Dynamic Conservatism and Legislative Possibility Under Inertia

Abstract

Models of policy change in stalled societies tend to emphasise precipitating exogenous factors such as major political and institutional crisis. Insufficient attention has been given to the study of how political and administrative elites handle institutional blockages during the parliamentary process in order to enact broad policy reforms, such as welfare state reforms. This paper proposes an analytical distinctive approach to the study of elites’ strategies to overcome the blockages emerging during the legislative process in the face of predominant conditions of policy stalemate. The elaboration of ‘dynamic conservatism’ offered here is based on a developmental study of the changing character and the implications of blockages for the policy making process. The analysis of the enactment of the 1992 health care reform in Italy suggests that the process of dynamic conservatism necessitate peculiar legislative instruments to break through immobilisme. The paired instruments of the enabling law and its implementative ‘legislative decrees’ are an extraordinary contributory element to the flexibility and sidestepping necessary for escaping the parliamentary blockage. The paper presents the empirical case of the introduction of New Public Management ideas into the Italian national health care system, which resulted in a radical departure from the status quo and break of policy stalemate.
Dynamic Conservatism and Legislative Possibility Under Inertia

‘The resistance to change exhibited by social systems is much more nearly a form of “dynamic conservatism” – that is to say, a tendency to fight to remain the same’ (Schon 1971, p.73). Deadlock and blockages are principal components of policy reform processes. They manifest themselves in various forms, from outright opposition to covert resistance, from obstructionist behaviour to creative compliance, from institutional inefficiency to decision making stalemate. In spite of their different character and effects on the policy outcome, blockages put reform impetus at risk. In the long term this has important implications for the status quo bias. As such, resistance to change is accompanied simultaneously by elites’ strategies aimed at anticipating and overcoming deadlock, and preventing potential stalemate as much as possible. Handling blockages can be analysed as a governmental activity per se, for the policy making process of reform is characterised by the parallel concurrence of dynamism and conservatism.

Although change and resistance are inextricably interwoven during the enactment of reforms, in the face of political institutions marked by inertia this concurrence has a distinctive character, and as such merits more attention than received so far. Inertia manifests itself in recurrent reform attempts and frequent unachieved goals, as to raise the necessary threshold level to break through immobilisme (Schon 1967). The paper aims to address the paradox of policy change of a substantive and ambitious character, going beyond policy announcements and incremental amelioration, within a political and institutional system traditionally trapped into deadlock and stalemate.
The question arises as to what strategies actors deploy and what process patterns promote policy innovation in the face of blockages.

In the case of the Italian political system, one of the most noticeable institutional deadlocks against broad policy reforms consists in the legislature and law-making process. In addition to the constraints imposed by the party system (Cotta 1994; Cotta and Verzichelli 2000), the Italian Parliament has traditionally been considered a stalled institution (Di Palma 1976; Di Palma 1977) in relation to the enactment of ambitious and wide ranging reforms. This decisional ineffectiveness results from the inability to reach agreement on policy content, and also on decisional rules, given the character of the Italian multiparty coalition system (Suleiman 1986). Italian executives' capacity to steer the parliamentary process has always been remarkably poor (Manzella 1991; Chimenti 1992). Recent increase in the use of delegated legislation suggests that the executive is trying to ‘escape parliamentary inertia’ especially in relation to broad policy change (Capano and Giuliani 2001). Despite the strengthening of the Italian executive’s legislative prerogatives in the last decade (Vassallo 2001), the Italian Parliament retains important transformative opportunities, owing to a strongly institutionalised committee system and a high level of decentralisation and fragmented party system (Polsby 1975; Violante 2001; Pasquino 2002).

Despite these theoretical premises, policy innovation and enactment of ambitious reforms are paradoxically noticeable in the last decade. This paper draw upon empirical research conducted on health care reforms from 1992 to 2003 with emphasis on the introduction of new public management ideas in this domain (Hood 1991; Hood 1998). The first part of the paper highlights the significance of health
care policy change in the face of traditional administrative blockages related to the
public authority model of the state (Cassese 1998; Cerase 2000; Cassese 2002).
Subsequently, the paper discusses the main elements of what I define as ‘dynamic
conservative’ policy process and proposes an explanation for legislative innovation
under inertia. Unlike the US Congress’ negative powers, the parliamentary blockage
associated with the Italian decision making process does not originate as much from
individual parliamentarians’ obstructionist behaviour Congress (Dodd 1986;
Herzberg 1986; Bailey 1989; Dodd and Oppenheimer 1989).

As offered here, the model of dynamic conservatism advances our understanding of
why big policy change is adopted in the first place by political and administrative
elites, how blockages are continually built into the process of legislative enactment,
and how eventually the operation of dynamic conservatism produces a departure
from the status quo. The operation of dynamic conservatism will be investigated by
analysing first the process and then the instruments of change. A developmental
study of the changing character and differentiated effects of blockages during the
legislative stages will then be presented. Upon this elaboration, the paper discusses
the significance and centrality of the Law -against the alternative of using
administrative rules- as the key instrument of change.

