



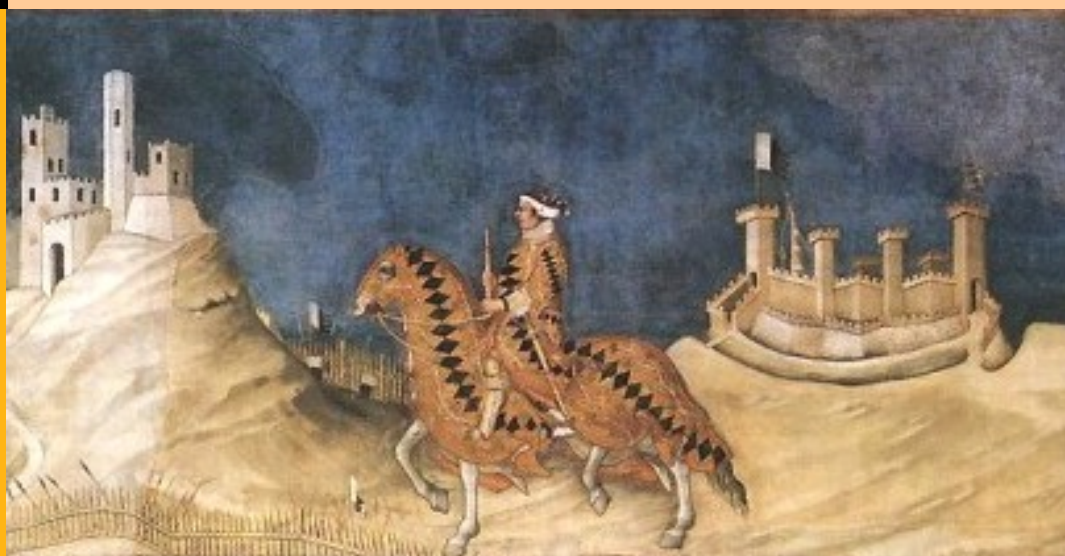
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**QUADERNI DEL DIPARTIMENTO
DI ECONOMIA POLITICA E STATISTICA**

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Discovering the dark heart of Italian capitalism:
a perspective from Supreme Court legal cases and business
consultants' analyses (1950s-1970s)

n. 698 – Giugno 2014



Abstract: This paper analyses the structure of Italian capitalism during the post-WWII economic miracle by focusing on the governance and management of small and medium firms. Using innovative sources, the paper shows that poorly conceived and/or enforced laws and legislation created incentive for business owners to be stockholders rather than stakeholders of their firms. This attitude emerges in two areas. Firstly, Italian business owners adopted structures of governance aimed only at protecting insiders, often at the expense of firms' development. Secondly, in Italy business consultants had a unique and wide role in the management of firms, and acted to protect the benefits of insiders rather than the interests of the company. These two issues also contribute to explain the well-known problem of the dwarfism of Italian firms and the scarce capacity to innovate.

JEL classification: N440; K22; L25.

The authors wish to thank for comments and criticisms the attendants to the Annual Conference of the Economic History Society (Cambridge, 2011) and of the European Business History Association (Athens, 2011), and to seminars at the University of Birmingham, UK (Birmingham, 2010), Scuola Superiore Sant'Anna (Pisa, 2014), the University of Siena (Siena, 2014), and the University of Pisa (Pisa, 2014). We also thank for precious advise Alberto Baccini, Alberto Dalmazzo, Silvia Di Martino, Giovanni Federico, and Alessandro Nuvolari. Last but not least, we must thank Sara Pecchioli for her valuable research assistance. Usual caveat applies.

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1. Introduction

In July 2013, the Italian business world was shaken by the dramatic news of the arrest of Salvatore Ligresti, and various members of his family, accused of a number of crimes including insider trading, fraud, and fiscal evasion. Being Ligresti the head of one of the most important Italian industrial groups and notoriously close to very influential politicians, his arrest had a big echo.¹ Some of the petty details of the accusation too, for example the use of business money to pay for his personal subscription to the television channel Sky,² reinforced in the Italian public the feeling that law was completely unable to constraint or limit business owners from exploiting and misusing firms' resources.

Depending on one's tastes, stories like these are either comical or tragic but, more importantly, they suggest that currently the Italian economy suffers from structural problems of lack of compliancy with basic rules of the game. This impression echoes in the academic literature. A branch of mainstream economics linked to the so-called "law and finance" approach, argued that legal origins of different systems are crucial in the analysis of the dynamic of economic growth,³ also by explaining the extent of problems defined, with slightly different meanings, as "self-dealing", "tunnelling" or "assets stripping."⁴ French-origin legal systems such as Italy are supposed to be more prone to them than Anglo-Saxon ones, and this would explain the Italian case. Consistently with this view, a group of Italian scholars maintained that, in Italy, self-dealing took place to an abnormal extent, although they explain this in terms of political economy, rather than as one of the supposedly time-invariant effects of legal origins.⁵ In both

¹ Gianni Dragoni, *Ligresti Story: La famiglia prima di tutto* (2013).

² Marco Panara, "Abbonamenti alle tv di Sky della famiglia Ligresti," *Repubblica Economia e Finanza* (22 luglio 2013).

³ Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, and Robert W. Vishny, "Law and Finance," *Journal of Political Economy* 106 (December 1998): 1113-1155; Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, "The economic consequences of legal origins," *Journal of Economic Literature* 46 (June 2008): 285-332.

⁴ Simeon Djankov, Rafael La Porta, Florencio Lopez-de-Silanes, Andrei Shleifer, "The law and economics of self-dealing," *Journal of Financial Economics* 88 (June 2008): 430-465; Simon Johnson, "Tunneling," *American Economic Review* 90 (May 2000): 22-27.

⁵ Alexander Aganin and Paolo Volpin, "The History of Corporate Ownership in Italy," in *A History of Corporate Governance around the World: Family Business Groups to Professional Managers*, ed. Randall K. Morck (Chicago, 2005), 325-361; Alexander Dyck and Luigi Zingales, "Private benefits of control: an international comparison," *Journal of Finance* 59 (April 2004): 537-600; Luigi Zingales, "The value of the voting right: A study of the Milan stock exchange experience," *Review of Financial Studies* 7 (January 1994): 125-148.

versions of the argument, the evidence of diversion of resources away from concerns, recourse to fraudulent bankruptcy, and practices of hiding assets for fiscal reasons, paint a picture of a form of capitalism where businessmen are stockholders rather than stakeholders in their firms.

In such scenario, for business and economic historians the very question becomes whether these phenomena are long-term features of the Italian economy, or just one of the aspects of the decline of the last two decades.⁶ If the former were true, this would lead to a profound reassessment of the very nature of the Italian variety of capitalism since, at least, the end of WWII. The label of a truly success story often associated to the Italian business structure, at least to part of it during certain phases, should be replaced with a much less enthusiastic one.

In order to analyse this issue, we take a very prudential approach by focussing on the historical phase of the Italian *miracolo economico* (economic miracle); these were the years (1950-1973) when the Italian productive structure reached the highest degree of similarity with the ones of other Western countries, hence where Italian businesses were most likely to have operated according to standard international practices.⁷ This means that if even during these years anomalies in the organisation and management of the average private Italian firm existed, it is extremely unlikely that the world of Italian business has ever been better.

The aim of the paper is to show that, in fact, during this period loopholes and gaps in the legal system and in the enforcement of basic rules led to the existence of an anomalous business structure characterised by high levels of stockholding. In this sense, while countries such as Germany, France or the UK rode the tiger of rapid growth of the golden age by progressing into their various trajectories of modern and efficiently regulated capitalism, the Italian economic environment did not catch these opportunities and remained prisoner of an inefficient institutional and legal system.⁸ The effects of these problems persisted over time and are at the roots of the lack of compliancy with basic rules that is so evident nowadays. In addition, such lack of compliancy provided incentives for the Italian business environment to remain in a

⁶ Emanuele Felice and Giovanni Vecchi, "Italy's Modern Economic Growth, 1861-2011," *Quaderni del Dipartimento di Economia Politica e Statistica, Università di Siena* 663 (2012).

