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Public Administration and the Transformation of Civil Service: A Comparative (Law) Perspective

Civil Service Reforms in Italy between Mythology and Reality

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La storia della burocrazia italiana ha visto una fluttuazione tra opposti modelli ideologici di regolamentazione del pubblico impiego, con il passaggio da una mitologia all'altra. La mitologia tradizionale ruotava attorno a un modello puramente pubblico, enfatizzando l'aspetto politico della burocrazia e il suo collegamento con lo Stato. In tempi più recenti, è emersa una mitologia opposta, basata principalmente su un modello privato che evidenzia la dimensione economica della funzione pubblica, precedentemente trascurata, e il suo rapporto con il Mercato. Tuttavia, la teoria è sempre rimasta lontana dalla pratica e i miti dalla realtà. Mentre le mitologie fondatrici sperimentavano discontinuità, le disposizioni effettive spesso mostravano continuità. La prima parte di questo contributo si concentra sul mito, fornendo un breve resoconto del passaggio dal vecchio all'attuale modello ideale della funzione pubblica italiana, che ha subito una trasformazione costituzionale. La seconda parte esplora la realtà, esaminando come questo modello è stato implementato negli ultimi 30 anni.

The history of Italian bureaucracy has witnessed a fluctuation between opposing ideological models of civil service regulation, transitioning from one mythology to another. The traditional mythology revolved around a purely public model, emphasizing the political aspect of bureaucracy and its connection to the State. In more recent times, an opposing mythology has emerged, primarily based on a private model that highlights the economic dimension of the civil service, previously neglected, and its relationship with the Market. However, theory has always remained distant from practice, and myths from reality. While the founding mythologies experienced discontinuity, the actual arrangements often displayed continuity. The first part of this contribution focuses on the myth, providing a brief account of the transition from the old to the current ideal model of the Italian civil service, which underwent constitutional transformation. The second part explores reality, examining how this

model has been implemented over the past 30 years.

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Summary. 1. Introduction. - 2. The mythology: from Sovereign Employer to New Public Management Model. - 2.1 The principle of separation between politics and administration and its constitutionalization. - 2.2 The principle of convergence between public and private regulation of employment relationships and its constitutionalization. - 2.3 The New Public Management Model and the change of the constitutional status of the Italian bureaucracy. - 3. The Reality: Betrayed Reforms and the Unsolved Persisting Problems of Italian Civil Service. - 3.1 The reality of the separation between politics and administration. - 3.2 The Reality of public-private convergence in the regulation of Italian civil service. - 4. Conclusion.

1. Introduction

The history of Italian bureaucracy has been fluctuating between opposite ideological models of regulation of civil service, passing from one to another mythology. The traditional mythology was a pure public model, stressing the political dimension of bureaucracy and its link to the State. An opposite mythology emerged in more recent times, which is fundamentally a private model, stressing the economic dimension of civil service, once overlooked, and its link to the Market.

However, a long distance has always separated theory from practice, myth from reality. The discontinuity of the founding mythologies has often been matched

by the continuity of the real arrangements. And sometimes the reverse has happened[1].

The first part of this contribution concerns the myth. It gives a very short account of the passage from the old to the current ideal model of the Italian civil service, which has been a constitutional transformation. The second part is about reality, i.e. about how this model has been applied in the last 30 years. The last part briefly concludes.

2. The mythology: from Sovereign Employer to New Public Management Model

At the beginning of last century, as in most countries of continental Europe, a "Sovereign Employer Model" emerged in Italy, according to which the State regulated its employees by statutes enacted by the Parliament[2]. This model responded to the double need of protecting the bureaucracy both from politicization and from unionization. Regulation by an Act of Parliament prevented politicization, reducing arbitrariness of the Executive in management of civil service careers, and ensuring impartiality[3]. At the same time, regulation by statutes prevented unionization, protecting the bureaucracy by means alternative to strikes and negotiations and thus insulating civil service from the social and economic conflict[4].