I. Health Care Policy Change: Handling Blockages and Escaping Inertia

The health care case illustrates an impressive break with immobilisme and
persistence of historically entrenched patterns of administrative reforms in Italy.
This section of the paper aims to highlight how this was possible and to discuss the
mechanisms that facilitated such a long-awaited achievement of broad change.
Above all, the first noticeable feature of health care reforms was the high level of intensity and radicalness of change, despite the cumulative effect of failed attempts and policy stalemate (Ferrera and Zincone 1986; Freddi 1989; Maino 2001). As much as big change was sustained by legislative dynamism, it also set in motion a process by which blockages were built into the policy process in a developmental way, as I will elaborate in the second part of the paper.

In blocked societies, the cumulative effect of failed attempts is to raise the threshold level necessary to infuse renewed impetus for reform into the political system. Incremental change is not an alternative way of bringing about change in inertial systems because the immobilisme resulting from many attempts at reform needs to be contrasted with a process at least as incisive. Crozier proposed that change by revolutionary crisis was needed to unblock French society (Crozier 1970). Past failures of reforms make it necessary to adopt increasingly more incisive reforms to resolve problems that crowd in. Intensity of change is proportionate, thus, to the effects of the historical legacy of resistance. Therefore, policymakers, with arguably higher understanding of the past than of the future, raise the intensity of change in order to overcome the cumulative effect of unresolved problems and achieve at least some of their intended high expectations. Consequently, they choose the most formally powerful and politically legitimising policy instruments available to them, according to the principles of administrative law.¹

Health care reforms in the 1990s were a pioneering case illustrating the real possibility of transforming the Italian State. This remarkable departure from the historically entrenched administrative tradition took two main directions.² First, the so-called enterprise formula,³ introduced in local health authorities and public
hospitals, yielded the intended results by creating at the top of the health care administration a powerful executive post taken by regional bureaucrats and public managers. This change is impressive given one of the most integral features of the Italian administration, namely the lack of a firmly established senior civil service until fairly recently (D’Alberti 1990; Ferraresi 1996). General managers have emerged as the key policy actors in regional health care policy, posing a threat to the old centrality of local political elites. The significance of the change, however, does not only rest in the creation of a new post and the attribution of new formal responsibilities, but also in the consolidation of a different type of public administration: more service oriented, less anchored in the public authority tradition, increasingly infused by private sector management practice and instruments, more open to flexibility in hiring, and performance related pay (Hood 1991; D’Albergo and Vaselli 1997; Rebora 1999; Pollitt and Bouckaert 2000).

The second most important trajectory of health care reforms in the 1990s has been the emergence of the regions as the most important administrative and political level of government in charge of health care policy making. Few responsibilities remain allocated to the central state. Among these we find establishing minimum standards of care and monitoring overall health care expenditure. Regional political executives became over the course of the 1990s by far the most important decision makers in the overall formulation of health care policy, defining the provision of services, managing administrative structures, and mobilising political consensus. Regions have also acquired such extensive financial powers that observers have defined this process as ‘fiscal federalism’ (Cavicchi 2001). This change is remarkable given the failure of the 1977 regional reforms and the difficulty in changing the configuration of local government and local politics in Italy (Page 1991). The regional level is,
thus, emerging effectively as a powerful intermediate institution for the definition and provision of welfare services.

The power of the paradigm of the entrepreneurial administration\(^4\) consists not only in being an alternative model of public management to the traditional one, but also a highly unfamiliar administrative culture. This external paradigm, developed in a different jurisdiction, and not based on public law, gave rise to political and administrative resistance, as expected. Hence, blockages did not disappear and were not removed during the health care reforms in the 1990s. Rather, the political strategy was to transform them into instruments facilitating reform impetus, so as to help change. Blockages were built into the legislation during the process of drafting the 1992 Amato health care reform and the legislative process of its parliamentary approval. Legislative decree no.502/1992 contained many ambiguities in order to build in possible breaches for later administrative manoeuvring, such as the unclear demarcation between state and regional responsibilities. The process of regionalisation was not clearly and firmly defined from the outset. By contrast, the reform was rather clear about the regional responsibilities for covering the huge budget deficits of local health authorities and public hospitals.\(^5\)

What was distinctive about the handling of blockages in the case of health care was that they were transformed into instruments of change by not bringing them into the open. Secrecy was crucial part of the policy process. Blockages did not emerge as a result of direct opposition to general managers or to regionalisation, which conversely were largely acclaimed publicly. Thus, there was no typically obstructionist behaviour. Blockages were not embodied in alternative administrative programmes, different policy options, or conflicting political and administrative
positions. Instead, blockages were handled mainly by keeping resistance covert. For instance, empirical findings have shown that the process of drafting the 1992 legislative decree was a highly secretive and closed one, which offered the opportunity to build in ambiguities and contradictions to be activated later during the implementation stage (Mattei 2004). The predominant mode of administrative dissent, characterised by mainly covert and oblique resistance, allows for simultaneity of change and deadlock. Hence, the reforms of the Italian national health care system in the 1990s illustrate the distinctive decision making process of introducing incisive change into a blocked political system, not by removing obstacles or rejecting change outright, but rather by finding creative and viable ways to survive in the changed environment, by finding ‘escape routes’ (Héritier 1999).