⁷ Renato Giannetti and Michelangelo Vasta, *Storia dell'impresa italiana* (Bologna, 2012). See also, Giovanni Federico and Pier Angelo Toninelli, "Business strategies from Unification up to 1970s," in *Evolution of Italian Enterprises in the 20th Century*, eds. Renato Giannetti and Michelangelo Vasta (Heidelberg-New York), 191-238. For a recent overview of the Italian economy during the golden age, see Nicholas Crafts and Marco Magnani, "The Golden Age and the Second Globalization in Italy," in *The Oxford Handbook of the Italian Economy since Unification*, ed. Gianni Toniolo (Oxford, 2013), 69-107.

⁸ Barry Eichengreen, *The European economy since 1945: coordinated capitalism and beyond* (Princeton, 2008).

trajectory of small dimension, little investment in innovation, and specialisation in traditional labour-intensive industries that since the late 1980s became a burden in the process of growth.

This paper shows that during the economic miracle a combination of badly conceived and poorly-enforced basic rules of the game led to two anomalies in the structure of Italian capitalism. The first one is the specious character of firms' organisation: Italian concerns appeared to be formally owned and controlled according to standard ways but, behind the façade, the existence of distorted and misleading types of governance surface. In general, the aim of these strategies was to insulate and protect the interests of insiders such as firms' owners and its entourage (the family, key creditors, etc.) from legitimate actions coming from outsiders such as the state, minority creditors, and workers.⁹

The second anomaly of Italian capitalism is that fiscal consultants (*commercialisti*) tended to expand their functions as to become the real managers of small and medium firms.¹⁰ In this role *commercialisti* forged a structural alliance with business owners, again with the aim of defending them from outsiders. Such a strategy was twofold. On the one hand, *commercialisti* had a key role in the informal mechanisms to deal with insolvency, often used to promote the interest of certain creditors at the detriment of others. On the other hand, they played a crucial role in helping firms' owners to turn the high complexity of Italian norms in favour of their private interests, including the possibility of not to be compliant with fiscal obligations.

These two issues, in turn, help to explain a well-known and long-lasting feature of the Italian productive system, the fact that firms' size, despite the key role of big business typical of the golden age, was and remained incomparably smaller than the one of other industrialized countries, a phenomenon which went hand-in-hand with substantial lack of innovative capacity.¹¹

⁹ For an example of institutions able, together with other elements, to balance the interests of insiders with the ones of the firms in the German case, see Christina Lubinski, "Path Dependency and Governance in German Family Firms", *Business History Review* 85 (October 2011): 699-724.

¹⁰ Authors such as Baccini and de Cecco had already suggested that in Italy business consultants have an unique and wide role in the management of small and medium firms, but this early intuition has never been fully developed in the literature. See, Marcello de Cecco, "Piccole imprese, banche, commercialisti. Note sui protagonisti della seconda industrializzazione italiana," in *Atti di intelligenza e sviluppo economico. Saggi per il bicentenario della nascita di Carlo Cattaneo*, eds. Luciano Cafagna and Nicola Crepax (Bologna, 2001), 425-449.

¹¹ Alessandro Nuvolari and Michelangelo Vasta, "The ghost in the attic? The Italian National Innovation System in historical perspective, 1861-2011," *Quaderni del Dipartimento di Economia Politica e Statistica, Università di Siena* 665 (2012); Franco Amatori, Matteo Bugamelli, and Andrea Colli, "Technology, Firm Size, and Entrepreneurship," in *The Oxford Handbook of the Italian Economy since Unification*, ed. Gianni Toniolo (Oxford, 2013), 455-484.

Analysing these problems opens the door to complex methodological issues, in particular in terms of sources to be used; by definition, forms of self-dealing tend to happen behind closed doors and hardly leave any formal trace, depriving scholars from a proper body of evidence. Certainly tales of frauds, corruption and, in general, murky approach to business represented (and still do) a trademark of the Italian environment and were often the background of plots of novels and movies, as well as being reported in the news. This, however, only provides some impressionistic and scattered evidence very hard to be used in a systematic fashion to reach general conclusions. To tackle the problem of substantial lack of evidence we use two original sources. The first one is the minutes of legal hearings held by the Italian supreme court (*Corte di Cassazione*) between 1950 and 1979, the second one the *Atti dei congressi nazionali dei dottori commercialisti*, the published acts of the annual meetings of the Italian national association of business consultants.

The paper is organised as follows. Section 2 introduces the sources and methodology. Section 3 provides a scheme of the various informal typologies of governance used by Italian firms, while section 4 analyses the aims of these structures. Section 5 studies the unique role of business consultants in the management of Italian firms. Section 6 concludes.

2. Sources and methodology

As we argued, the aim of this paper is to study phenomena that, by definition, tend to happen in ways that leave as little evidence as possible and certainly no written record. Thus, while firms are operating normally the issues at the centre of the analysis in this paper take place virtually unchecked or at least unnoticed. Things are different, however, in case of legal disputes when detailed enquiries on the nature, structure and conduct of firms are performed in order to inform judges' decisions. The minutes of legal proceedings are therefore a very useful source of information that, however, has been so far neglected by Italian historians and economists. One of the key advantages of this source is that the information provided is to a large extent independent from the nature of legal allegations. For instance, a bankruptcy case might reveal information about the existence of a distorted yet totally legal form of governance, or legal disputes among partners can shed light on cases of lack of tax compliancy. More in general, besides the mere content and outcome of the actual legal disputes, these cases illustrate general problems as well

as limitations in the law and in the enforcement mechanisms. Because these issues shape the structure of opportunities and incentives to all individuals and firms, the legal cases we study can be seen as the proverbial tip of the iceberg. For example, the opportunity to abuse certain types of governance, or not to comply with given laws, is relative to the entire system and not certainly confined to the cases we look at.¹²

Our methodology consists in collecting minutes of cases discussed in the Italian supreme court, the one which has the last word in both civil and penal cases. The choice of focussing on the *Corte di Cassazione* is motivated on various grounds. Firstly, being a national court, which expresses its opinion on cases taking place all over the country, its records guarantee a proper national coverage. Secondly, it allows us to have a sample of both civil and penal cases. Thirdly, although Italy is a civil-law country, hence judges' decisions are not formally binding, the verdicts of the *Corte di Cassazione* carry a heavy weight and tend to establish the conventional wisdom towards given legal matters. This allows understanding how judges' decisions, together with the formal nature of laws and legislation, shape entrepreneurial behaviour.

The way we proceeded in practice is as following. Firstly, we identified the Italian law journals publishing, altogether, the totality of legal cases discussed by the *Corte di Cassazione*. All these publications have annual indexes organised by more or less generic headings, not always fully consistent among different journals. In order not to miss out on any potentially-relevant case, in each journal we searched any heading under which we could expect to find reports of business-related legal hearings (see the Appendix for the full list of journals and headings searched). This generated a list of about 4,800 legal cases of potential interest discussed between 1950 and 1979.¹³

The minutes of legal hearings (called *sentenze*) are usually rather detailed, but what these journals tend to publish is a brief summary - usually one page length - of them (what in Italian

¹² At first glance one might suspect that, being cases discussed in court, the sample is biased in the direction of including firms more prone to illegitimate or borderline behaviour, hence the results cannot be generalised. In fact, by looking at the final result of legal disputes, we discovered a wide variety of results, including situations where firms were brought to court and discharged from allegation, or went themselves in court and won the case. In other words, the sample includes cases of "guilty" as well as "innocent" businesses; hence their features and response to incentives given by the law can be considered the same as the one of the general population of Italian firms of the time.