Civil servants must serve the entire Nation only, representing and embodying the State itself.

The first statute regulating the Italian civil service was enacted by Giolitti, in 1908.

The Sovereign Employer Model lasted for almost one century, experiencing however significant changes over time and sometimes upheavals of meaning, as happened in the Fascist era. In any case, the Giolitti statute, which can be considered the founding act of the Italian model of the Sovereign Employer, was followed by two others, in 1923 and 1957, the latter being in part still in force.

The Sovereign Employer model was reversed in the last decade of the century, when some trends already emerged during the 70s were accentuated and combined, giving origin to a new paradigm, largely based on New Public Management recipes, at that time spreading across nations and international fora.

Many factors may explain the change. The processes of globalization and Europeanisation, which intensified at the end of the last century, are probably the most powerful among them. These processes had an impact on both dimensions of the constitutional position of the bureaucracy: its relationship with politics and unions.

2.1. The principle of separation between politics and administration and its constitutionalization

As for the first dimension, supranational integration has strengthened the old need for impartiality, transforming it into a more intense need for autonomy and even independence of the bureaucracy from national politics. The bureaucrats serving the Nation could be nevertheless perceived as partial outside the State, as they do not serve the European or international community. This call into question the very ideology of the Sovereign Employer Model, namely the identification between the civil service and the Nation-State. Civil service reforms enacted in Italy since 1992 introduced a general principle of separation between policy and management, the first assigned to political representatives of the national community, the latter entrusted to allegedly autonomous and independent top civil service ("dirigenza")[5].
The separation later assumed a constitutional status, as the Constitutional Court began to read the principle of impartiality, established by the Constitution of 1948 according to the legislative reforms of 1993. The Constitutional Court reinterpreted the principle of impartiality as embodied by the separation between politics and administration, to protect the autonomy of the latter both from the government and the Parliament.
First and foremost, in its case law on the spoils system, which we will discuss later, the Constitutional Court has established that Parliament is not free to subject administrative leadership to precarious conditions, thereby exposing it to excessive political influence.
Such a legislation would contradict the principle of the separation between politics and administration, which in turn embodies administrative impartiality.
Secondly, Parliament is not free to assign the function of administrative management to the government instead of administrative leadership. According

to constitutional jurisprudence focusing on the functional boundary between politics and administration, the Parliament can state where policy ends and management begins, but it cannot betray the allocation criterion by assigning administrative functions to government bodies rather than bureaucratic apparatuses. The legislation cannot strip the administrative function from the subject (namely the administrative leadership) to whom it is reserved according to the principle of separation between politics and administration, which again embodies the constitutional principle of impartiality and thus binds all public powers within the State, including Parliament[6].

The Parliament, finally, is not even free, according to the most recent constitutional jurisprudence, to directly exercise the administrative function. Just as it cannot attribute management functions to the government, it cannot exercise it directly in legislative form either. The Constitutional Court has reached similar conclusions with a series of important rulings[7], which have outlined a "reserve of administrative procedure". This reserve so becomes, to paraphrase a very well-known definition[8] the «*constitutionally imposed form of the administrative function*». If the administrative function is exercised in another form, namely in legislative form, the Constitution is violated. In fact, the principle of impartiality requires that substantially administrative decisions be taken by the administration, in procedural ways that allow citizens and all parties concerned to express their interests.

2.2. The principle of convergence between public and private regulation of employment relationships and its constitutionalization

The processes of globalization and Europeanization also had an impact on the other dimension of the constitutional position of the bureaucracy, namely its relationship with and unions.

In this regard, the traditional special status of Italian public employees in respect of the system of industrial relations, came into conflict with the European parameters on public finance, necessary for entry into the single currency. The Sovereign Employer model, based on statutes enacted by a Parliament which was often captured by unions representing specific classes of civil servants, has

produced in the 80s a "jungle" of salaries higher than those of the public sector[9], as well as high inflation and high public debt.