It was not only the radicalness of change and covert resistance, but also the system of interest groups’ intermediation with the State that contributed to keeping the policy process ongoing and helped to infuse political momentum, even when blockages appeared to defeat the process of change. One of the facilitating conditions for sustaining momentum during the health care policy change was the endemic political conflict between the state and the medical profession. The effects of civil society’s response to the process of reform were important because they triggered another legislative initiative, keeping the process of change far from getting stalled again. This was facilitated by the existence of the institutional arena of the parliamentary committees, willing to channel and aggregate the opposition conveyed by civil society. Otherwise, interest groups’ response could have merely contributed to the abrogation of the decree, without resulting in new legislative output, a fundamental characteristic of dynamic conservatism. However, the impact of interest groups was rather limited as far as the thrust of the reform of the national health care system was
concerned. It is the effect on the process that matters most, as far as the mechanisms that allow for change in the case of health care are concerned. I will discuss this in details in the next section.

II. A Model of Reform Legislation in Stalled Societies

The purpose of this second part of the paper is to set out an elaborated version of dynamic conservatism as an analytical framework for the institutional pattern of reforms in those blocked political systems, such as the Italian one, characterised by an historical legacy of political inertia and policy failure. In this context, the key puzzle to address is how the breaking of immobilisme becomes possible (Capano 2003), and what operational mechanisms contribute to the triggering and development of a dynamic conservative process. Before embarking on a conceptual development of dynamic conservatism, we will briefly discuss the origins and usage of the term. The purpose is to demarcate our approach from the conventional usage of the term, which excludes the possibility of change.

Donald Schon’s Dynamic Conservatism and Limitations

‘Dynamic conservatism’ has been used in the literature rather loosely as an attribute of policy immobilisme and administrative resistance. The first scholar to coin this expression was Donald Schon in 1971 in his work Beyond the Stable State. There he defines dynamic conservatism in these terms: ‘The resistance to change exhibited by social systems is much more nearly a form of “dynamic conservatism” – that is to say, a tendency to fight to remain the same’ (Schon 1971, p.73). Social systems and organisations strive and engage in relentless activism to remain in equilibrium. They
resist change with opposing energy proportional to the high intensity of the change introduced. Thus, dynamic conservatism is recognisable, as an observable phenomenon, in the course of a radical attempt at transforming the political and administrative systems. Drawing on the work of Schon, Jack Hayward suggests that political inertia contains ‘an active sense of resistance to change, although common usage identifies inertia with passivity and inaction’ (Hayward 1975).

In the early scholarship of Donald Schon (Schon 1967; Schon 1971), dynamic conservatism is used to indicate a universal human condition, the anguish of facing uncertainty and the need for individuals and institutions to retain acquired norms and values, which he defines as the ‘theory’ of an organisation. The central question Schon is addressing is how we maintain ‘belief in the stable state’, which is a means of maintaining the illusion of stability of organisations and social systems, when in practice they are subject to continuing transformation. The belief in the stable state is the bulwark against the threat of uncertainty generated by change and reforms. It is a pervasive condition that is only partly rational, according to Schon.

Instability is indeed a disturbing factor for established human relationships, organisational roles and rules. The problem is how we manage to maintain belief in the stable state and simultaneously respond to change. The solution to this intractable dilemma, namely the evolving character of social systems and the human inclination for stability, is ‘not a passive or inertial but an active and more or less systematic resistance to change’ (Schon 1971).

From Schon’s elaboration of the concept, it remains unclear, however, how intentionality is built into the pattern of dynamic conservatism, if at all. He maintains
that social systems have power over individuals because they provide individuals with ‘a framework of theory’ (Schon and Rein 1994). Yet, political systems and political mobilisation are the result of conflicts, negotiations and compromises between actors. Schon explicitly dismisses this approach because ‘it would be an oversimplification to identify dynamic conservatism with vested interests’ (Schon 1971). The major reason why Schon is not convinced by the element of intentionality is that it cannot explain the long-term tenacity and irreversibility of resistance to change.

The silence in his work about bias in the distribution of political power and how this affects the relationship between the state and interest groups is one of Schon’s most dubious contributions to the study of dynamic conservatism as a political process. In his work he did not address the question of the effects of asymmetrical political power and conflict in organisations, owing to his conceptualisation of institutions as a living organism. Schon suggests that ‘we undertake a continuous and active program to maintain the system in which we are involved – we keep it in being in the sort of way that a living organism preserves itself by homeostasis’ (Schon 1971). Excessive reliance on biology leaves the problem of exploring political strategy in dynamic conservatism under-researched.

He did realise that problem solving required consensus building about the definition of problems, but how such consensus is to be created, and whether there is a role for social conflict within organisations, was only partially addressed. In this passage from *The Reflective Practitioner*, Schon gets as closest as possible to his interest in the political process:

But with this emphasis on problem solving, we ignore problem setting, the process by which we define the decision to be made, the ends to be achieved, and the means that may be chosen. In real world practice, problems do not present themselves to the practitioner as
given. They must be constructed from the materials of problematic situations that are puzzling, troubling and uncertain (Schon 1983, p. 65).