¹³ Considering our estimation of about 14,500 of legal cases related to bankruptcy and insolvency (the biggest categories), this means that our sample represents about a third of the total number of business-related cases discussed by the *Corte di Cassazione*. In order not to miss cases taking place during the golden age, we extended our sample up to 1979 because the *Corte di Cassazione* was a final step of a long process, which usually started much earlier on.

are called *massime*). These readings are extremely useful to extract very important information, in particular about firms' governance. The selected *massime* therefore constitute an integral part of our primary sources. Moreover, the information included in the *massime*, allow us to focus on the most interesting cases worth to be analysed in details. On this basis, we selected a sample of 158 cases and, in order to analyse them deeper, we then search for the actual *sentenze*. Despite the difficult to find them, we managed to find almost sixty per cent of the sample (90 cases).¹⁴

Likewise forms of behaviour such as tunnelling or fiscal evasion that tend to leave little if any formal evidence, the involvement of a third part - in this case business consultants - in such mechanisms is often informal and unrecorded. In order to reconstruct this dimension, we use as a source the official proceedings of the annual congresses held by the national association of business consultants. We analysed all volumes published between 1946 and 1979 and we identified various articles written by eminent members of the association whose content is pivotal to reconstruct the role of business consultants in the management of Italian small and medium firms during the economic miracle.¹⁵ To a good extent these articles were lobbying devices aimed at protecting the interests of the association and of its members from the perceived undue intrusion of other professional categories into what was seen as an already too limited set of activities. In this perspective business consultants had no incentive to emphasise the actual extent of their involvement into the management of firms (something that was technically outside their official range of competences), and certainly no gain at all in letting surface any trace of possible alliance with business owners at the expense of other parts. In this sense the source is biased against our argument, and any evidence we found supporting the hypothesis of a structural involvement of business consultants in favouring stockholding by firms owners is meant to be the very tip of the iceberg.

3. Informal governance: a stylised taxonomy

The analysis of the sources described above reveals the existence of structural anomalies in Italian capitalism during the period under study. The first one is the existence of a variety of informal styles of governance used with the clear aim of promoting insiders self-interest. Thus

¹⁴ All records are held by the *Corte di Cassazione* but files are hard to access, therefore we considered the ones published in any of existing the legal journals.

¹⁵ In general the speakers at the Congress were delegates of regional branches of the Association.

while firms formally appeared as standard partnerships or incorporated businesses, their actual governance was much more complex and often invisible to outsiders. The study of the sample of *massime* selected from law journals reveals a number of different devices that can be summarized in three main typologies (table 1).

Table 1. Typologies of informal governance

Typology 1 Hidden owner/manager	Typology 2 Faked forms of governance	Typology 3 Firm-to-firm control
1.1 Secret partner (husband, wife, brothers)	2.1 Artisan firm	3.1 Proxy company
1.2 Strategic exit of a partner from a firm	2.2 Small business	3.2 Linkages among companies
1.3 Partners changing from limited to unlimited liability	2.3 Limited company 1: covering a partnership	3.3 Bad company
1.4 De facto partnership	2.4 Limited company 2: power concentrated in the hands of one person (<i>Tyrannical entrepreneur</i>)	

Before analysing the way in which insiders used faked forms of governance to protect their interest, a description of various typologies of informal business organisation is in order.

The first general typology of styles of informal governance (1 – *hidden owner/manager*) was based on the existence, in a given partnership, of one or more members who did not formally appear as part of it, often despite a clear involvement in the administration. This generic strategy could take four forms. The most straightforward one (1.1) was simply the fact that some partners existed but their involvement was not explicitly and formally recognised, what in Italian is called *socio occulto*, or secret partner in English. Often, this kind of agreements can be found in family-run business where only one member officially appeared in charge of the firm and liable for the losses, while the actual managing of firm was shared with other members of the family (brothers, wife, and husband). A variation on the theme (1.2) is a situation where rather than never officially appearing as such, partners opted for a strategic entry and exit in and from the firm trying to hide their involvement any time this was not convenient. A third way of hiding partner/manager (1.3) took place in special limited-liability partnerships (called *società in accomandita*) in which some partners (called *accomandantari*) could chose to appear as limited-liability ones in exchange to accepting a marginal role (or no role at all) in the management of the business, while the other partners (*accomandanti*) were subject to unlimited liability. The

case of the secret partner into an established partnership, with all the variations on the theme, can be seen as a narrow aspect of the more general problem of various people operating together without making such business partnership official (typology 1.4). The use of de facto firms (*società di fatto* in Italian) was legal per se and an extremely common way of operating businesses.

The second general typology of informal governance (2 – *faked forms of governance*) consisted in hiding the true system of governance. This typology could take four different forms: ordinary industrial firms hidden behind the label of artisan ones (typology 2.1); medium-sized enterprises officially registered as small businesses (typology 2.2); partnerships turned into joint-stock limited-liability companies for strategic reasons (typology 2.3); unlimited-liability partnerships hidden behind joint-stock limited-liability whose shares (and managerial responsibilities) were concentrated in the hands of very few people if not a single person (so-called tyrannical entrepreneurship, typology 2.4).

The third general typology of informal governance (3 – *firm-to-firm control*) is the existence of firms without any real role apart from being functional to the interests of another business. This general strategy could take three forms. The first one (3.1) was the use of an existing limited-liability business as proxy company (*impresa schermo* in Italian) to cover the activity of a partnership. The second typology was the existence of linkages among businesses formally and financially independent, in fact owned by the same person or group of people (3.2). The third one was the explicit use of a firm to endorse liabilities belonging to other firms (bad company, 3.3).

Although logically separable, in practice different variations of the three general typologies of informal governance were also used in combination. For example, proxy companies could be used to cover either formally-registered firms or only de-facto ones with one or more silent partners, or silent partners could be part of businesses registered as small or artisan while in fact being ordinary ones, and so on.

4. Aims of governance

In general, the aim of these informal typologies of governance was the protection of insiders from various outsiders. This, however, took place in a number of different ways and for different purposes, which can themselves be divided in three general aims (table 2).

Table 2. Aims of various typologies of informal governance

Typology of governance		Aim		
		(A) To achieve reputation without liability	(B) To benefit from institutional protection	(C) To generate, artificially, financial resources or to transfer them from business to business
Hidden owner/ manager	1.1 Secret partner (husband, wife, brothers)	Yes		Yes
	1.2 Strategic exit of a partner from a firm	Yes		
	1.3 Partners changing from limited to unlimited liability	Yes		
	1.4 De facto partnership	Yes		
Faked forms of governance	2.1 Artisan firm		Yes	
	2.2 Small business		Yes	
	2.3 Limited company 1: covering a partnership		Yes	
	2.4 Limited company 2: power concentrated in the hands of one person (<i>Tyrannical entrepreneur</i>)		Yes	
Firm-to- firm control	3.1 Proxy company	Yes		
	3.2 Linkages among companies			Yes
	3.3 Bad company			Yes

The first general aim (A - *to achieve reputation without liability*) of some of the informal structures of governance described in table 1 was the establishment of a degree of reputation without exposing business owners to the full weight of legal and financial liability. This aim was related to the fact that in Italy trust and reputation tended to be endorsed on the full commitment of individuals rather than on the capacity of firms, largely because of the inability of the legal system to guarantee quick and efficient procedure to recover credits.¹⁶ The implication is that the

¹⁶ Magda Bianco, Tullio Jappelli and Marco Pagano, "Courts and banks: effects of judicial enforcement on credit markets", *Journal of Money, Credit, and Banking* 37 (March 2005): 223-244.