The so called "privatization" of the regulation of Italian civil service was largely introduced to meet European financial standard. The idea, which had already been raised in Italy as early as the 1970s,[10] was that the public employer could not grant its employees regulatory treatments different from those of the private sector, nor economic treatments different from those that an independent agency agrees with the unions, according to the ordinary dynamics of industrial relations[11].

This principle was also constitutionalized by the Constitutional Court in the following years, by a combined interpretation of art. 97, stating that «*Public offices are organised according to the provisions of law, so as to ensure the efficiency and impartiality of administration*» and art. 39, affirming trade union freedom.

The first step, in the mid-1990s, was to allow collective bargaining in the public sector, explaining that regulating civil service by statutes is not constitutionally mandatory: «*the traditional, wholly public statute of the public employment, is not imposed by art. 97 Cost*»[12].

However, the Court went even further, finding in the principle of efficiency, which is affirmed by art. 97 of the Italian Constitution together with impartiality, a positive constitutional basis that, if not mandatory, at least guides legislative discretion towards the principle of convergence between public and private regulation of employment relationships. The idea of privatization was in fact, for the first time, linked by the Court «*to the fulfillment of the needs for flexibility in personnel management*». And flexibility itself was qualified as «*instrumental to ensuring the efficiency* ("buon andamento") *of administration*», which is imposed by art. 97 of the Italian Constitution. Therefore, the Constitution somehow requires at least a certain degree of collective bargaining in the public sector. The same wording of judgment no. 309 of 1997, which became famous, in which the Court welcomed the transition from the fully public law status of public employment to a «*balanced combination of regulatory sources*», ("equilibrato dosaggio di fonti regolatrici"), capable of guaranteeing both impartiality and efficiency of the administration, implicitly characterized the traditional fully public law status as an "unbalanced combination" capable of protecting only impartiality but not efficiency, as the

latter requires a degree of bargaining.
This line of reasoning became clearer in recent years when the Court moved a second step in the process of constitutionalizing the idea of the so-called privatization of the regulation of civil service, this time finding a positive constitutional foundation of that principle in art. 39 of the Constitution, to be read in light of the European constitutional framework. The Court declared legislative measures of systematic deferral of collective bargaining in the public sector are contrary to the Constitution, because they produce an intolerable «*sacrifice of the fundamental right protected by art. 39 of the Constitution*»[13].
According to the Court, collective bargaining in the public sector «*assumes the status of an indispensable source*». Therefore, it can be affirmed that the traditional fully public law status is not imposed by the Constitution but, perhaps, is no longer even allowed by Article 97 (as for the efficiency principle it states) and by Article 39 of the Constitution, which makes collective bargaining, even in the public sector, an "indispensable" source. It can be said that the Constitution today still demands a minimum of legislative and special regulation of administrative organization, including the employment relationship of employees, for the purpose of impartiality. But it also requires, conversely, a minimum of contractual and private regulation of the employment relationship of public employees, both for the purpose of good administration and efficiency and for the protection of the rights of public workers.

2.3. The New Public Management Model and the change of the constitutional status of the Italian bureaucracy

To sum up, the New Public Management has substituted the Sovereign Employer as the constitutionally recommended model of regulation of civile service in Italy. The main feature of such Model should be the combination and reciprocal reinforcing of the two constitutional principles affirmed by the Court: separation between politics and administration and convergence in regulation of public and private labor relations. These principles are strictly connected in the reform design, as top civil servants, gaining managerial autonomy according to one principle, are supposed to flexibly manage human resources acting as a private employer, according to the second one. The very constitutional position

of the bureaucracy has changed accordingly, both in the political and in the economic system.
In the political system, the constitutionalization of the principle of separation between politics and administration grants the bureaucracy its own constitutional position in the balance of powers within the state. The bureaucracy is constitutionally assigned a function that the Parliament cannot attribute to the executive power or exercise directly. In the economic system, the constitutionalization of the privatization of public employment confers a constitutionally protected position to the bureaucracy within the system of industrial relations. Parliament cannot disregard or alter this position, either by granting privileged treatments to public employees outside of this system or by restricting the faculties and rights that can be exercised within it.