As will become clearer in this paper, political conflict is a central element in our conceptualisation of dynamic conservatism, drawing upon the possibility that the impetus towards political reform brings about change. As Hayward observes, ‘the political problem arises when those who will sustain the central losses and those who have firm prospects of gain are pitted against each other in the decision for or against specific changes’ (Hayward 1975, p. 15).

Drawing on Schon’s concept of active resistance, Hayward defines dynamic conservatism as a resourceful activity of those dedicated to resistance. He suggests that the only changes tolerated are those necessary to preserve the system from crisis. The decision making process of political inertia is characterised by incrementalism. Incremental adaptations amount to a minimal compliance with the demand for change. He claims that ‘when action finally comes it has been too little and too late to be really effective’ (Hayward 1975). Hayward attributes political inertia to the British propensity to compliance and to ‘rule-fetishism that values institutional devices for their own sake’ (Hayward 1975). Therefore, in this model of inertia, change is incremental and timid and does not proceed by grand schemes. In his approach, Hayward does not hold that dynamic conservatism is distinct from inertia, mainly because they are empirically difficult to discern (Hayward 1975). However, the study of the operation of the process of dynamic conservatism in the case of health care reforms has helped us to assess how blockages were inserted in the process and how political impetus was infused.
The Policy Process of Handling Blockages

This section investigates how blockages punctuate the legislative process and how they impede change at each individual stage. Table 1 summarises the developmental and cumulative process of blockages discussed in this section. The dynamic conservative strategy develops along three legislative stages associated with a national framework law delegating authority to the executive to legislate, the so-called legge delega. This is a general feature of the Italian policy making process, beyond health care specificities. As this law aims to provide the executive only with the general principles as they are decided in Parliament, it is at the second stage of the process, which is drafting and enacting the implementative legislative decrees, that administrative elites are able to influence more directly the process of reform. At the third stage of the legislative process, regional implementation legislation, enacted by regional councils, adapts the national general framework to regions’ own specificities and political strategies.

Regional governments have ample discretion in the so-called leggi di riordino, aimed to devise a new institutional and organisational framework for the regional health care systems. These three are the main stages of the reform process of legislative specification and legislative development of a national enabling law introducing big reforms. As I mentioned in the first section of the paper, the relationship between the government and interest groups also changes during the policy process from confrontation to more covert negotiation, according to the legislative stage and the administration’s strategy.
The first stage is characterised by the parliamentary approval of an ambitious and wide reaching reform. General guidelines in the delegating law are broad and they usually contain very limited operational provisions. Resistance is minimal in light of the fact that this stage is the most exposed to public and media attention and political conflict in the public arena. Blockages to radical change can possibly be found in the limitations that parliament places on the authority delegated to the executive. Thus, blockages consist in defining the scope of the executive’s power of delegation and identifying areas to be excluded from executive intervention. For example, delegating law no. 421 of 1992, regarding the reform of health care, established that the post of general manager, to be introduced in the health care administration, should not remove the existing executive board as a collegial decision making structure. In this way, the majority of political parties in parliament attempted to avoid the excessive technocratisation of public management and ensure continuity of political control. Another instance of potential blockage during the first stage of the process was the definition of local health care authorities and public hospitals as ‘public enterprises’ in such a way that it was not clear which institutions would have supervisory control over them. This omission was intended to avoid the possibility,
which in fact became reality, of regional governments acquiring direct political control over them. The Amato government largely ignored the general principles of the delegating law. Thus, blockages had a very minimal substantive effect. Criticism of the reform, however, resurfaced later on.

The drafting process of legislative decrees takes place at the relevant ministries, most often in the legislative offices, so-called uffici legislativi. They coordinate the activity of civil servants involved in the process of defining the operational details of the reform. At this second stage of the legislative process the skeleton of the delegating law acquires concrete relevance. Sector specific requirements and legal technicalities necessitate the active involvement of civil servants. Neutralising ambiguities in the form of ambivalent clauses or definitions are introduced. This is only remotely attributable to ‘bad drafting’. Rather, it reflects the legalistic logic of resistance that the administration has at its disposal. Ambiguities leave great liberty of interpretation at later stages and can be transformed into obstacles.

In the third stage of the dynamic conservative strategy, when the legislative reform hits the administrative system, neutralising ambiguities become neutralising instruments, purposefully and skilfully designed to conserve the status quo ante, or to dilute the big change adopted in the first stage. For instance, the regional legislation creating the Società della Salute in Tuscany permitted the restoration of local elected elites to their original role and threatened to constrain the rising authority of the managers.10 Similarly, regional legislation in Emilia Romagna attempted to re-introduce participatory and consultative methods of decision making which required a dilution of managers’ authority, considering that local elites were placed at the centre of the network realised through the Piani per la Salute (Mattei 2004).11 The
blockages, thus, gained visibility at a post-decisional stage but had already been debated politically during the parliamentary adoption of the delegating law and built in during the drafting of the legislative decree. This shows that political elites and bureaucrats are equally involved in blocking change, which is thus more encompassing than a merely ‘bureaucratic phenomenon’ (Crozier 1964).