use of the limited liability form (either in partnerships or in incorporated business) could not be a straightforward mean to create a distance between personal assets and the ones of the firm. Besides, the use of the limited liability had higher cost than the recourse to the partnership, because of the minimum amount of capital required and the impact of registration fees.¹⁷ Thus for small partnerships or sole ownership it would have been too expensive to adopt the limited liability form, leave alone in the joint-stock version. In such scenario, an entrepreneur with high personal reputation could choose to spend it by operating in a business in a way to ingenerate the impression of being a formal partner, but without formally appear in it and without exposing his/her personal assets as collateral for financial obligations. A similar strategy consisted in officially appearing as a partner only during good times, or only in a role (for example as limited-liability partner) which would protect the person from full legal responsibilities.¹⁸ The self-dealing nature of these mechanisms is at first glance only partially clear, as hidden partners could escape the consequence of bankruptcy (and possibly, in good times, also the attention of tax collectors), but still at the expenses of the other members of the partnership. However, this form of governance often implied agreements among partners to make only one of them legally responsible, and officially endorsing all personal assets on the others, de-facto limiting the degree of liability of the firm to its own assets. The most typical example of this kind of agreements can be found in family-run business, in particular in the case of a firm operated by wife and husband, where only one member officially appeared in charge of the firm and liable for the losses.¹⁹ In this perspective, particularly illuminating is the case of *Mongello vs. fallimento Mongello et al.* In the early 1960s, mr. Mongello, together with his wife and daughter, traded in Rome in the shoe industry. His involvement was explicit, but when the business got bankrupt Mongello tried to hide his financial responsibility by pretending to never having been a partner. In declaring Mongello guilty, the judge in charge commented that he “did not underwrite any commercial bill in order not to involve his assets... but behaved in a way as to ingenerate the

¹⁷ In 1959, the minimum capital requirement was fifty thousand lire for limited-liability companies, and one million for joint-stock ones. Source: Giuseppe Ferri, *Manuale di diritto commerciale* (Turin, 1959).

¹⁸ Cassazione Civile, Sezione I, 18 giugno 1958, *Fallimento Società A.L.P.E. vs. Floris* (for the former), and Cassazione Civile, Sezione I, 24 ottobre 1969, *Gilli vs. Fallimento Società Cotonificio di Samarate e Gilli* (for the latter).

¹⁹ Cassazione Civile, Sezione I, 27 febbraio 1971, *Giannattasio vs. società irregolare Giannattasio e fallimento Giannattasio*. For an overview of the mechanisms operating in family firms, see Andrea Colli, *The history of family business* (Cambridge, 2003).

impression among third parties to be a partner in the firm”.²⁰ Italian judges were fully aware of these mechanisms, considering wife and husband as “natural partners in crime”,²¹ and such attitude was reflected in the Italian bankruptcy law which established extremely rigorous devices to avoid undue transfer of assets between two members of a couple. For example, in case of bankruptcy of one member of a married couple, the so-called *presunzione muciana* implied that any asset purchased by his/her partner up to five years before such insolvency was automatically included among the ones to be used to pay the bankrupt’s creditors.²² Similarly, any donation of money and/or assets between husband and wife could have been nullified by court.²³ However, in Italy loopholes in the law and technical issues during procedures offered ample opportunities to by-pass these otherwise substantial obstacles. For example goods and/or assets bought explicitly for the economic needs of the marriage (the so-called *beni in dote*), however substantial, were not subject to such legal norms.²⁴ In other cases, it was simply very hard to determine the exact ownership of goods and assets.²⁵ The discrepancy between the law in the books and its enforcement thus made this form of governance extremely effective in establishing a degree of reputation but, at the same time, protecting more personal assets than the legitimate claims of creditors.

The search for credibility without liability was also often behind the use of two other perfectly legal typologies of governance: de facto partnership (1.4) and proxy company (3.1). In a de facto partnership creditors had the impression of dealing with a proper firm with independent assets, only to discover that, in fact, such concern never officially existed, hence was not liable for losses or debits. Besides, the partners involved never formally established any business association hence not even them were, *prima facie*, liable for financial obligation.²⁶ In some cases, the use of a de facto partnership was combined with the existence of one or more silent partners. In such situation the reconstruction of individual legal responsibility became even harder and the protection of the silent partner even stronger. As a matter of fact, while the Italian bankruptcy law clearly established, in case of insolvency of a formally registered firm,²⁷ the

²⁰ Cassazione Civile, Sezione I, 21 ottobre 1967, *Mongello vs. Fallimento Mongello e altri*.

²¹ Cassazione Civile, Sezione I, 11 maggio 1968, *Fallimento Ponziano vs. Renza*.

²² Cassazione Civile, Sezione I, 19 ottobre 1955, *Belillo vs. Fallimento Mantovani*.

²³ Cassazione Civile, Sezione I, 20 marzo 1959, *Santi vs. Fallimento Rosati*.

²⁴ Cassazione Civile, Sezione I, 2 marzo 1978, *Fallimento Benanti e Schillaci vs. Benanti e Schillaci*.

²⁵ Cassazione Civile, Sezione I, 8 giugno 1966, *Fallimento Cattaneo vs. Cattaneo*.

²⁶ Cassazione Civile, Sezione I, 12 agosto 1953, *Zanella vs. Rottersteiner*.

²⁷ Legge Fallimentare, articolo 147, comma secondo.

possibility of extending automatically the legal and financial responsibilities to all partners (including the silent ones), it was a matter of debate whether the same applied in case of unregistered de-facto companies. In such cases it was up to the power of individual judges to make a decision, opening the door to abuses.²⁸ Another type of governance put in place to achieve reputation without full financial responsibilities was the use of a proxy company to hide another informal concern. Often, although not necessarily, the proxy company was a limited-liability business hiding the activities of an unlimited-liability partnership among the stockholders of the joint-stock company officially appearing in contracts and obligations.²⁹

The second general aim behind the use of informal governance (B - *to benefit from institutional protection*) was to try to take advantages from the use of privileged forms of business organisation. Generally, this was the strategy behind the use of what in table 1 we defined typology 2 (faked forms of governance), although the actual advantages and protection offered, varied according to the specific form adopted. Specifically, by choosing given forms of governance, business owners tried either to avoid taxation or to be protected from bankruptcy, or to benefit, without the right to do so, from limited liability. By registering a concern as a small or an artisan firm, business owners were by law discharged from bankruptcy and, in the latter case, also enjoyed a favourable fiscal regime.³⁰ In theory, in order to use either of these forms of governance, a given business had to fit some criteria. In practice, however, technical difficulties made the enforcement of these norms very hard.³¹ For example, the threshold to qualify a business as small was based on fiscal declarations that, as we show in the next session of the paper, were commonly open to frauds. Besides, a firm could qualify as small business even if it was below the fiscal threshold only at the moment of the declaration of bankruptcy or, at most, a year before.³² Similarly, the legal status of artisan firm was based on a fuzzy definition of its activity, and it was up to judges to decide in each case whether or not the given firm qualified as

²⁸ Cassazione Civile, Sezione I, 12 marzo 1957, *Calvello e Mettel vs fallimento Vargas*.

²⁹ Cassazione Civile, Sezione I, 18 marzo 1966, *Boniardi vs. fallimento Società Boniardi e altri*.

³⁰ Alberto Baccini, "Artigiancassa: da Istituto di credito speciale a banca per le imprese artigiane," in *Atti e Documenti di Artigiancassa S.p.a., Artigiancassa: da Istituto di credito speciale a banca per le imprese artigiane 1953-2001* (Firenze, 2002), 7-101; Giuseppe M. Longoni and Alberto Rinaldi, "Industrial policy and artisan firms (1930s-1970s)," in *Forms of Enterprise in 20th Century Italy. Boundaries, Structures and Strategies*, eds. Andrea Colli and Michelangelo Vasta (Cheltenham, 2010), 204-224.

³¹ Cassazione Civile, Sezione I, 19 aprile 1966, *Laganà vs. fallimento P.A.V.*; Cassazione Civile, Sezione I, 12 novembre 1977, *Baldassarre vs. Ditta Gravina e fallimento Baldassarre*.