3. The Reality: Betrayed Reforms and the Unsolved Persisting Problems of Italian Civil Service

The reality of the implementation of the Public Management Model, 30 Years after its introduction, are far away from what mythology promised. No one in Italy could deny that something went wrong.
The reforms have been immediately readjusted in 1998 and partially codified in 2001. Later, the codification itself has been modified by 117 new statutes in the last 20 years. The ongoing review of reforms by itself signals that the new constitutional model did not produce the desired results.
What follows is just an incomplete list of problems that have emerged over the last 30 years and are still unresolved. Problems arose in respect of both two main principles of the public management mythology.

3.1. The reality of the separation between politics and administration

First of all, the idea of separation between politics and administration was almost immediately contradicted by the decision to make the high bureaucracy precarious. To tell the truth, public managers still have a permanent employment relationship, like other public employees. But, while maintaining such

relationship, they continuously change their position, on which prestige, salary and even career increasingly depend. Positions change essentially according to political choices based on personal trust. The spoils system, according to which the holder of an administrative position automatically leaves office at each change of government, is the best known tool for ensuring trust between politics and administration[14]. As mentioned in the first part, the Constitutional Court has limited the Parliament's ability to introduce spoils system measures, as they violate the principle of separation between politics and administration and, therefore, administrative impartiality. However, the Court has never stated that the spoils system is always in conflict with the Constitution. Constitutional jurisprudence, with various fluctuations, has settled on the following principle: the spoils system is only permitted when it concerns top positions (s-called "posizioni apicali")[15]. One could therefore imagine that the spoils system applies to only a few high-level positions. However, once again, reality differs greatly from theory: according to a conservative estimate, the spoils system applies to more than 20,000 positions[16]. Furthermore, even executives who are not subject to the spoils system still have temporary appointments and therefore depend on political trust at the time of renewal. Political trust extends to the entire Italian high civil service, and it also affects lower positions. Therefore, in mythology there is a separation between politics and administration but, in reality, at least top civil servants have one foot in administration and one foot in politics and they are the living denial of the mythology of the separation between these bodies.

That brings many consequences, not limited to the obvious effect of politicization of bureaucracy, contrary to the clear intentions of reforms. Probably the most impacting one is the discontinuity of administrative action. The traditional Italian political instability has now been transferred to the bureaucratic system, which was previously relatively immune from it. Every change of government produces a long period of administrative standstill, which ends only when ministers of the new cabinet have had time to reorganize their ministry and select their teams, which now include both staff and line functions and are increasingly made up, for both classes of offices, also by top civil servants, often changing their positions. When the ministerial bodies settle down, administrative activity can resume. But it never picks up where it left off, because

new people must take over the old dossiers. If you calculate that governments change on average every year, you can understand the impact of these continuous interruptions of continuity.
Secondly, the idea of separation between politics and administration has been substituted, in practice, by an internal separation within the bureaucratic body, fracturing its unity. While high bureaucracy goes higher, approaching politics and increasing jobs opportunities as well as salaries, lower bureaucracy goes lower. Wages are modest and flat[17]. Training chance are limited, as well as career opportunities. There is only a hope to win a lottery. This may happen by a co-optation in the paradise of civil service through the so-called "paragraph 6".
This is a discretionary mechanism presented by the mythology as a chance to recruit managers from the private sector. However it has been used, in reality, as a fast-track from low to high public administration, based on personal trust.
The idea of top civil servants acting as private employers, exercising autonomy and being accountable for the results of their organization, has been itself denied in practice. First, given that civil servants found it difficult to transform themselves into managers, in 2009 it was decided to force them by law to do so, prescribing in details specific practices that are usually observed in the private sector. But when managerialism is imposed by law, the essential element of it is lost, i.e. decision-making discretion and autonomy, so as to allow a continuous and timely adaptation of the organization to the activity carried out and the users served. The loss of autonomy of top civil servant, due to both structural politicization and functional legalization, made the very concept of their "accountability for results" useless. This new form of responsibility, which had been an important part of the mythology of the reform[18], has been marginalized in practice and transformed in a new liability for non-compliance with a myriad of detailed and sometimes useless legal and procedural obligations. Moreover, the burden of traditional liabilities has been growing in recent times and so the risk perceived by civil servants. The imbalance between the pressing incentives for legality and the weak incentives for efficiency has thus prompted the management to develop a defensive attitude[19]. To remedy such approach, the legislator has recently limited administrative liability to cases of intentional misconduct. It has also limited criminal liability of civil servant by better typifying the crime of abuse of power and restricting it to violations of specific