Professional groups became salient actors in the process, only when and how the state decided to consult them. Consultation with medical associations was limited by the decision of the administration to open up the process of reform only after the radical change had been introduced. The legislative stages in Table 1 do not only correspond to different developmental moments in the evolution of blockages against change, but they are also related to the predominant type of mediation between interest groups and the administrative system. Any generalisation about the relationship between the administration and interest groups has limitations because it is issue-specific. As we have investigated, the government was more willing to compromise on issues of public employment than the introduction of general management. However, empirical findings suggested that, during the drafting of Legislative Decree no. 502/1992, the mode of action of interest groups was primarily identifiable with endemic conflict and a rejection of cooperation with the government.¹² Negotiations between the medical associations and the administration became somewhat more prominent only during the parliamentary approval stage of the decree.
The Reform Function of the Law

The strategy and process of dynamic conservatism proposed so far necessitate the activation of peculiar legal instruments and legal conditions. The centrality of the ‘law’ as the key instrument in enacting the reform of the state is one of the main features of the Italian policy making process of enacting broad reforms. Hereafter we discuss the peculiarity of the usage of the enabling law and executive legislative decrees in the Italian system. Our aim is to show how the transformation of the function of law during the legislative process, as explained earlier, determines the departure from the status quo and the possibility of overcoming blockages. Once parties in parliament have approved the enabling law as a political agreement, it is bound to lose its initial function and become a self-sustaining administrative activity \textit{per se}, during the drafting of legislative decrees. Legislative proliferation, parliamentary hyperactivity, and the fragmentation of the legislative function, which is rather diffuse, owing to the dispersal of executive power in Italy, are contributory factors in keeping the legislative process progressing, and creating access points for new actors and new elites to mobilise support around their interests. Had regional elites not found a legislative process in motion already, it would have been difficult for them to be able to initiate an entirely new one without fierce opposition and possible defeat.

Grand schemes of reforms have been increasingly pursued by the paired policy instruments of an enabling law\textsuperscript{13} followed by implementing executive legislative decrees.\textsuperscript{14} The nature of enabling laws in the Italian parliamentary system offers an opportunity for ample policy change that is politically legitimated and for which political consensus has been achieved. Its necessary parliamentary enactment makes
it into a suitable instrument for introducing big policy change. An enabling law is a piece of primary legislation that establishes the principles and criteria to guide the executive in the reform process. Its use by reformers in Italy is hardly symbolic. Rather than guidelines for the executive to exercise delegated legislative powers, enabling laws impose formal constraints as far as the scope of governmental intervention is concerned. This instrument offers the advantage of being sufficiently flexible to allow for adjustments at later stages but necessarily restrictive as far as compliance with constitutional principles is concerned, such as the ‘right to health’. Enabling laws, thus, are adaptive instruments that offer multiple solutions in order to address political conflict arising at later stages of the process. They permit radical change, and are not fixed once and for all at the beginning of the process.

The primacy of Law over other policy instruments in reforming the public administration is justified by the administrative law doctrine of the fonti. The precedence of the instruments of law over administrative regulation as the main vehicle to bring innovation reform to the state is established formally by this doctrine. The reform of the Italian state has historically been pursued by laws enacted by parliament. Alternative instruments are indeed available, such as various types of administrative regulations, so-called regolamenti, but these are not used for grand reforms but rather to spell out their operational details. Although there is no general legal principle, or constitutional provision, which clearly establishes how to choose in practice between law and administrative regulations in Italy according to specific policy issues (Giannini 1990), these instruments differ remarkably in their ‘legal power’. According to Sandulli (Sandulli 1989), law and regulations fundamentally differ in the ‘their formal power’, so called forza giuridica. The formal power of the law refers to the potential of the legal act to promote innovation in the pre-existing
juridical system. The power of the law is also measured in terms of its capacity to ‘resist’ administrative regulations, which do not have an equally forceful innovative capacity. By contrast, the power of administrative regulations is to be ‘authoritative’, namely it rests in their capacity to produce unilateral decisions (Sandulli 1989).

One of the most direct and concrete effects of the centrality of the law is legislative hyperproductivity. This trait distinguishes empirically dynamic conservatism from inertia. It does not only derive from the high legal productivity of the Italian Parliament (Di Palma 1977), but also from the intrinsic nature of the law, which contains provisions for the production of subsequent and related legal acts. For instance a delegating law already determines the number, the scope and timing of its implementation decrees. Similarly, a legislative decree contains indications with respect to adopting ministerial acts and regulations. Dynamic conservatism shares with a legal autopoietic system the process of self-reproducing and self-sustaining legal norms (Teubner 1993). Law, thus, permits the policy process to be kept continually in motion, by ongoing legislative initiatives.