³² Cassazione Civile, Sezione I, 11 marzo 1975, *Memeo vs. Banca Nazionale dell'Agricoltura, Soc. Uniroyal Eglebert e Volpe*; Cassazione Civile, Sezione I, 12 luglio 1957, *Cavaglieri vs. fallimento Cavaglieri*.

artisan. Various cases found in the sample show the difficulties of such evaluation and the enormous latitude left to judges.³³ This led to strong incentives to hide concerns with very clear industrial nature behind the label of artisan firms. In the early 1960s, for example, in the town of Reggio Calabria Antonio De Cusatis run, disguised as an artisan firm, a baking factory. The industrial nature of this concern was evident from the simple fact that it was an important supplier of the Genoa-based firm Saiwa, at the time one of the Italian leading companies in the food processing sector. It also appeared – as the judge stressed – that in its activity the business run by De Cusatis used “a complex pool of assets” such as buildings, machinery, and industrial plants.³⁴

The use of limited-liability form in a strategic way was mainly in the desperate attempt to avoid the full legal and financial liability of the members of a partnership. In fact, it was often the case that inquiries into the failure of joint-stock companies revealed how their firms were originally unlimited-liabilities partnerships or sole-ownership, only turned into the limited-liability form right before the declaration of bankruptcy.³⁵ A variation on this strategy is what the Italian civil code defined tyrannical entrepreneurship (*imprenditore tiranno*), i.e. a joint-stock limited-liability company whose shares are concentrated mainly in the hands of one single person. In this case the aim is to turn what would have been a de facto unlimited-liability sole ownership into a de jure limited liability company, by simply endorsing a small proportion of stocks onto another partner as to avoid to formally appear in control of 100% of them, a situation which would lead to unlimited liability of the stock-owner. The effectiveness of this form of governance is well showed by the case *Fallimento Melandri vs. Banco di Napoli e Cassa di Risparmio di Genova e Imperia*, involving the limited-liability joint-stock company I.m.p.e.a. based in Genoa. In this case the judges quickly realised that what appeared as a company was, in fact, a partnership between mr. Melandri and his wife, the former owning 80% of the firm’s share and the latter 20%. It also appeared that Melandri was the company director and only

³³ Cassazione Penale, Sezione V, 6 maggio 1968, *Giancreco vs. Romano e altri*; Cassazione Civile, Sezione I, 16 ottobre 1965, *Sozzi e Soc. Colorificio Toscano vs. fallimento Sozzi*.

³⁴ Cassazione Civile, Sezione I, 18 maggio 1971, *De Cusatis vs. Saiwa e fallimento De Cusatis*.

³⁵ Cassazione Civile, Sezione I, 11 gennaio 1969, *Ferrari vs. Ascenti*; Cassazione Civile, Sezione I, 24 marzo 1976, *Cesim vs. Banca del Lavoro*; Cassazione Civile, Sezione I, 7 settembre 1970, *Società Veneer Trading vs. fallimento Società Veneer Trading*.

representative. Despite this very clear situation, still the court decided not to charge Melandri with full financial liability.³⁶

The third general aim behind the use of informal governance (C - *to generate, artificially, financial resources or to transfer them from business to business*) was to increase the resources of a firm, and/or to transfer them from a company to another in order to make them invisible to creditors' claims. To pursue this aim, business owners made use of two of the typologies of governance described in table 1. One typology (3.2) was the network of firms, formally independent but belonging to the same person or group of people. Also in this case, the involvement of husband and wife having common interests but formally trading in two separate concerns increased the effectiveness of these mechanisms.³⁷ Networks could be used to guarantee each other liabilities and/or to transfer resources from a firm in financial difficulties to other businesses in the attempt of tunnelling assets and make them invisible to creditors.³⁸ A good example is the case of the bankruptcy of the limited-liability company S.a.m.i.c, a firm operating in the early 1960s in Milan mainly in the textile sector, but with some interest in the building industry too. This concern was, at first glance, a solid and relatively big firm, with a share capital of two billions lire in 1961. At the moment of its insolvency, however, it appeared that in front of more than three billions lire of liabilities, the amount of assets actually available to creditors was much lower. According to the judges, the reason for this discrepancy was that, despite its status of limited-liability joint-stock company, the firm was managed by a single person (mr. Tavazzini) "as its own thing", something that included the constant transfer of resources to a galaxy of other firms somehow controlled by S.a.m.i.c. itself. The effectiveness of this mechanism is showed by the fact that the fraudulent character of this behaviour could escape judges attention. Indeed, judges in the court of appeal had originally dismissed the case and only the judges in the *Corte di Cassazione* recognised, instead, that the network structure had the intent of hiding resources from creditors.³⁹

³⁶ Cassazione Civile, Sezione I, 9 dicembre 1976, *Fallimento Melandri vs. Banco di Napoli e Cassa di Risparmio di Genova e Imperia*. In the case Cassazione Civile, Sezione I, 13 aprile 1964, *Fallimento Lutz vs. Lutz e altri*, the main stockholder owned 99% of shares.

³⁷ Cassazione Civile, Sezione I, 6 ottobre 1977, *Fallimento Barbagallo e Volpi, Fallimento Barbagallo vs. Società Giuba Saul It. e Volpi*. See also, Cassazione Penale, Sezione V, 9 ottobre 1967, *Portalupi e altro vs. fallimento Portalupi*.

³⁸ Cassazione Civile, I sezione, 6 luglio 1970, *Del Fante vs. Fallimento Società Del Fante*; Cassazione Penale, Sezione III, 11 maggio 1962, *Celeschi e altro vs. fallimento Celeschi*.

³⁹ Cassazione Penale, Sezione III, 1 luglio 1963, *Pubblico Ministero vs. Tavazzini*.

The other typology of governance used to channel resources from a firm to another is what we defined the bad company (3.3). This took place when a company was used by another one which had its full control, as the frontline in case of bankruptcy.⁴⁰

To sum-up, despite norms often formally conceived exactly to avoid stockholding and the pursue of private advantages, a number of gaps, loopholes, and procedural issues created incentives to use forms of governance which, in different ways, protected insiders from legitimate claims of outsiders, being them creditors, clients or the state.

5. The role of business consultants (*commercialisti*)

Together with the issues described above, the second anomaly in the structure of Italian capitalism during this period is the unique wide role played by fiscal consultants who, de facto, were the true managers of small and medium firms. In Italy there were two professional categories formally recognised as business consultants: the so-called *ragionieri commercialisti* (operating on the basis of a specialised technical high-school degree) and the higher-qualified so-called *dottori commercialisti*, a professional title that required university degree in economics, commerce and business administration, and having passed a national exam hold and managed by the national association. Business consultants of both types had in Italy an importance that was unknown in other countries, the result of a unique legal and institutional setting. The main activity of this professional figure, common to the equivalent professions in Europe, was fiscal consulting.⁴¹ In Italy, however, the peculiar extreme complexity of fiscal norms made the position of business consultants more central than anywhere else. The legislative reforms of the 1950s and then of the 1970s led to what was defined an “amazing legislative confusion” as to “reduce to very few specialists the number of people able to understand the whole fiscal system”;⁴² the result was that for firms was simply impossible to operate without a fiscal specialist.⁴³ Differently from what happened in other economies, the structural involvement of

⁴⁰ Cassazione Civile, Sezione I, 25 marzo 1971, *Fallimento Società FIMIR vs. Credito Italiano*; Cassazione Civile, Sezione I, 22 giugno 1963, *Fallimento Società Fratelli Andreoni e soci vs. Società Fratelli Paganoni*.

⁴¹ Bernardo Mattarella, “Untitled speech”, in *Congresso nazionale dei dottori commercialisti: Napoli, 4-7 ottobre 1956* (Napoli, 1957), 427-430.

⁴² Cosciani, quoted in Stefano Manestra, “Per una storia della tax compliance in Italia,” *Questioni di Economia e Finanza - Occasional papers Banca d’Italia* 81 (2010).

