Essays

Questioning the Impartiality of Public Administration
The Uncertain Glory of Public Prosecutors

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Abstract

The purpose of the article is to show the existence of a 'vertical partiality' of public administration managers *vis-à-vis* the citizens. The public managers observed here are public prosecutors as the gate keepers of criminal justice. The performance parameter that is measured is conviction rates in three countries: the US, England and Wales, and Italy. These countries provide a spectrum of high and low conviction rates. The present study is limited by a first cut at comparing such different judicial systems. Research approach is comparative and quali-quantitative. The article examines differences in procedure and in praxis, across different countries, making use of simple comparative statistics. The article finds that different cases – of high and low conviction rates – constitute two sides of the same coin: public managers pursue ease of management, either driven by favorable procedure or finding space in the slack of the same. The quest for a 'just' conviction rate is rather elusive, and the answer probably resides in ongoing research and analysis. The article also harmonizes different strands of organizational behavior research. The article takes an original bureaucratic theory approach at explaining conviction rates. An international comparative perspective highlights macro-differences that are hardly observed in domestic panel data and analysis. Practical implications of findings show the US system may overly incentivize plea dealing while Italian criminal justice reform does not address key issues that congest the judicial system and increase length of trials. From a social point of view, perception of the US system may be more negative than necessary, practice being affected by bureaucratic organizational behavior rather than discriminatory intent. The Italian judicial system maximizes its own social visibility more than its positive impact on society. Not immune from critique, the EW system appears nonetheless equilibrated.

I. Introduction

One of the tenets of democratic – and perhaps totalitarian – public law is the impartiality of public administration and of its public managers. Public managers in fact, are supposed to make decisions without discriminating between one citizen and the next citizen. Impartiality implies that public managers treat all citizens 'on the same plane' and we may call this kind of impartiality 'horizontal impartiality'. In fact, there is one aspect of impartiality that is less considered in public law: discrimination on the part of public managers between themselves and the rest of society, which by metonymy could be called 'inequality between the law and

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the citizen'. The theoretical purpose of this article is to show the existence of such 'vertical partiality' of public managers, thus highlighting a perhaps neglected facet of inequality. The concept is that public managers make decisions that privilege their own work *vis-à-vis* the citizen's right to freedom. This purpose is pursued by comparing empirical public administration situations that are represented by the different conviction rates of public prosecutors in the criminal justice systems of the USA (federal), England and Wales (EW), and Italy. The link between the theoretical and the empirical purpose of this article lies in the hypothesis that conviction rates may be the resultant of a 'non-impartial' behavior on the part of public prosecutors. Public prosecutors are public managers. The thesis of the article is that public prosecutors, as public managers, tend to make decisions that privilege their own ease of work *vis-à-vis* the citizens' rights, thus embodying the 'vertical partiality' described above.

Focus on conviction rates is not novel in the literature, however, it is regarded here only as a starting point to join the debate and come to the issue from an original angle: 1) a theoretical view to explain conviction rates through a theory of organizational behavior; 2) an international perspective, with its macroscopic differences, which may lead to new insight than country specific studies; 3) leverage of the judicial system as a natural experiment in the evaluation of the quality of decision-making in public administration. Judicial rulings in fact, are decisions about decisions: a conviction is a positive evaluation of the decision to send a case to court; on the other hand, an acquittal is a negative evaluation of the decision to send a case to court. The judicial system has an inherent characteristic as an evaluation process.

Choice of sample countries is motivated in the following. Relevance of the subject treated here started with scrutiny from the European Commission on judicial reform in Italy, which was followed up by a reform of criminal justice procedure.[1] Italy has a very low conviction rate and comparison with US federal system is pursued as the USA represent the opposite extreme in the performance of public prosecutors. EW represent a bridging case between the two extremes. On the one hand, the US and EW judicial systems have basic similarities. The US federal system, however, only deals with a subset of criminal law throughout the country. Whereas, EW has a population very similar to Italy and deals with all criminal cases, just like the Italian system.[2]

[1] European Commission, 'EU Justice Scoreboard 2021, no 17', 3, ft 17: 'In the context of the European Semester, the Council, on the Commission's proposal, addressed country-specific recommendations relating to their justice system to seven Member States in 2019 (HR, IT, CY, HU, MT, PT and SK) and eight Member States in 2020 (HR, IT, CY, HU, MT, PL, PT and SK)'. European Commission for the Efficiency of Justice – CEPEJ, 'European judicial systems: Efficiency and quality of justice' - Cepej studies no 23, edition 2016 (2014 data), 231: 'in all these jurisdictions (*with the exception of Italy*) the Disposition Time can be considered acceptable' (emphasis added). See also Italian justice reform legge 27 September 2021 no 134.