rules of conduct expressly imposed by law without margin of administrative discretion[20]. The Constitutional Court recognized the necessity and urgency of these legislative interventions, identifying in the defensive bureaucracy «*a source of inefficiency and immobilism [... and] an obstacle to economic recovery, which requires, on the contrary, a dynamic and efficient public administration*»[21]. Therefore, the mythology of public management is contrasted by a reality of high bureaucrats losing autonomy, executing detailed laws which command specific managerial practices, in fear of incurring in liabilities, and taking a defensive approach based on inaction and inertia.

3.2. The Reality of public-private convergence in the regulation of Italian civil service

Passing to the second pillar of the NPM model, namely privatization, it is worth saying, at the outset, that the reform differentiated recruitment of civil servants from their employment relations, limiting to the latter the application of common labor law and collective bargaining. The exclusion of recruitment procedures from privatization had been based on the idea that the merit system must be protected by maintaining in the "public" sector the requirement of a "public" competition ("concorso pubblico"), imposed by the Constitution. According to the Constitutional Court, public competition is «*the general and ordinary form of recruitment for public administrations, represented by a transparent, comparative selection, based exclusively on merit and open to all citizens in possession of previously and objectively defined requirements*»[22].

Reality, once again, has been different. First, the requirement of public competition, although excluded from the scope of privatization, has been indirectly undermined by it. Collective bargaining privileged the career of civil servants, sacrificing lateral entry through public competition "open to all citizens". Moreover, private labor law allows for recruitment of temporary employees, which usually are subsequently hired as permanent staff through procedures totally or partially reserved to them. All these exceptions to the principle of open competition frequently apply in practice, despite the fact that they should be admitted, according to the Constitutional Court, only «*when they are themselves functional to efficiency* ("buon andamento") *of the administration*

and where there are specific and extraordinary needs of public interest capable of justifying them»[23]. Second, the financial crisis of 2008 had a devastating impact on Italian public administration. Among other things, it led to a partial and later a total freeze on new hires for an extended period. Public competitions were blocked, and Italian civil service has been not only reduced in numbers[24]. It became also aged and under-educated precisely at a time when technological change and digitization offer opportunities that only a young and up-to-skills bureaucracy could seize[25].

Third, linking innovation to privatization, the reform ended up removing recruitment from both privatization and innovation. The system of recruitment remained the traditional one. Private sector techniques have had little attention and foreign experiences alike, such as that of EPSO in the EU or the British Civil Service Commission. Therefore, public competitions, until recently, remained for a long time based on time consuming procedures centered on knowledge rather than competence. However, in times of social acceleration knowledge becomes quickly obsolete while soft skills allow people to adjust to changing circumstances. Moreover, knowledge obsolescence requires continuous training, which remained overlooked and not integrated in a more comprehensive system of management of the competences of civil service.