⁴³ Maria Rosaria Fiorentini, “Sviluppo capitalistico e professioni economiche: ragionieri e dottori commercialisti, consulenti del lavoro,” in *Le libere professioni in Italia*, ed. Willem Tousijn (Bologna, 1987), 264 and 279.

fiscal consultants thus became a feature of every Italian small and medium firm. In such situation both supply and demand-side factors made convenient for these specialists to enlarge their roles. On the demand side, once the consultant was hired, his fixed cost made convenient to the average small-sized Italian concern to try and extract economies of scope by using him for the provision of other expertise, from labour management to financial consulting.⁴⁴ On the supply side, this was a welcome opportunity as the lack of exclusivity on their functions made business consultants feeling unstable in their position, and constantly seeking to expand their roles. This is a perennial complaint among *dottori commercialisti* who feared the race from the bottom from *ragionieri commercialisti*,⁴⁵ while both categories also faced the competitions from other professions, such as lawyers, as well as institutions such as business associations and trade unions.⁴⁶ Fiscal consulting, thus, was the first step to acquire more extensive roles in firms; *ragionieri commercialisti* tended to become de facto general managers of smaller firms, while *dottori commercialisti* to play a de facto role of global consultant in relative bigger ones.⁴⁷

The unique wide and deep role played by business/fiscal consultants in Italy had implications in terms of compliance with the rules of the game. Specifically, business consultants plaid a structural role in circumventing specific rules and regulation with the aim of protecting business owners from outsiders. This happened in three different areas: i) tax compliance; ii) tunnelling of resources from firms to owners; (iii) dealing with insolvency.

The lack of tax compliance (i) is a long-term structural feature of the Italian economy and its degree was (and still is) unknown in other Western economies. Research run by Schneider and Enste showed, for instance, that since 1990 in Italy the level of the shadow economy has been

⁴⁴ This was recognised by the *commercialisti* themselves, see Goffredo Sala, “Prospettive del dottore commercialista e ordinamento professionale”, in *Congresso nazionale dei dottori commercialisti: 20-25 settembre 1976: atti e relazioni* (Genova, 1979), 811-824.

⁴⁵ Such complains were very common at annual meetings of the national association. See, for example, Oreste Croce, “Il ruolo del revisore ufficiale dei conti”, in *Congresso nazionale dei dottori commercialisti* (Milano, 1946), 359-363; Pietro Aricò, “Attuale orientamento della professione di Dottore Commercialista in Italia e delle professioni corrispondenti in altri paesi”, in *Congresso nazionale dei dottori commercialisti: Napoli, 4-7 ottobre 1956* (Napoli, 1957), 183-189; Luigi Rocco, “Orientamenti e collegamenti professionali”, in *Congresso nazionale dei dottori commercialisti: Napoli, 4-7 ottobre 1956* (Napoli, 1957), 191-203; Dino Angeli, “La crescente importanza dei problemi professionali”, in *Congresso nazionale dei dottori commercialisti: Trieste, 21-25 settembre 1966* (Trieste, 1968), 387-402. Luigi Antonelli, “Funzioni e compiti del dottore commercialista”, in *Congresso nazionale dei dottori commercialisti: Trieste, 21-25 settembre 1966* (Trieste, 1968), 201-240; Sala, “Prospettive del dottore commercialista e ordinamento professionale”.

⁴⁶ Fiorentini, “Sviluppo capitalistico e professioni economiche”, 290 for the former, 292 for the latter.

⁴⁷ Ibid., 284-285. Evidence of this also surface in the case *Rossi e De Mattia vs. Tribunale di Treviso* (Cassazione penale, Sezione, III, 18 febbraio 1957), in which Mattia Nerino, *commercialista* of the firm *Officine Meccaniche Rossi Romeo*, owned by Romeo Rossi, argued to have been in full charge of the management of the firm.

among the highest in the Western world.⁴⁸ Although shadow economy does not directly mean fiscal evasion, it is a good indication of the high level of economic activity that escapes formal controls, hence more exposed to this type of problems. Data on fiscal evasion, although limited to the national dimension, confirm this perception. Already before the WWII, estimations of fiscal evasion provided by the statistician Corrado Gini, and by the editors of later editions of his book, spanned from about 32 per cent in 1909 to 50-70 per cent in the 1920s and 1930s.⁴⁹ After the War, despite reforms in the 1950s, the degree of fiscal evasion remained at similar levels,⁵⁰ to the point that during parliamentary discussion it was argued: “We often have the feeling that fiscal evasion is a lifestyle choice”.⁵¹ Although these remarks applied to firms as well as private citizens, it is clear from contemporary reports that small and medium businesses were at the forefront of fiscal non-compliance.⁵² The fact that business consultants were in charge of fiscal matters, as the result of their monopoly over the understanding of the system, logically implies that such enormous degree of fiscal evasion would have been simply impossible without their help. In fact this was the common opinion, so eradicated in the Italian culture as to be officially reported in speeches at the annual meetings of the national conference. In 1976, for example, Goffredo Sala quoted the newspaper *Il Giorno* that identified *commercialisti* as the ones able to make firms “saving on taxes”.⁵³ Although the remaining of the speech was directed towards the attempt to deny such fact, paradoxically strong elements supporting this thesis came from other high-ranked members of the very association. The most striking one come from a speech by Aldo Parea at the annual meeting in 1958, where he stated: “It is uncontroversial that, for fiscal reasons, in every firm there are two book-keepings: the official one and the real one ... the aim of keeping two book-keepings is to reduce the burden of taxation”.⁵⁴ Hardly the widespread character of fiscal evasion and the perfect knowledge of these mechanisms by fiscal consultants could be made more explicit.

⁴⁸ Friedrich Schneider and Dominik H. Enste, “Shadow Economy: Size, Causes and Consequences,” *Journal of Economic Literature* 38 (March 2000): 77-114.

⁴⁹ Corrado Gini, *L'ammontare e la composizione della ricchezza delle nazioni* (Torino, 1914) (2nd ed. 1962), quoted in Manestra, “Per una storia della tax compliance in Italia.”

⁵⁰ See Manestra, “Per una storia della tax compliance in Italia.”

⁵¹ Ibid.

⁵² Ibid.

⁵³ Sala, “Prospettive del dottore commercialista e ordinamento professionale”, 813.

⁵⁴ Aldo Parea, “Una forma di pseudo ‘cessio bonorum’,” *Congresso nazionale dei dottori commercialisti: Palermo 2-5 ottobre 1958* (Palermo, 1960), 321-322.

The second area of alliance between consultants and business owners was the one of resource tunnelling (ii). As argued in the introduction, various studies by economists have already showed that due to the absence of efficient norms, in Italy tunnelling in incorporated businesses is comparatively extremely high. Along different lines, de Cecco provided further evidence of the existence of such phenomenon, arguing that since the 1970s firms' owners, scared by social and political tensions, "began to extract capital from their companies".⁵⁵ Despite these indications, a quantification of tunnelling among non-incorporated firms and in historical perspective is hard to provide and its actual extent remains a matter of debate. However, there is a specific form of tunnelling which gives us some important hints. This is the use for personal purposes of assets (cars, real estates, etc.) formally endorsed onto firms but leased to their owners or their families. The relevance and extent of this phenomenon can be indirectly inferred from the fact that it was not until 2011 that the fiscal revenue board made compulsory to formally report these goods "to contrast the leasing of firms' goods to partners or members of their families in order to circumvent fiscal obligations".⁵⁶ In fact, leasing of firms goods allowed business owners to achieve two results; on the one hand they saved on the purchase of personal durable goods, on the other they reduced business taxes by taking into account the costs of artificial investments therefore reducing the book value of profits. At least three elements suggest that business consultants were in the position, and had strong incentives, to favour this sort of practices. Firstly, as for fiscal evasion, *commercialisti* were in charge of bookkeeping, thus tunnelling would have been impossible without their support or at least approval. The details of legal case *Rossi e De Mattia vs. Tribunale di Treviso*, for example, show very clearly how the firm's owners totally depended on the consultant's expertise to organise a fraud by falsifying the books. It was the consultant, in fact, who first conceived the plan and then physically managed it.⁵⁷ Secondly, business consultants served individual customers, specifically the firm's owner, not firms.⁵⁸ In such situation, tunnelling of resources from firms to owners would strengthen *commercialisti* position. Thirdly, tunnelling also helped to keep firms' small and this, in turn, was pivotal to preserve consultants' unique position of power in the Italian business world. As a

⁵⁵ Marcello de Cecco, "Italy's dysfunctional political economy", *West European Politics* 30 (September 2007): 767.