Another important condition for sustaining the process of dynamic conservatism, besides internal self-reproduction, is the fragmentation of the legislative function, which in Italy permits actors to use various policy venues at different stages, in an extremely flexible and polycentric system (Cotta 1994). The executive and the legislature co-legislate during the process of delegated legislation, as the case of the reform of the national health care system illustrated. The legislative process of the enactment of a delegating law and legislative decree unfolds by a unified mechanism (Manzella 1991) rather than by a separation of responsibilities. This offers an open and flexible method of making reforms, which allows for amendments, changes, and
reversals, if necessary, given the amending power of parliamentary committees. The decision-making process remains in a state of fluidity that contributes towards increasing the number of access points and breaches. Then, new elites, new actors or new issues can emerge and be inserted in the ongoing legislative process.

The fragmentation of delegated legislative functions in Italy and the centrality of the Italian parliament (Di Palma 1977) permit the juridification of norms to be constantly infused with political conflict, power struggle, and new emerging political issues. The iterative policy process allows for the transformation of the law from a means of political agreement and consensus to being primarily an administrative activity. This is a core element of the dynamic conservative process. A policy agreement is juridified during the drafting process of an executive legislative decree, and repoliticised by being returned to the relevant parliamentary committees for approval. Legislative decrees are attractive instruments for reform because they offer the executive and legislature the possibility of co-legislating and sharing the blame for unpopular reforms. Their usage has increased significantly in the 1990s. The peculiarity of the decreto legislativo is that it is a hybrid instrument, not as powerful as primary legislation but potentially suitable for greater innovation than administrative regulations.

The Law plays inevitably a fundamental role in the dynamic conservative policy pattern because it is empirically the predominant instrument through which big change is introduced, opposed and again renewed. Neutralising and purposefully built in ambiguities at the first stage of the legislative process are transformed into means of resistance by the transformation of the Law from an instrument of political change and reform impetus in the first stage of the process of dynamic conservatism.
into the very *substance* and object of the administrative activity during the second stage. As one MP defined it, ‘the legislative process responds to a contractual logic, being characterised by the need to settle conflicts and disputes so that a legal act fulfils the function of political compromise; yet, once a legal act has been created, its function is no longer useful’. The transformation of the function of a legal act, from being a way to settle political disputes and achieve political agreements in parliament into a different aim is a crucial factor which explains how the legislative impetus can become self-sustaining and eventually driven by new elites, or different actors to the ones who initiated it.

The Law therefore becomes the *substance* of reforms responding to other legal acts rather than to new political impetus for change. Having lost its original function, the law becomes an administrative mechanism of operationalisation and increasing legal sophistication and specification. For instance, in the delegating law no. 412/1992 the transformation of local health authorities into public enterprises, so-called *aziendalizzazione*, was aimed at improving the efficiency of public services. Once the ministry of health became involved in implementing the reform, the *aziendalizzazione* became an end in itself, so that general managers acquired disproportionate powers of discretion against the medical profession.

As emphasised earlier, the power of the law rests in its capacity to bring innovation to pre-existing systems. This should not be underestimated as a result of the normative preconception that legislative proliferation produces only paralysis. Against most scholars, who have used the term ‘dynamic conservatism’ as a characterisation of ‘resistance’ or immobilisme associated with the persistence of old rules and procedures, the process of change we have analysed here is far from being
a reflection of inaction and paralysis. On the contrary, its major trait is impetus and continually sustained legislative momentum.

The process of juridification does not coincide only with the creation of blockages. The legal ‘execution’ of delegating laws is not merely a process of self-reproduction of old administrative customs and procedures. Drafting implementative legislation is associated with the resourceful and imaginative creation of new institutional arrangements which, though aimed at blocking immediate change, in the longer term offer the opportunity for the mobilisation of a new political process. The ongoing legislative process is fuelled by the dynamism of introducing blockages, and ultimately this impetus facilitates the creation of opportunities for change rather than fossilising the system. For instance, at the end of the 1990s, emerging regional elites and regional managers seized the opportunity created by legislative decree no. 502/1992 to gain autonomy and create innovative regional health care systems (Maino 2003). Yet, they have done so in the footsteps of the legislative process originally launched in 1992, and not by an entirely new policy initiative. Thus, dynamic conservatism is a continual process that evolves to exploit the powers that block the system in order to help change.

Dynamic conservatism, as it was developed in this paper, advances the debate on policy reforms in advanced industrial democracies by considering how blockages are transformed into triggering factors of change. Blockages and changes are bound up with each other in a blend of old and new. Blockages are not given, or exogenous, but they are built in purposefully during the process of reform by those actors who mobilise against the introduction of change. Closure is maintained by the process of
resistance, but openness is also ensured by the dynamic conservative process in which neutralising instruments trigger political mobilisation when new political impetus is infused in order to bring an end to immobilisme. The infusion of impetus from groups magnifies the effect of the system of blockages and sets the system on a new policy path. The cumulative effect in the long run of this motion in spirals rather than circles remains rather unpredictable, but it does offer opportunities for departure from the status quo ante.