According to mythology, and according to the Constitutional Court, privatization means efficiency and flexibility. Efficiency requires a system of incentives in the hands of the employer. Career is the most important of such incentives. Therefore, the reform originally stated that civil servants could upgrade their ranking based on decisions of the managers directing their organization. Again, reality has taken different and often unintended paths. At first, through collective bargaining, particularly after its decentralization, unions have substituted public managers in administering civil service careers. Massive and indiscriminate upgrading of Italian bureaucracy took place: to give just an example, in 2001, approximately a third of civil service has had an upgrade over the same year (28.27%). The reaction was a kind of counter-reformation in 2009. Collective bargaining has been weakened in respect of statutory regulation and upgrading were subordinated to public competition open to external candidates. However, that brought several negative consequences. To begin with, when new hires have been frozen, career has been frozen as well. Moreover, the

backwardness of recruitment procedures, based on knowledge only, has had a fundamental consequence, of which all civil servants are well aware: either you study to pass the competition, or you work to perform better. As upgrading were substantially reserved to not-performing civil servants, aspirations for career advancement operated as a disincentive to performance improvement rather than an incentive. Once again, reality contradicts mythology.

Flexibility means many things, but an important aspect is the possibility of temporary organizing. In this respect, reforms moved from a simple principle: removing traditional bans on recruitment of temporary employees in the public sector and allowing the same flexibility granted by common labor law in the private sector.

Theoretically, that should have meant the possibility to recruit temporary personnel for temporary needs and permanent personnel for permanent needs, adjusting the organization to the functions it is called to perform. Real processes, however, took different directions.

The natural trend to abuse of fixed-term work in the public sector has been exacerbated by the financial crisis. The freeze on permanent hiring has made temporary staff the only solution available, not to cover temporary needs, but to carry out ordinary workloads. When administrations have been filled with precarious personnel, the legislature has transformed such personnel into permanent staff, derogating the constitutional principle of public competition.

More recently, since the emergency represented by the implementation of the Italian recovery and resilience plan, the legislator has tried to transform pathology into physiology: the recruitment, by “simplified” public competitions, of temporary staff, linked to the duration of projects, but whose possible future stabilization is foreseen in advance. How the solution works depends on what the simplified competitions will look like. If they will be notional tests or opaque algorithmic selections, probably a new poorly selected “projectariat” will become the civil service of the future in Italy.

4. Conclusion

While the gap between myth and reality may seem significant, it should not be assumed that myth is useless. Despite the contradictions mentioned, reforms

have improved the Italian administration, which otherwise would have remained even more out of synchrony with the acceleration of society. This holds true even in more recent times, after the pandemic., some encouraging reforms have been introduced. First, evaluation of competences and soft skills have been introduced in public competitions, correcting their traditional knowledge-oriented focus[26]. Second, the most recent collective agreements enhance continuous training of civil servants, also linking it to career progression. Third, the School of National Administration - SNA, which is the main institution capable of integrating continuous training and recruitment, has been strengthened and it has acquired new functions and resources. Fourth, a new area of high professional staff has been introduced between managers and low bureaucracy, potentially reducing the gap and adding an upgrading opportunity for the bulk of the Italian civil service. Fifth, a new fast-track, from medium level to the top level ("dirigenza"), has been established: it does not depend on personal trust, like the so-called paragraph 6, but on a merit-based competition administered by SNA. Finally, smart working, first ignored and later excessively used in the pandemic, could become the tool for introducing into the public sector the logic of results and a managerialism that is not its legalistic parody.

1. For a general overview of the history of the civil service discipline in Italy, recently S. Battini and S. Gasparrini, *Miserie del pubblico impiego in Italia*, in *Riv. Quadr. dell'Inapp*, 1, 2020, p.3-ss.
2. The term is used by S. Bach and L. Bordogna, *Emerging from the Crisis, The Transformation of Public Service Employment Relations?*, in S. Bach and L. Bordogna (edited by), *Public Service management and Employment Relations in Europe*, Routledge, New York, 2016: «*In this model, a clearly identifiable professional cadre of employees entered government through rigorous recruitment and selection procedures and evaluated against universal criteria. These public servants were expected to serve impartially and to pursue the general interest of the nation, fulfilling these "sovereign" functions on behalf of the State. It was considered almost inconceivable that these public servants could have their own distinctive interests separate from the general interest of the state and the importance of values of loyalty, trust and stability featured in the regulation of their employment relationship. On the one hand, public servants enjoyed special substantive and procedural prerogatives, often established by a public law statute subject, if dispute arises, to administrative courts and tribunals. [...]. On the other hand, they were denied collective bargaining rights; their terms and conditions of employment were unilaterally determined by the state through laws or administrative measures*».

