recent works have found that the public rhetoric of US Supreme Court justices in interviews and other media appearances clearly has an effect on the court's perceived legitimacy in the eyes of the public (Glennon and Strother 2019; Strother and Glennon 2021). Similarly, Ryan Black and colleagues (2023) show that the decision to broadcast state supreme courts' judicial proceedings may also affect legitimacy perceptions. However, the media appearances of judicial professionals in these studies do not represent a conscious judicial effort to reach out to the public for institutional reasons. Supreme Court justices may attend televised speaking engagements to promote their memoirs or to provide general insights into the court's jurisprudence. However, justices do not usually participate in these media appearances in order to send a message to the public on behalf of the court. In fact, justices are expected to only speak on their own behalf and to reveal as little as possible about the Supreme Court's inner proceedings. This is a significant difference with the Clean Hands prosecutors' conscious effort to rally public support around their corruption investigation via the strategic use of the media. Similarly, the televised proceedings of state supreme courts also do not represent a strategic use of the media to connect directly with public opinion. These broadcasts may represent an

attempt to enhance the transparency of the legal process, but they do not constitute an intentional outreach to public opinion by state supreme court justices. For this reason, both instances discussed in this literature are significantly different from populist prosecutors' strategic use of the media to connect directly with civil society.

In what follows, I explore the features of judicial populism in the Clean Hands operation. First, I start by providing some historical background to ground my analysis of judicial populism within the broader context of changes to the Italian judicial profession in the preceding decades. Then, I outline the legal novelties that the Clean Hands prosecutors introduced in their understanding of corruption crimes. Following that, I explore the application of these legal novelties to the prosecution of systemic corruption in the Clean Hands operation. Finally, I explore the Clean Hands prosecutors' strategic outreach to the Italian public through the press.

### **The historical conditions for the emergence of judicial populism in Italy**

It is beyond the scope of this article to explore the causes behind the emergence of judicial populism. However, it is worth briefly outlining some of the historical context surrounding the Clean Hands operation, which represents the last evolution in a long transformation of the judicial role within the Italian context. In the decades preceding 1992, Italian prosecutors and judges had seen their role gradually change from mechanical implementers of the written law operating within a hierarchical and conservative bureaucracy to enterprising legal innovators charged with tackling some of the most pervasive issues in Italian society (Della Porta 2001; Vauchez 2004; Manzi 2023).

This radical transformation was especially visible in Italian judicial professionals' work against left-wing terrorist organizations in the late 1970s and against Mafia organizations in the 1980s. In both instances, Italian judicial professionals took up a leading role as agents of state power against these criminal threats, achieving astonishing results. Special teams of prosecutors and investigating judges developed new investigative techniques and legal strategies to effectively prosecute a network of terrorist cells and terrorist organizations working across jurisdictions (Manzi 2023, 127–31). Furthermore, judicial professionals working on Mafia investigations in Sicily exploited their colleagues' previously accumulated expertise on terrorist investigations to build a successful prosecutorial response against Cosa Nostra (Manzi 2023, 129, 172–73). The latter resulted in the so-called *maxi processo* (maxi trial) and in hundreds of convictions against Cosa Nostra's local leaders and lower ranks (Stille 1996).<sup>6</sup> Thus, these developments showed the Italian judiciary's potential in developing novel legal solutions to tackle systemic issues that other government branches had been unable to solve.

Previous scholars have identified the judicial fights against terrorist organizations and Mafias as a critical juncture in the reconceptualization of the judicial role within the Italian context (Della Porta 2001; Vauchez 2004). Della Porta (2001) explicitly argues that this new model of professionalism calls for judges to take up the fight

<sup>6</sup> The so-called *maxi processo* (maxi trial) was a trial against more than three hundred defendants charged with Mafia-related crimes. The defendants included Mafia members at different levels of the criminal organization, from top leaders to foot soldiers.

against systemic challenges that elected officials have systematically ignored or failed to address (Della Porta 2001, 4; Manzi 2023, 147). Using one of Alessandro Pizzorno's (1992) categories, Della Porta (2001, 4) defines this as "role substitution." Furthermore, she argues that the Clean Hands operation represents another instance of the same mentality (16; see also Manzi 2023, 147–48). Della Porta is certainly correct in recognizing the traits of a new, expansive conception of the Italian judiciary's mission among its own members. However, I argue that "role substitution" does not fully describe prosecutorial behavior in the Clean Hands operation. The expansion of the judicial role to encompass the fight against systemic societal issues clearly set the stage for judicial professionals' investigative efforts against the corruption system. However, Italian prosecutors leading the Clean Hands operation also adopted legal novelties and strategies that reflected a moralistic understanding of the relationship between elites and society. A similarly populist understanding of the law was not present in previous successful judicial campaigns against terrorist organizations and organized crime. Thus, while the reconceptualization of the judicial mission as a "substitution role" accurately applies to prosecutorial behavior in the Clean Hands investigation, the latter also presented new populist features that the earlier definition does not address (Della Porta 2001, 4, 16; Manzi 2023, 5, 147).