Conclusions

This paper has argued that policy change is not by crisis, by incremental steps, by exponential issue expansion, or by an invisible hand, but by a dynamic conservative process in which political impetus and equally forceful resistance are bound up together during a three-stage legislative process. The legislative stages of the reform of the national health care system considered in this paper, namely the enactment of the delegating law, the issuing of the legislative decrees, and regional implementation legislation, have shown different types of blockages. These were here conceptualised in their dynamic developmental evolution because their effects on the process varied according to the policy stage and institutional level in which they were built in. Against the emphasis of more static models on accounting for ‘given’ impediments to change (Crozier 1964), the framework of dynamic conservatism here offered improves the understanding of the effects of blockages on the ongoing process of reform as it unfolds. Actors introduce latent impediments at an initial stage as Trojan horses. These are later activated during the execution of the parent enabling law, when executive legislative decrees are drafted. What explains the relationship between initial radical change and blockages is the ‘threshold effect’,
that is the need to overcome the cumulative effects of past failures by the introduction of very incisive change to counterbalance the historical legacy.

The second most important element of the model of dynamic conservatism is the innovative function of the Law as the key driver of broad policy change in Italy. The Law is defined by the process which has generated it rather than some abstract and general theory (Giannini 1990). The high degree of fragmentation of the legislative function in Italy offers a remarkable opportunity for continual amendments and provides multiple open access points for new actors, such as regional elites, to intervene in a pre-existing and already ongoing process. However, law-driven change is not only associated with new legislative initiatives enacted by parliament. It is the transformation of the law from an instrument of political agreement in Parliament to the very substance of administrative activity that contributes to a departure from the status quo. When the law loses its function of ensuring political agreement and becomes an aim in itself for legalistically minded civil servants, then it is possible for new actors, or old actors with new interests, to reorient the process according to their own policy objectives. The transformation of the function of the law from instrument to substance is at the core of the explanation of how we move from original change to blockages to renewed change.

Whereas the other developmental models of change primarily focus on benign growth and ameliorative change (Lindblom 1959; Baumgartner and Jones 1993), dynamic conservatism attributes to blockages a key role not only as factors of resistance but also as triggering factors of change. Blockages are inserted in a dynamic and developmental process of change sustained by political strategy, self-reproducing legal activity and also societal conflict. The type of activity undertaken
by interest groups contributes to renewed legislative activism, as was the result of the opposition of interest groups against the 1992 health care reform. Dynamic conservatism is a policy process that simultaneously closes and opens up possibilities. Not merely a neutralising strategy, it does create opportunities for reform as a result of the developmental character of the legislative process, namely, the iterative and interlocked processes of juridification of political issues (Teubner 1993), where the law becomes the substance of reform, and renewed politicisation of legal acts, as interest groups bring into the open otherwise covert and oblique resistance.

Bibliography


### Notes

1 According to the Italian administrative law doctrine, there is a formal hierarchy of legal norms based on the notion of ‘fonti’, literally ‘sources’. The plurality of fonti, from which legal norms derive, is regulated by three different types of relationship: chronological, hierarchical and competence. The chronological principle of establishing the relationship between legal norms is that *lex posterior derogat legi priori*. According to the hierarchical criteria, inferior legal norms (such as administrative regulations, ordinances, local government statutes) cannot contradict in any way superior norms, such as acts of parliament, constitutional laws, decree-law, regional laws, referenda, regional statutes, or legislative decrees. The third principle is based on a separation of competencies, according to the subject matter being regulated, or to the constitutional preference of one ‘fons’ over the other.


3 ‘Enterprise formula’ refers to the process of *aziendalizzazione*, the transformation of local health care authorities into ‘public enterprises’, independent from the municipal administration. The 1992 Amato reform granted all local health care authorities and selected public hospitals juridical autonomy. They were given organisational, administrative, and accounting discretion from municipal administration. The enterprise formula aimed to shift the health care administration from a rigidly legalistic to a managerial one, moving away from formal controls, and introducing efficiency criteria. Public firms plan their own activities according to local demands, allocate their budget without municipal participation, and establish rigid accounting systems.

4 C. Hood defines NPM as ‘a shorthand name for the set of broadly similar administrative doctrines which dominated the bureaucratic reform agenda in many OECD group of countries from the late 1970s’ (1991). ‘Entrepreneurial state’ refers to the doctrinal component of NPM linked to stress on private-sector styles of management practice, exemplified by greater flexibility in hiring and rewards, discretionary control of organisations from named persons at the top ‘free to manage’ (Hood 1991). NPM is related principally to the notion of ‘hollowing out of the state’, whereby many activities of the state have been reassigned (Rhodes 1994).

5 In its 1991 Annual Report of the State, the Court of Accounts launched an urgent invitation to the Government and Parliament to address the very serious mismanagement of local health care authorities and their alarming budget deficit. Despite 3 billion Euros increase in the size of the 1990 national health care fund (32 billion Euros), health care authorities had accumulated a total budget deficit of 6 billion Euros. Personnel costs had increased by 16% from 1990, health care procurement by 11%, and public resource to finance private providers by 10%. (Parliamentary Act, XI Legislature, Doc. XIII, no.2-quinquies). Furthermore, the public debt amounted to 102.5% of the country’s GDP in 1992, in contrast with the 60% convergence criteria set out by the EU Maastricht Treaty (Article 109J). The budget deficit was 10.7% against the Maastricht requirement of 3%. Moreover, the lira came under strain and was devalued by 7% in September 1992. For an account of the financial
The far reaching change introduced by the 1992 reform of the national health care system, imposed by the Amato government on a divided and recalcitrant parliamentary majority, achieved with limited political consensus and produced without comprehensive consultation of the affected medical groups, backfired against the new Ciampi government in 1993 because of vehement and disruptive protest by professional groups. The implementation of the reform was temporarily halted by outright opposition and the groups’ lack of cooperation with the government.