⁵⁶ <http://blog.pmi.it/02/12/2011/beni-ai-soci-la-nuova-normativa>. Accessed on 16th April 2014.

⁵⁷ Cassazione Penale, Sezione III, 18 febbraio 1957, *Rossi e De Mattia vs. Tribunale di Treviso*.

⁵⁸ Rocco, "Orientamenti e collegamenti professionali" and Fiorentini, "Sviluppo capitalistico e professioni economiche", 285.

matter of fact, *dottori commercialisti* served small firms,⁵⁹ while *ragionieri commercialisti* even smaller businesses organised as artisan firm, and it is no coincidence that the number of consultants in general increased in the 1970s and in particular 1980s in conjunction with the rise of the relative share of small-medium firms which followed the oil shocks and the crisis of big business.⁶⁰ The link between firms' small size and the power and influence of consultants had both supply and demand-side explanations. On the demand-side, big firms did not use external consultants, but internalized this role. This led to constant complains among business consultants who saw big business, in particular state-ownership ones, as the "enemy".⁶¹ On the supply-side, business consultants saw themselves as craftsmen, specialising in all possible functions and very often operating individually or, at most, in association with few colleagues, contrary to what happened in other countries.⁶² Still in 1983, about 70 per cent of *dottori commercialisti* (i.e. the one dealing with relatively bigger firms) operated individually.⁶³ This issue was probably cultural, but certainly there were strong incentives provided by the institutional set-up too: unlike in any other European country, the Italian legislation of the time made impossible the organisation of business consultancy in joint-stock firms.⁶⁴ Without this possibility, the market for offering services to big firms remained out of reach for individual business consultants, unable or unwilling to specialise in a narrower set of functions. In fact, at least since the 1960s, business consultants were perennially concerned about the competitions of foreign firms in this segment of the market.⁶⁵

The third scenario of structural alliance between business consultants and firms owners appears in the management of cases of business insolvency (iii). Likewise fiscal compliancy (or lack of), the issue of bankruptcy in Italy shows peculiarities unparalleled anywhere else in Europe. Specifically, the vast majority of cases were dealt with by using informal procedures

⁵⁹ Franco Antolini, "Tecnica e politica dei bilanci di esercizio delle imprese", in *Congresso nazionale dei dottori commercialisti: Napoli, 4-7 ottobre 1956* (Napoli, 1957), 333-338.

⁶⁰ Between 1980 and 1985, for example, the number of *commercialisti* increased by 32 per cent, and only by 13 per cent between 1976 and 1980. Also, in 1976 the *ragionieri commercialisti* – the ones dealing mainly with the smallest firms – were about 40 per cent of the total, a share that increased to almost 50 per cent in 1985. Source: Authors' elaboration from Fiorentini, "Sviluppo capitalistico e professioni economiche", table 13, 278.

⁶¹ Sala, "Prospettive del dottore commercialista e ordinamento professionale"; Croce, "Il ruolo del revisore ufficiale dei conti" and Rocco, "Orientamenti e collegamenti professionali."

⁶² Rocco, "Orientamenti e collegamenti professionali"; Antonelli, "Funzioni e compiti del dottore commercialista", 217 and Aricò, "Attuale orientamento della professione di Dottore Commercialista in Italia."

⁶³ Data from Fiorentini, "Sviluppo capitalistico e professioni economiche", 282.

⁶⁴ Law n. 1815, 23rd November, 1939.

⁶⁵ Angeli, "La crescente importanza dei problemi professionali."

rather than the one offered by law.⁶⁶ This aspect was, *prima facie*, against the interests of business consultants as they operated as receivers in formal cases of bankruptcy, while in other countries such as France and Belgium this function tended to be in the hands of lawyers.⁶⁷ Despite this, the national association of business consultants often explicitly supported the use of informal procedures. In a paper presented at the conference of the national association in 1958, no less that the president of the association Luigi Antonelli wrote a praise of the so-called *cessio bonorum* - an extra-judicial agreement between creditors and debtors in case of illiquidity or insolvency - arguing for the superiority of private solution given the length, costs and implications of formal procedures.⁶⁸ Although presented as an opportunity for firms to economise on costs, the support to the use of *cessio bonorum* might hide a different set of advantages for some of the parties involved.

Firstly, the remuneration for the managing informal procedure, which in Italy was one of the main activities of business consultants - in a sort of monopoly - was decided on commercial basis and could be much higher than the fee obtained by business consultants in the role of official receivers in bankruptcy procedures. In fact, business consultants often publicly complained about the fact that a number of cases of official bankruptcy ended-up paying very little.

Secondly, the very nature of *cessio bonorum* offered the possibility of satisfying majority creditors at the expenses of minority ones, hence protecting insiders from legitimate claims from outsiders. In fact, *cessio bonorum* implied that big and non-guaranteed creditors, the ones part of the deal, obtained the full control of the firm's assets and could use them to recover their credit either via liquidation or by keeping the firm running. Minority creditors agreed on dropping any claim on future dividends in return for an immediate payment of a share of their credits in line with the expected market value of the firm's assets or of its potential ability to generate profits in the future. This solution was clearly open to abuse from majority creditors, not to mention the possibility for the owner to keep a re-starting option open by satisfying these creditors. For example, a key and tricky issue was the calculation of the percentage of payment due to minority

⁶⁶ Paolo Di Martino and Michelangelo Vasta, "Companies' insolvency and 'the nature of the firm' in Italy, 1920s-1970s," *Economic History Review* 63 (February 2010): 137-164.

⁶⁷ Angelo Arrigoni and Giordano Caprara, "La professione del professionista in Francia, Belgio, Germania con comparazione alle funzioni assolve dal dottore commercialista in Italia", *Congresso nazionale dei dottori commercialisti: Palermo 2-5 ottobre 1958* (Palermo, 1960), 289.

⁶⁸ Luigi Antonelli, "La 'cessio bonorum' quale soluzione stragiudiziale in taluni casi patologici d'impresa", *Congresso nazionale dei dottori commercialisti: Palermo 2 - 5 ottobre 1958* (Palermo, 1960), 263-278.

creditors, especially in cases when the firm was kept alive. Business consultants looked fully aware of these issues and of the key role played by the person in charge of the procedure. As stated by Aldo Parea in a speech at the meeting of the national association in 1960: “It is obvious that such a procedure may lead to an unequal treatment among creditors, hence it is necessary for the professional in charge ... to follow, in performing this role, the soundest principles at the basis of any profession”.⁶⁹ While arguing along these almost-moralistic lines, however, the same author also claimed that informal deals would avoid the “numerous controls and various cautions” typical of official bankruptcy procedures.⁷⁰ In other words, business consultants seemed to be aware of the risks involved in the use of extra-judicial solutions but at the same time, criticised the level of control that characterised official procedures. The exact extent to which these procedures were used to promote the interests of insiders is hard to quantify, but certainly this happened, as various cases in our sample show.⁷¹ Furthermore, it is worth noticing that a loophole in the Italian bankruptcy law made easier to favour some creditors at the expenses of others. According to the law, a disparity of treatment among creditors led to preferential bankruptcy (*bancarotta preferenziale*) - which was only sanctioned with a fine - and not to fraudulent bankruptcy (*bancarotta fraudolenta*), a much more serious crime of penal nature. However, charging someone of preferential bankruptcy was not necessarily proportional to the actual damage done to the firm or minority creditors. An illustrative example comes from the comparison between two cases. The first one is the cooperative firm *La Padana*, operating in Parma in the early 1970s. In this case while the cooperative was already declared bankrupt, the general manager used almost the totality of the business assets (about fifty million lire) to pay specific debts, including his remuneration for the previous years of employment (about five million). Despite the evident damage to minority creditors and the use for person interest of a conspicuous part of the firm’s assets, the felon was only charged with preferential bankruptcy.⁷² This example stands at odds with what happened in the case of the *Lavoratori del Mare di Carrara*, a fishing cooperative active in the town of Carrara in the late 1950s. In this instance the

⁶⁹ Parea, “Una forma di pseudo ‘cessio bonorum’”, 324.