Another way in which previous judicial engagements with systemic issues may have paved the way for the emergence of judicial populism is through the deep relationship between civil society and members of the judiciary. Judicial professionals involved in the prosecution of terrorist organizations and Mafia organizations became deeply involved with local civil society (Manzi 2023). For instance, prosecutors in the northern city of Turin, where terrorist organizations like the Red Brigades and Prima Linea had established well-organized local cells, took part in an effort to reach out to civil society organizations, especially unions (Boffano 2009; Manzi 2023, 136–37). In the South, the interactions of judicial professionals in Palermo with local civil society organizations, including the Jesuit-led group Città per l'Uomo, became so frequent as to attract the attention (and mockery) of national politicians, one of whom labelled this alliance "a shadow government of magistrates and Jesuits" (Stille 1996, 208).<sup>7</sup> Furthermore, the *maxi processo* took place alongside a significant resurgence of local civil society organizations, the so-called "Palermo Spring" (Lentini 2011; Manzi 2023, 138). The latter was a vast societal mobilization against Cosa Nostra's territorial control.

As I previously mentioned, judicial populism brings along a new style of behavior, one that entails a direct appeal to the public via the strategic use of the media. While a similar appeal was not visible in the judicial fight against terrorist organizations and organized crime; nevertheless, the growing interactions between judicial

<sup>7</sup> In this passage, Alexander Stille (1996) is quoting an interview with Socialist politician Claudio Martelli, which appeared in *Panorama* on September 6, 1987. Martelli's quote betrays a profound misunderstanding of Palermo's judicial professionals' work on Mafia investigations. As Stille points out, Socialist party politicians, in particular, came to associate Palermo's judicial professionals with the rise to local power of Mayor Leoluca Orlando (208). The latter's political ascent was made possible by his relationships with local grassroots organizations, including Città per l'Uomo, and Orlando's ruling coalition excluded the Italian Socialist Party. Martelli's quote therefore expresses the Socialist minister's distrust of the Palermo judiciary's efforts, based on their alleged political proximity to Orlando and other groups.

professionals and civil society may have contributed to helping judicial professionals identify a new audience. Lacking support from other government branches, prosecutors and judges, especially those involved in the fight against Mafia organizations, found in the public's support a source of encouragement and possibly an audience with a sincere interest in their success. This might have helped set the stage for an even more explicit reorientation of the judicial role toward a public audience, which would become apparent during the Clean Hands operation.

As I outline in the following section, the leading prosecutorial figures in the Clean Hands operation had active relationships with the local civil society organizations involved in anti-corruption work. In fact, Antonio Di Pietro, the leading prosecutor in the Clean Hands operation, would first outline his legal strategy in a local civil society organization's journal (Manzi 2023, 145–48). Thus, previous developments might have helped prepare the way for the emergence of judicial populism. However, at the same time, these developments represent a qualitatively novel evolution of the judicial role within the Italian context.

### **The emergence of judicial populism: A new strategy against systemic corruption**

The Milan prosecutor's office used to be at the center of the judicial fight against terrorist organizations that I described in the previous section. Starting in the late 1970s, local Milanese prosecutors have contributed to creating a vast judicial network with their peers working in other jurisdictions, such as Turin, Bologna, and other cities, to coordinate efforts against organizations like the Red Brigades and Prima Linea (Spataro 2011, 144). Such efforts have contributed to a significant accumulation of knowledge in the prosecution of complex criminal issues among local judicial professionals (Manzi 2023). Furthermore, in the 1980s, Milanese investigating judges had attempted to uncover evidence of corrupt exchanges within a broader investigation into the secret association called "P2" (Manzi 2022, 459; 2023, 133–34). The investigation into the P2's illegal activities, however, was derailed by the intervention of the Roman prosecutor's office, which appropriated all cases related to this issue (Manzi 2022, 459–60; 2023, 134).

Nevertheless, these efforts demonstrate the Milanese judicial professionals' significant amount of previous experience in the prosecution of complex criminal issues. Moreover, after the disbandment of the offices of the investigating judges in 1989, some judicial professionals with significant expertise in corruption investigation joined the Milan prosecutor's office (Manzi 2022, 450; 2023, 153). This included prosecutor Gherardo Colombo, one of the leading judges in the P2 investigation (Manzi 2023, 153). Despite the setbacks suffered in the P2 investigation, local prosecutorial efforts to uncover corruption continued into the late 1980s, which led to a few important corruption investigations in the years immediately preceding the Clean Hands operation (Manzi 2022; 2023, 135). The "Duomo Connection" and *Carceri d'Oro* (Golden Prisons) investigations both suggested the existence of an elaborate criminal scheme involving local businessmen, civil servants, local elected officials, and possibly organized crime as well (*La Repubblica* 1992; Manzi 2023, 135).

However, both the Duomo Connection and Golden Prisons investigations were not enough to uncover the underlying corruption system that regulated these illegal

exchanges. This was partially due to the legal strategy of the judicial professionals (Manzi 2023, 135). Especially in the Golden Prisons investigation, prosecutors pursued the traditional approach of applying charges of *concussione* (forced participation in corruption) to all defendants rather than differentiating between this type of felony and *corruzione* (corruption) (Ravelli 1989; Manzi 2023, 135). In the Italian Penal Code, these are two different legal categories reflecting differences in individual participation in corruption.<sup>8</sup> *Concussione* assumes the existence of a coercive element and implies that the defendant who paid the bribe did so against their will and was therefore reluctantly participating in the corrupt exchange (Manzi 2023, 145–46). Traditionally, prosecutors brought *concussione* charges against those economic actors, such as businessmen and company managers, who had accepted to pay a bribe in exchange for favorable treatment (for instance, paying a bribe to fix a government bid). On the other hand, *corruzione* captures free participation in illicit favors, with no element of coercion present (Manzi 2023, 146). Prosecutors sometimes charged bribe receivers with *corruzione* due to their being on the receiving end of corrupt exchanges. However, *concussione* charges tended to be prevalent in corruption investigation, as the Golden Prisons operation demonstrates.