The reform of the Italian health care system had rarely generated such a vociferous and potent clamour as at the beginning of 1993. The opposition of the medical profession took the form mainly of direct action and endemic conflict, especially immediately following the Amato decree. The most sensitive issues were those related to public sector employment since the public health care sector was the third largest employer after education and local government.

Groups’ influence on the process was most evident in their ability to trigger a new legislative episode, that of the amendment of the Amato reform through a new legislative decree. Executive Decree no. 517 was issued by the Ciampi Government in December 1993 after a lengthy parliamentary discussion and amendment process.

Among governmental strategies in handling groups’ demands, in order to secure policy continuity and minimal modification of the original reform, we found strategies such as gaining wider political consensus and political legitimacy through parliamentary approval, engaging in wider and more open consultation with trade unions and all medical associations, and eventually making public concessions to the medical profession over employment legislation. This strategy led to a policy making process geared towards consultation with groups rather than adversarial politics.

A comparable instrument of negotiated planning has recently been devised by the Regione Toscana with the Società della Salute, literally Welfare Societies, created by the 2002-2004 Regional Health Care Plan. According to the executive proposal approved by the Regional Council, the Società della Salute has fully fledged organisational, managerial and financial responsibilities for the provision of all health and social services in the local area except hospital services. They are charged with the management of social care, health care, primary care, specialist medicine, ambulatory care, and general medicine.

In Emilia Romagna, the mayors’ greatest opportunity to participate in the decision-making process affecting their local communities is represented by the ‘Piani per la Salute’, literally Health Care Plans, which are the products of a negotiation process between institutions and actors involved in the provision of local health care services. One of the main purposes of this method of negotiation is to open up horizontally the otherwise centralised planning process to local organisations and citizens.

The demonstration on 17 December represented the climax of many days of strikes and demonstrations. 30,000 doctors convened in the centre of Rome and were screaming slogans such as ‘buffone’, literally ‘fool’ or ‘dimissioni’, literally ‘resign’ and ‘sei come il mago di Napoli’, literally ‘you are like the wizard of Naples’, alluding to underhand practices in the Minister’s city of origin. See ‘Bloccata l’auto, insulta a De Lorenzo; in piazza 30 mila camici bianchi’, La Stampa, 17 December 1992.

An enabling law to delegate legislative powers to the executive has the same formal status of an ordinary law enacted by parliament, namely primary legislation, whereas an executive legislative decree has a ‘sub primary’ position in the rigid hierarchical system, not a secondary one though, which applies only to administrative regulations.

Legislative decrees, so-called decreti legislativi, are executive decrees having the force of law, which are issued by the government in accordance with the principles and criteria set out in their parent enabling law, enacted by parliament in the form of ordinary legislation. Law no. 400 of 1988 (article 14) has clarified further the procedures of this instrument of delegated legislation, not to be confused with decree-laws. The enabling law must formulate clearly the object, timing, principles and criteria of executive legislative authority. If the delegation of legislative authority exceeds two years, the executive must get parliamentary approval on the draft legislative decrees before they are issued. A parliamentary opinion is formulated by the relevant standing committees after 60 days of receipt of the draft document from the executive. Then, the executive must amend the text according to the recommendations of the parliamentary committees and send the draft for a second and definitive reading to the committees, which deliberate a final resolution after 30 days. There are, thus, two readings of draft legislative decrees.

For a discussion of autopoiesis, see Luhmann (1986), Teubner (1988), Jessop (1990), Morgan (1986), Kauffman (1976). An autopoietic organisation is self-referentially closed and perceives its environment as a projection of its self-identity. It functions only to survive and regenerate its
components. The aspects of autopoiesis that are most relevant to our theoretical approach are: the regeneration logic which depends on the network of interrelationship between actors in the political system which produces these mechanisms; and, the fact that autopoietic systems must produce their own components for conserving their organisation. As Kaufmann suggests, the autopoietic model can be applied to public administration to describe bureaucracy as a self-reproducing system (Kauffman 1976).

16 In the Xth Legislature (1987-1992) the total number of legislative decrees issued by the executive was 129, and in the XIIIth (1996-2001) it increased to 425 (of which 242 derive from enabling laws not connected to the implementation of European directives). See Capano and Giuliani (2001).

17 Interview with Giorgio Bogi in Rebuffa and Monica (1995).

18 By ‘execution’ we do not refer to the implementation stage, but to the legal activity of detailing and operationalising a general framework enabling law enacted by parliament, so-called legge di delega, into an executive legislative decree, so-called decreto legislativo. The latter is further executed by implementation legislation, inclusive of regional legislation, or ministerial regulations.