3. The approval of a statute on the employment relationship of public employees represented for a long time one of the most significant demands of a political and cultural movement which, in the second part of the XIX century, was inspired by the need to reduce political interference in administration and to bind, through administrative law, the exercise of government powers in the organization and functioning of public administration. See S. Spaventa, *Giustizia nell'amministrazione*. Discorso pronunziato da Silvio Spaventa nell'Associazione costituzionale di Bergamo il 6 maggio 1880, Roma, Tipografia dell'Opinione, 1880.
4. In this regard, the attitude of the reformist faction within the Italian socialist movement, led by Filippo Turati, was of great importance. Turati's strategy was indeed to exchange the relinquishment of trade union rights by public employees, recognizing their distinctiveness compared to private sector workers, in return for obtaining more legislative protections. See F. Turati, *Gli agenti dello Stato e le Camere del lavoro*, *in Critica sociale*, XII, 1902, p. 227-ss. On the topic, see G. Melis, *Burocrazia e socialismo nell'Italia liberale. Alle origini dell'organizzazione sindacale del pubblico impiego (1900-1922)*, Bologna, il Mulino, 1980, and G. Melis, *Il socialismo riformista e la burocrazia nell'età liberale*, in *Studi Storici*, 1992, p. 1892-ss.
5. The bibliography on this topic is extensive. Limiting to the most recent volumes that approach the subject in general and comprehensive terms, see the following: E.N. Fragale, *Studio sul principio di distinzione tra politica e amministrazione*, Rimini, Maggioli, 2020; A. Marra, *L'amministrazione imparziale*, Torino, Giappichelli, 2018; L. Casini, (a cura di), *Venti anni di "politica e amministrazione" in Italia*, Bologna, il Mulino, 2017; B. Ponti, *Indipendenza del dirigente e funziona amministrativa*, Rimini, Maggioli, 2012.
6. See Constitutional Court (Judgement n. 81/2013) affirmed that «*the separation between functions of political direction and functions of administrative management constitutes a principle of a general nature, which finds its foundation in the art. 97 of the Constitution*». It is up to the Parliament to define in concrete terms what is policy and what is management, but Parliament itself «*cannot make choices which, unreasonably contrasting with the principle of separation between politics and administration, harm the impartiality of the public administration*».
7. See Constitutional Court, n. 69/2018, n. 258/2019, n. 116/2020. See F. Cortese, *Sulla riserva preferenziale di procedimento come strumento di garanzia*, in *Le Regioni*, 2018, p. 759-ss.
8. F. Benvenuti, *Funzione amministrativa, procedimento, processo*, in *Rivista trimestrale di diritto pubblico*, 1952, p. 118-ss.
9. *E. Gorrieri, La giungla retributiva,* Bologna*,* il Mulino, 1975.
10. See M.S. Giannini, *Impiego pubblico (profili storici e teorici)*, in *Enc. dir*., XX, 1970; M. Rusciano, *L'impiego pubblico in Italia*, Bologna, il Mulino, 1978; M. D'Alberti, *Impiego pubblico, norme privatistiche, processo del lavoro*, in *Giur. cost.*, 2, 1977, p. 509-ss.; L. Zoppoli, *Contrattazione e delegificazione nel pubblico impiego. Dalla legge quadro alle politiche di «Privatizzazione»*, Napoli, Jovene, 1990.