The presence of different legal categories for individual participation in corrupt exchanges reflects the legal corpus's nuanced understanding of corruption dynamics. By differentiating between charges of *corruzione* and *concussione*, the Italian Penal Code recognized the existence of a potential principal-agent relationship among the defendants involved. This principal-agent relationship warranted *concussione* charges for the individuals "coerced" into an illicit exchange and *corruzione* charges for the bribe receivers. At the same time, this understanding of corruption dynamics tended to assign a "hierarchical" nature to this criminal phenomenon where bribe givers are forced to submit to the corrupt rules imposed by bribe receivers rather than intentionally taking part in a mutually profitable trade-off.

The Clean Hands operation completely subverted this understanding of corruption by proposing a new legal strategy based on an understanding of this criminal phenomenon as a network or a system with informal norms regulating willing co-participation in illicit exchanges (Manzi 2023, 145–46). Prosecutor Antonio Di Pietro, who would later lead the investigative effort in the Clean Hands operation, outlined his sociological and legal theory of corruption dynamics through a series of articles in a local journal run by the civil society organization Società Civile. This organization was established in the late 1980s by university professor Nando Dalla Chiesa to educate the public about corruption and ethics rules (Società Civile 1987; Manzi 2023, 137–38). Since then, the organization has been deeply involved in grassroots activism and local reporting on corruption instances within Milan's city administration via the organization's journal (Manzi 2023, 138).

In his first interview with Società Civile, prosecutor Di Pietro offered a grim assessment of the evolving corruption phenomenon within the city of Milan (Colombo 1990; Manzi 2023, 145–46). According to Di Pietro, bribe givers and bribe receivers had engineered new ways to hide their transactions from law enforcement. This signaled a qualitative evolution of corruption into a more complex phenomenon than in the past (Colombo 1990). It also suggested that current criminal norms may be

<sup>8</sup> Italian Penal Code, art. 317 and art. 318 c. p.

outdated in relation to recent developments in this criminal issue (Manzi 2023, 145–46). Building on these observations, Di Pietro (1991) offered a new fully-fledged legal strategy to uncover corruption in his article for Società Civile's journal (Manzi 2023, 146–48). This strategy would later become the driving force behind the unprecedented success of the Clean Hands operation.

The foundation of Di Pietro's legal strategy was a new understanding of corruption as a complex, self-regulating system with its own norms (Manzi 2023, 146). According to Di Pietro (1991), corruption had become so pervasive as to create self-regulating patterned interactions among the individuals involved (Manzi 2023, 146). Those who would find themselves in economic and political roles sensitive to bribe exchanges (party-affiliated civil servants handling local public administration branches, company managers, and businessmen looking to win government bids) would enter these jobs with an awareness of the informal rules regulating a pre-existing network of illegal trade-offs. Therefore, to describe the existence of this complex criminal system, Di Pietro coined a new legal concept, which he called *dazione ambientale* (Di Pietro 1991; Manzi 2023, 146–47). This term was meant to capture the transformation of corruption into an “environment” that predated specific actors' participation in this criminal issue and that provided a clear set of informal rules for anyone operating within it.

Based on this understanding of corruption as a systemic condition, Di Pietro (1991) argued that differences in criminal responsibilities between bribe receivers and bribe givers had consequently become meaningless (Manzi 2023, 146). Principal-agent relationships based on fear and threats provided an inaccurate picture of bribe givers' participation in corrupt exchanges. Rather, according to Di Pietro (1991), participation in the system unambiguously implied acceptance of its rules (Manzi 2023, 146). The only choices that would make a difference in terms of criminal responsibility would be to either leave the system or refuse to take part in it entirely. On the other hand, once an individual conformed to the rules of the corruption system, this signified their active acceptance of, and contribution to, its existence. For this reason, Di Pietro (1991) argued that distinguishing between charges of *concussione* and *corruzione* was an inadequate approach to this criminal issue (Manzi 2023, 145–46).

Di Pietro's legal strategy clearly embodied a populist understanding of individuals' criminal responsibility for their participation in the corruption system. Through the concept of *dazione ambientale*, Di Pietro had introduced a legal understanding of corruption whereby it was impossible—indeed, useless—to distinguish between different members of the same corrupt elite in relation to their role in bribe exchanges. In other words, *dazione ambientale* implied every defendant's equal responsibility for the corruption system, whether they had been receiving or giving bribes and regardless of their “positionality” and relative power within the corruption system. Therefore, *dazione ambientale* introduced a populist, or moralistic, framework to understand defendants' culpability. All members of the corrupt “elite” taking part in the corruption system (which came to include civil servants as well as elected officials and economic actors, regardless of their relative political or economic power) were equally responsible for the existence of this complex criminal phenomenon, regardless of their specific role and regardless of the conditions surrounding their participation. Within this framework, participation in the system (or lack thereof) was the only relevant fact to a defendants' criminal responsibility.