⁷⁰ Ibid., 322

⁷¹ The case *Castelli vs. Sentenza Corte d'appello di Roma* (Cassazione Penale, Sezione III, 20 maggio 1966) provides a clear example of *cessio bonorum* organised with the intent of favouring one creditor over the others.

⁷² Cassazione Penale, Sezione V, 7 giugno 1973, *Pubblico Ministero vs. procura Delindati*.

mere distribution of assets as a charitable act, and without evidence of fraud, was considered as a case of fraudulent bankruptcy and the two managers involved sentenced to four years of jail.⁷³

6. Conclusions

“In the middle of the square, paid homage to as to a Messiah is walking the lawyer Racalmuto, a Sicilian, from many years the town main *commercialista*”.⁷⁴ With these words, in 1964 the writer Lucio Mastronardi described one of the main characters of his novel *Il meridionale di Vigevano*.⁷⁵ The story takes place during the economic miracle in a rapidly-enriching town in the North of Italy (Vigevano) specialised in the booming shoe industry, thus being an epitome of the Italian economy of the time. The world that emerges from the novel is one made of small firms, operating with basic technologies in traditional sectors, and competing on borderline short-term strategies without embracing any long-term plan of firms’ growth and development. In such world, there is no use of formal institutional mechanisms to coordinate the actions of economic agents, and everything is based on the personal skills as middleman of an extremely powerful *commercialista*.

This paper shows that such picture was indeed very close to the reality, and also during the golden age the average Italian private firm suffered from a sort of “Racalmuto syndrome”. Italian legislations and regulations offered strong incentives for the average firm’s owner to be and remain a stockholder, and promote his own interests instead of the one of his own business. Forms of governance were adopted with the aim of protecting insiders from legitimate claims of other parts involved, and management was left in the hand of business consultants in return for insiders’ advantages. Any consideration about the perspective of firms to grow and develop seemed to play little, if any, role. These aspects contribute to explain why even during the economic miracle, while the technologies of the second industrial revolution called for big firms’ size, in comparative perspective Italian private businesses still showed a problem of dwarfism. In the early 1960s, for example, in Italy the share of workers employed in manufacturing firms with

⁷³ Cassazione Penale, Sezione III, 23 febbraio 1959, *Leone (avv. Di Altieri) vs. Sentenza corte d’appello tribunale di Genova*.

⁷⁴ Lucio Mastronardi, *Il meridionale di Vigevano* (Torino, 1994) (1st ed. 1964), 384, (authors’ translation).

⁷⁵ This novel is part of a trilogy usually known as *Il maestro di Vigevano*, from the title of the most successful tale, which was originally published in 1962.

less than 10 workers was about 30 per cent,⁷⁶ against 6.4 per cent in France, 2.5 per cent in US, less than 3 per cent in Germany, and 16.4 per cent in Japan.⁷⁷ This is not surprising when we consider that the use and abuse of forms of governance such as artisan firm or small business, widespread tunnelling of resources away from business towards owners, or the recourse to informal liquidation-oriented bankruptcy procedures instead of formal ones, all contributed to reduce businesses' size. Recent studies show that this was far from accidental: maintaining small dimension in manufacturing and services was part of the political agenda of the two main Italian political parties (the *Democrazia Cristiana* and the *Partito Comunista*) both concerned, for different reasons, about the rise of big business.⁷⁸

The styles of governance and management analysed in the paper were also linked, directly and indirectly, to the tendency of the Italian firms to remain in traditional sectors and their low ability to innovate.⁷⁹ Indirectly, because small size of businesses also meant small financial resources and was, per se, an obstacle to invest in R&D.⁸⁰ However, the dark heart of Italian capitalism had also a direct impact on this issue: forms of marginal behaviour such as the possibility of tunnelling resources from firms, or to avoid taxes, guaranteed high profitability even without the need to engage with advanced (and expensive) technologies and managerial practices.

This form of capitalism was, nonetheless, able to guarantee the well-known brilliant performance of the Italian economy during the 1950s-1960s. This is not in contrast with our argument: in such a rapidly expanding world economy, the forms of governance and management we analysed in the paper were not enough to play as an absolute obstacle. However, we believe that the institutional set-up established in this historical phase determined a pattern of sub-optimal development that later showed all its limits, and could be part of the explanation of the very poor economic performance of the last twenty years.

⁷⁶ Giovanni Federico, "Industrial structure (1911-2001)," in *Evolution of Italian Enterprise in the 20th Century*, eds. Renato Giannetti and Michelangelo Vasta (Heidelberg-New York, 2006), tab 2.8.

⁷⁷ Giannetti and Vasta, *Storia dell'impresa italiana*, tab. 2.11a. See also Bart Van Ark and Erik Monnikhof, "Size distribution of output and employment: A data set for manufacturing industries in five OECD countries, 1960s-1990," *Oecd Economic Department WP* 166 (1996). German's data is our estimate based on the fact that the workers share for the size class 1-19 is 3.9 per cent on total.

⁷⁸ See Andrea Colli and Alberto Rinaldi, "Institutions, Politics and the Corporate Economy," *Quaderni del Dipartimento di Economia Politica e Statistica, Università di Siena* 664 (2012).

⁷⁹ For a recent overview, see Federico Barbiellini Amidei, John Cantwell and Anna Spadavecchia, "Innovation and Foreign Technology", in *The Oxford Handbook of the Italian Economy since Unification*, ed. Gianni Toniolo (Oxford, 2013), 378-416; and Nuvolari and Vasta, "The ghost in the attic?"

⁸⁰ Amatori, Bugamelli, and Colli, "Technology, Firm Size, and Entrepreneurship."

APPENDIX: List of journals (and headings) examined

Penal cases

1. *Rivista Penale* (1949-79)
2. *Massimario penale della Corte Suprema di Cassazione* (1950-1978)
3. *Cassazione penale – Massimario* (1961-1979)

Headings

- Bancarotta fraudolenta (Fraudulent bankruptcy)
- Bancarotta preferenziale (Preferential bankruptcy)
- Fatti commessi su libri e scritture (Fraudulent bookkeeping)
- Reati di persone diverse dal fallito (Crimes committed by people other than the bankrupt)
- Ricorso abusivo al credito (Abusive use of credit)

Civil cases

1. *Massimario della Giurisprudenza Italiana* (1949-79)
2. *Massimario Foro Italiano Cassazione Civile* (1949-79)
3. *Giustizia Civile* (1949-79)
4. *Giurisprudenza commerciale società e fallimento* (1974-79)
5. *Il fallimento e le altre procedure concorsuali* (1979)
6. *Giurisprudenza fallimentare: Annuario della giurisprudenza fallimentare* (1979)

Headings

- Artigiano e artigianato (Handcraft and artisan firm)
- Azienda (Firm)
- Cessione dei beni ai creditori (Endorsement of assets on creditors)
- Coniugi (Married couple)
- Fallimento (Bankruptcy)
- Impresa e imprenditore (Enterprise and entrepreneur)
- Obbligazioni e contratti (Legal obligations and contracts)
- Società (Partnerships)

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