11. M. Rusciano e L. Zoppoli (edited by), *L'impiego pubblico nel diritto del lavoro*, Torino, Giappichelli, 1993. M. D'Antona, *Lavoro pubblico e diritto del lavoro: la seconda privatizzazione del pubblico impiego nelle "leggi Bassanini"*, in *Lav. pubbl. amm*., 1998, p. 35-ss. A recent overview in A. Boscati, *La disciplina della dirigenza e del lavoro pubblico a vent'anni dall'approvazione del d.lgs. n. 165/2001: la costante ricerca di un approdo stabile*, in *Istituzioni del federalismo*, 1, 2021, p. 337-ss.
12. See Corte Cost., n. 309/1997 and Corte Cost., n. 313/1996.
13. Corte Cost., n. 178/2015.
14. On the general topic, see G. Endrici, *Il potere di scelta. Le nomine tra politica e amministrazione*, Bologna, Il Mulino, 2000.
15. S. Battini, *L'invasione degli apicali: la Corte costituzionale riabilita lo spoils system*, in *Giornale di diritto amministrativo*,2019, 3, p. 269-ss
16. See S. Battini, *Fenomenologia dello spoils system: un nuovo Stato patrimoniale?* in *Rivista trimestrale di diritto pubblico*, 3, 2023, in press.; see also S. Neri, *Lo spoils system: una analisi empirica*, in *Giornale di diritto amministrativo*, 3, 2019, p. 313-ss.
17. The average salary of top management in central administrations is eight times higher than that of an administrative official in the initial category. (Ministero dell'economia e delle finanze - Ragioneria generale dello Stato, *Commento ai principali dati del conto annuale del periodo 2011-2020*, p. 99-ss.).
18. L. Torchia, *La responsabilità dirigenziale*, Padova, Cedam, 2000. More recently, C. Celone, *La responsabilità dirigenziale fra Stato e d enti locali*, Napoli, Editoriale Scientifica, 2018.
19. G. Bottino, *Rischio e responsabilità amministrativa*, Napoli, Editoriale Scientifica, 2017; M. Cafagno, *Contratti pubblici, responsabilità amministrativa e burocrazia difensiva*, in *Dir econ*., 3, 2017, p. 625-ss.; S. Battini and F. Decarolis, *L'amministrazione si difende*, in *Riv. trim. dir. pubbl*., 2019, p. 293-ss.; B. Tonoletti, *La pubblica amministrazione sperduta nel labirinto della giustizia penale*, in *Riv. trim. dir. pubbl*., 2019, p.77-ss.; M. Cafagno, *Risorse decisionali e amministrazione difensiva. Il caso delle procedure contrattuali*, in *Dir. amm*., 2020, p. 35-ss.; G. Bottino, *La burocrazia "difensiva" e le responsabilità degli amministratori e dei dipendenti pubblici*, in *An. giur. econ*., 1, 2020, p. 117-ss.
20. See legislative decree no. 76/2020, art. 21 and 23.
21. Corte Cost., n. 8/2022. A critical analysis in S. Battini, *Abuso d'ufficio e burocrazia difensiva nel groviglio dei rapporti fra poteri dello Stato*, in *Giornale di diritto amministrativo*, 4, 2022, p. 494-ss.
22. Corte Cost., n. 293/2009.
23. Corte Cost., n. 166/2020, affirming a constant doctrine.
24. For example, central administrations, over a period of ten years, have experienced a decrease of 21.6 percent in their initial size (Ministero dell'economia e delle finanze - Ragioneria generale dello Stato, *Commento ai principali dati del conto annuale del periodo 2011-2020*, 12 ss.).

25. In a span of twenty years (2001-2020), the average age of the total personnel has increased by six and a half years, reaching 50 years. The highest age is still found in central administrations, where it exceeds 54 years. (Ministero dell'economia e delle finanze - Ragioneria generale dello Stato, *Commento ai principali dati del conto annuale del periodo 2011-2020*, 111 ss.).
26. See for example SNA, *Proposta di linee guida sull'accesso alla dirigenza pubblica*, Roma, settembre 2022.