On the one hand, Di Pietro's (1991) theory about the corruption system's dynamics reflected an accurate sociological understanding of informal networks and complex criminal systems (Manzi 2023, 146). The corruption system pervading Italian politics had in fact created its own institutions to regulate exchanges among its participants without disruptions when old and new individuals left or entered the system. From that accurate sociological framework, however, Di Pietro derived legal implications that reflected a populist understanding of corruption and the responsibility of actors for their participation in it. For instance, the existence of a long-standing structure that made it impossible to win government bids without paying bribes could have been interpreted as an element of coercion, compatible with the traditional legal understanding of *concussione*. On the contrary, Di Pietro interpreted actors' acceptance of the rules and dynamics sustaining the corruption system as a sign of willing participation in this criminal phenomenon, therefore emptying actors' participation of coercive elements and assuming everyone's criminal responsibility for their participation in illegal exchanges to be equal (Manzi 2023, 145–46). Once again, this reflected a populist understanding of defendants' responsibility for their participation in corruption.

On the other hand, only when a participant showed remorse for their participation in the corruption system and, therefore, a willingness to cooperate with legal authorities would coercion be considered one of the reasons for the defendant's participation in the corruption system. When discussing the degree to which corruption had become a structural phenomenon, Di Pietro (1991, 9) suggested that a defendant's criminal responsibility might change as a result of the defendant's cooperation with prosecutorial authorities: "Within a similar social context, it seems to me that a novel and more functional way of ascertaining the facts in a case would consist in re-qualifying the legal responsibility of the bribe-giver, perhaps even to the point of introducing leniency at trial, were the defendant willing to provide more information about the crime under investigation in a timely fashion."<sup>9</sup>

In this quote from his article, Di Pietro (1991) seems to suggest that the only way a defendant's criminal responsibility for participation in the corruption system could change would be via their availability to provide information about the criminal phenomenon. In other words, in accordance with a populist understanding of corruption, Di Pietro's legal strategy only assumed two scenarios under which defendants may not be as equally responsible as any other participant in the corruption system: if they refused to take part in it from the start or if they broke away from the system by cooperating with prosecutorial authorities. Doing the latter warranted a requalification of charges against the defendant given the defendant's willingness to cooperate with prosecutors. This legal strategy reiterates Di Pietro's populist understanding of corruption: the only differences in culpability among defendants derive from the latter's willingness to withdraw from the corruption system, not from the specific features of their participation in it.

At the same time, however, this legal strategy also provides significant strategic incentives to both the prosecutor and the defendant in the case (Manzi 2023, 145–46). As Di Pietro (1991) explains in the quote, turning against the corruption system warrants a requalification of a defendant's criminal responsibility in a more lenient

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<sup>9</sup> The quote can also be found in Manzi 2023, 146.

direction. Thus, this reassessment of a defendant's criminal responsibility also creates strong strategic incentives in support of defection from the corruption system and collaboration with legal authorities (Manzi 2023, 146). At the same time, these incentives are inherently dependent on the populist assumption that every participant in the corruption system is equally responsible for it, regardless of their role and the circumstances of their participation, unless they cooperate with prosecutors. This suggests that, while this legal strategy coherently follows from a populist understanding of the criminal rules on corruption, it also responds to the prosecution's strategic necessity for "introducing an informal plea-bargaining process" into Italian criminal law (Manzi 2023, 146). At the time of Di Pietro's (1991) article, the Italian Code of Criminal Procedure had just undergone a comprehensive reform, which had introduced new forms of "speedy trials" based on a defendant's cooperation—the so-called *patteggiamento* (roughly translated as "bargain") (Pizzi and Marafioti 1992, 22; Manzi 2023, 44).

Nevertheless, these criminal procedures fell short of mimicking plea bargaining's central dynamics. Even after the Italian Code of Criminal Procedure's revision, legal authorities were still left without the ability to negotiate charges with a defendant based on their willingness to cooperate (Pizzi and Marafioti 1992, 22; Manzi 2023, 44). Mafia crimes constituted the only explicit exception.<sup>10</sup> Prosecutor Di Pietro, therefore, could not deploy plea bargaining to incentivize the cooperation of defendants. However, his populist interpretation of criminal rules on corruption and use of *dazione ambientale* provided him with a legal justification for shifting from harsher charges, such as *falso in bilancio* (false accounting) or *corruzione* to more forgiving *concussione* charges based on defendants' willingness to distance themselves from the corruption system (Manzi 2023, 150–51). Di Pietro outlined this legal strategy in the following way:

The *Mani Pulite* investigation was not about corruption [at first]; it was about false accounting. . . . I wondered: if [businessmen] need to pay a bribe, where will they draw the money from? The money has to come from their own business activities. But if this is the case, they cannot report these expenses in their books, so they have to commit false accounting. . . . Therefore, I pressed charges of false accounting against these company managers . . . and I told them: "there is a six-year sentence for false accounting, while a sentence for corruption can last up to five years." However, considering the "environmental" features of the corruption system . . . it is possible that the person might have been "forced" into this system. So, if the person was willing to tell me how this system worked, I might have been able to conclude that the businessman was forced into giving a bribe. As a result, I did not charge the company manager with false accounting . . . but he was also not charged with *corruzione*, since that person was forced into paying a bribe by the

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<sup>10</sup> In 1991, Parliament passed a law that would afford prosecutors the ability to lessen criminal charges depending on a mafia member's cooperation (Fioriglio 2003, 5; Manzi 2023, 183).

environmental conditions he faced, and of which he was a victim. In this way, I broke the oath of silence (*patto di omertà*) between bribe-givers and bribe-receivers.<sup>11</sup>

As visible in this quote, Di Pietro stressed that defendants' cooperation would help determine that their participation in the corruption system was against their will and would result in more lenient charges. Therefore, a populist approach to criminal rules allowed Di Pietro to obtain the cooperation of the defendants. This populist legal strategy, which relied on several legal innovations, became the reason for the Clean Hands operation's unprecedented success.

### **Judicial populism in the clean hands operation**

In February 1992, Luca Magni, a local businessman who had been asked to pay bribes in order to compete for a government bid within the city of Milan, reached out to prosecutor Di Pietro about the contents of this illicit request (Barbacetto, Gomez and Travaglio 2012, 5–6; Manzi 2023, 1). Di Pietro took this opportunity to organize a sting operation against the civil servant who had requested the bribe, Mario Chiesa. This individual had been appointed head of a local agency, Pio Albergo Trivulzio, through negotiations between Socialist Party members of the Milan City Council and other political forces holding seats in this assembly (Barbacetto, Gomez and Travaglio 2012, 11; Manzi 2023, 1). This embodied a political dynamic that pervaded Italian politics at the time: at any government level, Italian political parties would carefully distribute administrative positions among their affiliates, thus ensuring that each party would control a certain number of administrative jobs for allocation among its constituents and supporters (Golden 2003). This vast system of political patronage, called *partitocrazia* (partitocracy) (LaPalombara 1989, 215–16), did not only guarantee electoral support via clientelism, but it also guaranteed a seamless and constant flow of bribes to political parties. As head of the Pio Albergo Trivulzio, Chiesa had been on the receiving end of many bribes, of which a substantial amount served to illegally finance the Italian Socialist Party (Barbacetto, Gomez and Travaglio 2012, 11; Manzi 2023, 1).

Had prosecutor Di Pietro followed the traditional approach to corruption investigations, Chiesa could have provided the names of a few other company managers participating in the system—as he did—and authorities would have charged economic actors with *concussione* (under the assumption that Chiesa had forced them to participate in an illegal exchange if they wanted to do any business with him), while Chiesa might have been susceptible to charges of *corruzione*. This strategy would have probably concluded the investigation. Instead, Di Pietro's deployment of his new legal strategy gave rise to a chain reaction producing an unprecedented amount of evidence about the bribe exchanges taking place around the Pio Albergo Trivulzio's services and beyond. From the beginning, Di Pietro decided to apply charges of *corruzione* to the businessmen whom Chiesa had mentioned as

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<sup>11</sup> Interview with former prosecutor Antonio Di Pietro by Lucia Manzi, on the telephone, July 30, 2017 (author's translation). In other words, Di Pietro is explicitly referencing terms used in the context of Mafia prosecutions. This quote can also be found in Manzi 2023, 150.

consistent bribe givers to his agency (Manzi 2023, 149). Company managers who had never before experienced the threat of *corruzione* charges were now facing pretrial incarceration.

Charges of *corruzione* implied a defendant's active participation in corruption and therefore warranted pretrial incarceration to stop defendants from either fleeing or destroying potential evidence. This populist legal strategy immediately produced an immense and constant flow of testimonies (Manzi 2023, 151). The pursuit of *corruzione* charges against the defendants put momentous pressure on them, and Di Pietro incentivized their cooperation by offering more lenient charges of *concussione* in exchange for information about the corruption system (151). Thus, the populist legal strategy that Di Pietro had devised soon produced unprecedented results, with several of the defendants choosing to cooperate with prosecutors sometimes even before a formal case was opened against them (151). Such actions resulted from the prisoner's dilemma (Sberna and Vannucci 2013, 576) that this legal strategy created (Manzi 2023, 151). Corruption system participants (company managers, civil servants, politicians) began voluntarily showing up at Di Pietro's door to offer information (and therefore reap the legal benefits of cooperation) before another defendant might incriminate them (151).

The unprecedented amount of information available to legal authorities about the corruption system also created a media dynamic that would further amplify the prisoner's dilemma inherent in Di Pietro's populist legal strategy. Almost immediately, the Clean Hands operation started attracting ample media coverage. The ever-growing number of defendants implicated in the scandal soon turned the operation from a local matter into a national issue involving members of parliament, party leaders, and some of the wealthiest Italian businessmen (Manzi 2023, 153). As Pier Paolo Giglioli (1996) reports, the Clean Hands operation occupied the most prominent Italian newspapers for a significant amount of time (Manzi 2023, 152), exposing the Italian public to a massive amount of information about the corruption system's inner workings and long-standing operations (Fisman and Golden 2017, 222–23). However, a peculiar feature of this media coverage was the newspapers' access to the testimonies of the individuals under investigation, which the Clean Hands prosecutorial team, under Di Pietro's leadership, was collecting (Manzi 2023, 152).

Journalistic access to the defendants' confessions allowed national newspapers to provide an unfiltered look inside the corruption system's daily dynamics. For the first time, the veil of impunity that had protected politicians, civil servants, and company managers taking part in corruption was being lifted. On the one hand, this type of coverage might have contributed to the increasingly vocal expressions of disappointment and outrage at Italian politicians that started taking place in Italian cities, especially in Rome and Milan.<sup>12</sup> On the other hand, this type of public exposure via the press may have been one of the contributing factors to the decision

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<sup>12</sup> In addition to marches in support of the Clean Hands prosecutors like the one I described in the introduction to this article, popular discontent toward politicians found ways to express itself in more spontaneous and unplanned ways. One of the most iconic moments in the Clean Hands operation was the throwing of coins to Italian Socialist party leader Bettino Craxi, as he was exiting the Raphael Hotel in Rome. Craxi was met by a large group of protestors waving banknotes and chanting "do you want this too?" (*Il Post* 2018).

of some of the defendants to commit suicide out of shame and despair (Manzi 2023, 152).

### **A new style of prosecutorial behavior: Prosecutors and the strategic use of the media in the clean hands operation**

Di Pietro's (1991) populist legal strategy allowed prosecutors to collect unprecedented amounts of information about the corruption system from its own participants. This information would play a crucial role not only in building an incredibly strong case against the defendants but also in reshaping the relationship between the judiciary, the press, and the public. As I explained earlier in this article, among its features, judicial populism also entails a new style of behavior where legal professionals seek a direct relationship with the public to protect themselves from potential backlash against their innovative populist reading of the law. The relationship that formed between the Clean Hands prosecutors, the press, and the public clearly embodied this new populist model of judicial professionalism. As I demonstrate in this section, when necessary, the Clean Hands prosecutors sought strategic media interventions to rally public opinion in their support against political backlash that could have jeopardized the operation's success.

Before the strategic outreach to the public via the media, however, the legal innovations in the Clean Hands operation had already contributed to a significant change in the relationship between the judiciary and the press. As previously stated, the legal strategy of the Clean Hands prosecutors produced an unprecedented number of confessions from the defendants involved. The Clean Hands prosecutors did not intentionally seek to make these confessions widely available to the public. However, legal innovations in the Clean Hands operation and the increasingly tight relationship between the judiciary and the press significantly facilitated the almost simultaneous sharing of the information with the public. This development set a new stage for the relationship between judicial professionals and the media.

One of the often neglected innovations that the Clean Hands prosecutors pursued was narrowing the confines of the so-called *segreto istruttorio* (mandatory confidentiality) that surrounded the ongoing investigations. This mandatory confidentiality usually served to protect the development of investigations from undue external interferences. Contrary to traditional practice, the Clean Hands prosecutors adopted a very narrow application of *segreto istruttorio*. According to a journalist reporting on the Clean Hands operation, the veil of secrecy over an ongoing corruption investigation would be broken as soon as defendants acquired access to the documents and evidence that the prosecution had assembled. This meant that the press would come into possession of the same documents almost at the same time as the defendants involved, which sometimes went along with a tendency to push some of the procedural norms.<sup>13</sup> For instance, according to one of the journalists following the Clean Hands investigation, Di Pietro deliberately held one of Chiesa's interrogations in the courthouse's backyard, inside what resembled a construction

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<sup>13</sup> Interview with a journalist by Lucia Manzi, Milan, May 9, 2016.

trailer with all the windows open. This clearly increased the probability that the contents of their conversation would leak.<sup>14</sup>

There is not enough evidence to suggest that the Clean Hands prosecutors adopted this narrow interpretation of *segreto istruttorio* to facilitate the leaking of information to the public for strategic purposes. Nevertheless, this new interpretation of procedural rules, along with recent novelties introduced by the 1989 reform of Italian criminal procedure, contributed to fundamentally changing the relationship between the judiciary and the press. Key to this development was the tight relationship that formed between the so-called *polizia giudiziaria* (a police corps entirely dedicated to working alongside the prosecutors) and crime reporters (Manzi 2023, 152). As another reporter following the Clean Hands operation explained,

[t]he group of journalists who was following the Clean Hands operation did not include the old judicial affairs reporters. Rather, it mostly consisted of young thirty-year-olds who had been reporting on crime . . . . In 1989 a new code of criminal procedure was introduced, which formally allowed prosecutors to direct the police corps' work on investigations. Whenever a prosecutor would order an arrest, we could rely on our connection with these judicial professionals, but, more importantly, we could rely on our well-established relationship with police forces, which derived from having spent many a night following violent crime cases with casualties . . . . That cop knows that he can trust me . . . because of this, if I need to understand better what is happening, maybe swearing to him that I will not write about it, the cop might be inclined to help me. This [connection] is something even prosecutors had not expected, but that objectively took place.<sup>15</sup>

During the Clean Hands operation, the relationship between reporters and the police grew so close that, sometimes, news of incoming arrests would leak before the arrests could take place: “The circulation [of information] was so fast that a few times we received notice of who would be arrested the day before this happened . . . . Our habit was to then go meet with this individual and interview them before their arrest (knowing that they would later be arrested) so that we could use quotes from this interview when this person was in jail.”<sup>16</sup> The immense and unprecedented amount of information available to the public about the corruption system quickly became a hallmark of the Clean Hands investigation. News teams established permanent stations in front of the Milan courthouse, constantly reporting for months about the operation’s ongoing developments. Moreover, national newspapers often drew most of their material directly from defendants’ testimonies: “Instead of writing a piece, we quoted entire sections from the police case into our articles, only adding a few subtitles to build transitions from one part of the article to another.”<sup>17</sup>

As outlined in these journalists’ testimonies, legal innovations set the stage for the restructuring of the relationship between the judiciary and the press via the

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<sup>14</sup> Interview with a journalist by Lucia Manzi, Milan, May 9, 2016.

<sup>15</sup> Interview with a journalist by Lucia Manzi, Milan, May 31, 2016.

<sup>16</sup> Interview with a journalist by Lucia Manzi, Milan, May 9, 2016.

<sup>17</sup> Interview with a journalist by Lucia Manzi, Milan, May 31, 2016.

mediating role of police forces working alongside prosecutors. These conditions greatly facilitated the sharing of information with the public and set the stage for the emergence of a new populist style of judicial professionalism. Given the growing role of the press in sharing news of the Clean Hands operation, it became relatively easy for judicial professionals to use media coverage strategically in order to bring the public into the fight against corruption and to shield the judiciary from political backlash. In March 1993, about one year after the start of the Clean Hands operation, several government officials proposed what would have been a “political solution” to the corruption problem uncovered by the Milanese prosecutors (Barbacetto, Gomez and Travaglio 2012, 106). The so-called “Conso package” consisted of a set of laws that would have rendered corruption charges less threatening to defendants while, at the same time, extending the application of criminal procedures granting a speedy trial (and more lenient sentences) to this specific type of criminal violation (106). In other words, the *decreti legge* (decree laws) that Minister Giovanni Conso (then head of the Ministry of Justice) put forth would have restructured the legal framework regulating corruption prosecutions and the ongoing Clean Hands operation.

First, one of the decree laws established that illegal financing would have “ceased to be a felony and would have instead become an administrative violation to be sanctioned with a fine” (Barbacetto, Gomez and Travaglio 2012, 106). This would have decriminalized a substantial component of the corruption system, whose primary reason for existence was to produce substantial illegal financing for the campaigns of Italian political parties and other electoral activities. Apparently, when discussing this decree law, government members also entertained the necessity of adding a formal ban from political office for anyone who would have benefited from the decriminalization of illegal party financing. However, this type of consideration did not make it into the final draft. Furthermore, the Conso package would have imposed a very extensive understanding of *segreto istruttorio* for ongoing investigations, which would have impacted the amount of information immediately available to the public via press coverage of the Clean Hands operation (106).

In addition, the Conso package also included a few proposals to explicitly allow defendants charged with corruption charges to seek the so-called *patteggiamento* (Barbacetto, Gomez and Travaglio 2012, 106). The latter was considered the Italian equivalent of common law plea bargaining. However, as I previously explained, *patteggiamento* did not allow for the negotiation of charges between the prosecutor and defendant that is central to plea bargaining. Rather, it granted additional leniency and a speedy trial to a defendant willing to plead guilty. Therefore, defendants who chose *patteggiamento* over corruption charges may have been able to avoid a harsher sentence and may have been granted parole rather than imprisonment (106). As a result, the extension of *patteggiamento* to corruption investigations would have undermined the successful legal strategy that had produced the massive flow of information about the corruption system in the Clean Hands operation. Indeed, it would have provided defendants with a “way out” of harsher charges without the need to offer their cooperation to the prosecutors in exchange for leniency. Overall, the Conso package would have severely impacted the Clean Hands operation’s effectiveness by fundamentally changing the legal framework that prosecutors had relied on for their work. It would have prevented the Clean Hands prosecutors from deploying the legal innovations that they had derived from a populist reading of

extant procedural and penal norms. In order to prevent this from happening, the Clean Hands prosecutorial team, under the leadership of Francesco Saverio Borrelli, who was then Milan's chief prosecutor, pursued an unprecedented strategic media intervention.

After consulting with members of the Clean Hands prosecutorial team, Borrelli called for a press conference to be held at his office inside the Milan courthouse and issued a statement about the proposed Conso package. In his statement to the press, Borrelli argued that it would be misleading to define the Conso package as a response to the prosecutors' requests for legislative aid in the fight against corruption (Barbacetto, Gomez and Travaglio 2012, 107). Government personalities had in fact started presenting the Conso package as an expression of support for the Clean Hands operation (106). Borrelli carefully dispelled any such ambiguity. At the same time though, Borrelli was careful to point out that, if Parliament wished to pass such legislation, it was fully within its powers to do so. Far from questioning the separation of powers among branches, Borrelli recognized that Parliament could in fact enact this type of legislation. Nevertheless, he also pointed out that the government would then also have to respond to the electorate for this decision. Finally, Borrelli attempted to outline what he thought would be this legislation's effect on the Clean Hands operation: a possible legal "paralysis of all ongoing investigation" due to the withdrawal of those incentives that had ensured the operation's breakthrough against the corruption system (107).

Borrelli's decision to hold a press conference specifically to comment on the likely effects of the Conso package was an unprecedented move with momentous political consequences. This is because it represented a strategic intervention geared toward attracting media attention to an item on the legislative agenda. While it is not unusual for legal actors, including prosecutors, to engage with the press from time to time, mostly to provide updates about their work, Borrelli's press conference went well beyond this. Its main goal was to protect the prosecutorial team's work by making sure that political forces would not undermine the Clean Hands team's legal strategy. Therefore, Borrelli sought to use media coverage to send a strong signal against the government's intended legislation. Leaving aside the normative implications of such an act, Borrelli's press conference clearly represented an instance of the strategic use of media coverage to produce legislative impact.

Even though the Milanese chief prosecutor unambiguously recognized Parliament's sovereignty over legislation, the targeted press conference created an inevitable media cycle, which soon turned into a wave of reactions to Borrelli's words by other public figures. Judicial institutions and judicial associations all showed support for Borrelli and the Clean Hands prosecutorial team (Barbacetto, Gomez and Travaglio 2012, 107). Media coverage conveyed Borrelli's negative assessment of the Conso package to the public, which immediately reacted with a strong show of support for the Clean Hands prosecutorial team. The first public reactions came almost at the same time as Borrelli's speech to the press. As Gianni Barbacetto, Peter Gomez, and Marco Travaglio (2012, 107) report, "newsrooms start[ed] receiving a wave of faxes filled with outrage from average citizens protesting the seeming attempt to 'sweep under the rug' political malfeasance."

As a result of this public backlash, the Italian government dropped the Conso package (Barbacetto, Gomez and Travaglio 2012, 107–8). Borrelli succeeded in

preserving the legal tools that the Clean Hands team would continue deploying until the operation's formal closing. Therefore, his targeted media intervention achieved its goal. More importantly, it clearly embodied a new style of prosecutorial behavior with populist features that broke down an informal barrier in the relationship between prosecutors and the press. The constant media coverage of defendants' confessions in the Clean Hands operation had already contributed to creating a "symbiotic relationship" between the press and judicial professionals. Borrelli's strategic outreach to the public via the press solidified this relationship by inaugurating the explicit and strategic use of media coverage by members of the judiciary. At the same time, the favorable media cycle that followed Borrelli's intervention further enhanced the emerging cleavage that saw the press, the judiciary, and the Italian public on one side and the political elites on the other. This cleavage clearly embodied the deep dichotomy at the heart of populism—the "us versus them" mentality that juxtaposes the people against corrupt elites. Thus, Borrelli's intervention also ushered in a new style of judicial professionalism that effectively relied on a strategic relationship with the press to speak directly to the public.

The several instances of either intentional or unintentional coordination between the Clean Hands prosecutors and the press demonstrated that this strategic relationship is a key feature of judicial populism. As I argued earlier in this article, judicial populists may introduce significant legal novelties in their work. This was especially the case in the Clean Hands operation, where a populist understanding of *corruzione* and *concussione* charges, along with the novel idea of *dazione ambientale* paved the way for the introduction of an extremely effective "informal plea-bargaining" (Manzi 2023, 146). As a result, judicial populists may be vulnerable to attacks and criticisms of their legal strategy. The strategic relationship with the press, however, provides judicial populists with a way to protect their work from retaliation. As Borrelli's press conference demonstrates, strategic media interventions can produce a favorable media cycle that will rally public opinion around judicial populists. This creates strong incentives for judicial populists to reach out to the public via the media and thus makes the strategic relationship between judicial professionals and the press an inherent feature of judicial populism. In other words, judicial populists must be ready to fight their battle not just at trial but also before the court of public opinion, which the press can effectively rally in their support.

## Conclusion

My goal in this article was to provide a new framework for understanding the successful breakthrough against systemic corruption in the Italian Clean Hands operation. Increasing scholarly attention to the phenomenon of populism has improved our understanding of this issue's essential features. However, scholars have shied away from applying this analysis to judicial behavior so far. Current theories of populism provide a useful framework for understanding the legal strategy that Italian prosecutors deployed in the Clean Hands operation. As I have shown in my analysis, this legal strategy fully embodied a populist approach to corruption prosecutions. Relying on new legal concepts such as *dazione ambientale*, Di Pietro introduced an interpretation of corruption laws that assumed the equal responsibility of all

defendants involved in patterned corrupt exchanges, regardless of their positionality within the corruption network, relative power, or role in the interactions with other corruption system participants. Thus, this legal interpretation is essentially populist in that it reads the law through the lens of the existential opposition between a loosely defined conglomerate of corrupt elites equally responsible for pervasive criminal violations and the “virtuous” citizens. This populist interpretation of criminal rules, in turn, allowed Di Pietro to introduce an “informal plea-bargaining procedure,” which proved to be the real engine behind the Clean Hands operation’s unprecedented success (Manzi 2023, 146). Thus, the main contribution of this article is to apply extant theories of populism to the Clean Hands operation to illuminate the unique populist features of this operation’s legal strategy.

Furthermore, the Clean Hands operation also shows that another feature of judicial populism is the emergence of a new style of judicial behavior that appeals directly to the public via its relationship with the press. Because judicial populists will often introduce legal novelties via their populist interpretation of legal rules, they will also seek to protect themselves from retaliation by rallying the public in their support. This is clearly visible in the Clean Hands operation. When the Clean Hands prosecutors perceived an emerging threat to their legal strategy, they intentionally pursued a strategic media intervention. This created a favorable media cycle, which created public support for the judiciary against government attempts to change the legal framework regulating corruption prosecutions. Thus, judicial populism will often entail strategic media interventions to sway public opinion in support of the judiciary.

Furthermore, analyzing the Clean Hands operation via this new framework allows us to identify the emergence of a similar phenomenon beyond the narrow confines of the Italian case. For instance, Judge Sergio Moro (2004), who led the Brazilian Car Wash operation,<sup>18</sup> admitted to finding inspiration in the Clean Hands operation’s legal strategy. The use of pretrial detentions, wiretaps, and defendants’ testimonies in the Car Wash operation clearly echoes the populist legal strategy that the Italian prosecutors deployed. Finally, targeted media interventions, such as the leaking of the wiretapped conversation between President Dilma Rousseff and former President Luiz Lula also point to the strategic use of media coverage to protect investigative work from political backlash (Douglas 2016). Thus, the pursuit of populist legal strategies and populist judicial behavior deserve further attention, especially to assess their effectiveness against pervasive criminal phenomena.

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<sup>18</sup> The Car Wash Operation was a vast anti-corruption investigation that led to the uncovering of a massive bribery scheme involving government agencies, like Petrobras, private companies, like Odebrecht, and elected officials, including former President Luiz Lula and President Dilma Rousseff.

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