[2] Population of England and Wales: 'On Census Day, 21 March 2021, the size of the usual resident population in England and Wales was 59,597,542 (56,490,048 in England and 3,107,494

The methodological approach of this article is comparative and quali-quantitative. The article examines qualitative and quantitative differences in procedure and in praxis, making use of simple comparative statistics. The paradigm is regulatory rather than radical: reform is in the scope of this article, which does not question the foundations of the judicial organization and the roles of judges and prosecutors.

The structure of the article is as follows: Section 2 recalls the relevant literature in the domains of public law (impartiality), in the domain of organizational behavior (vertical partiality), and in the domain of criminal procedure (conviction rates). Section 3 illustrates criminal procedure in a comparative perspective; Section 4 presents the analysis and findings; Section 5 discusses impact and possible remedies; limitations and future studies are discussed in Section 6; Section 7 finally, summarizes the article.

II. Literature Review: Bureaucracy and Impartiality

This section presents three areas of literature that are relevant to our thesis. The first subsection shows the importance of impartiality in public law. The second subsection illustrates the theories of organizational behavior that this article brings to bear with observed behavior. A final subsection illustrates the literature on criminal justice statistics and performance.

1. Impartiality as a Key Element of Public Administration

Public law identifies impartiality as a key quality of public administration. We examine a sample of US, UK or EW and Italy's legislation proposing or protecting the value of public administration's impartiality. US legislation for instance, focuses on conflict of interest, whereby one member of public administration prefers himself or herself to the rest of society.[3] UK legislation[4] and the Italian Constitution[5] are more explicit about impartiality as a major quality of public administration.

in Wales); this was the largest population ever recorded through a census in England and Wales': https://tinyurl.com/49n6vamh (last visited 31 January 2026). Population of Italy: 'Italy's total population was 58.96 million in January 2023': https://tinyurl.com/43rffznx (last visited 31 January 2026).

[3] 5 USCS, Ethics in Government Act of 1978; 5 USCS, Inspector General Act of 1978 (establishing Offices of Inspector General in departments and other bureaus of the federal government with capability to initiate investigations). Also, Inspector General Reform Act of 2008, 110 P.L. 409, 122 Stat. 4302.

[4] A.W. Bradley and K.D. Ewing, *Constitutional & Administrative Law* (Harlow: Pearson Education Limited, 14th ed, 2011), 605: The United Kingdom Civil Service Code declares that civil servants are expected to carry out their role 'with dedication and commitment to the Civil Service and its core values: integrity, honesty, objectivity and impartiality'.

[5] Art 97 Italian Constitution: 'Public offices are organized according to the provisions of law, so as to ensure the efficiency and impartiality of administration'.

2. Bureaucratic Behavior and Defensive Administration

Literature on organizational behavior does contemplate 'objective vertical partiality' when dealing with monopolistic organizations, like public administration.[6] One specific microeconomic formulation of the utility function of the monopolistic public manager is due to William Niskanen, who hypothesized that every actor in the economy pursues the maximization of his own utility either by profit or by the satisfaction of one's own needs. The public manager or bureaucrat maximizes his own utility pursuing factors as:

> '*salary*, perquisites of the office, *public reputation, power,* patronage (opportunity to provide and receive protection), *ease in managing the bureau,* ease in making changes (in his bureau)'[7] (emphasis added).

Prosecutors are public managers too; they are here hypothesized pursue the factors of utility emphasized above. The present hypothesis, of course, does not imply an awareness on the part of prosecutors nor does it imply prosecutors are not hard-working managers. The present microeconomic model in fact, is in accord with the 'as if' methodology of the positive economic model.[8]

The idea here is to see prosecutors as public managers making 'non-market decisions',[9] independent of the substantive content of their judicial function. The research question is: are US, EW, and Italian public prosecutors behaving with impartiality between themselves and the citizens? To answer such question, we need to take into account the characteristics of the organizational environment whereby prosecutors operate. This will be done in Section 3, on comparative criminal procedure.

Coming back to organizational behavior and the bureaucracy, while Niskanen provides a behavioral theory in economics, that is outside of the realm of public law, his theory is in accord with eminent jurist and philosopher Bruce Ackerman, who viewed public administration as 'the fourth branch of government,' that is an independent branch, governing itself and pursuing its own objectives.[10] Following

[6] See generally P. D'Anselmi, 'Can We Afford to Separate Politics from Administration: Designing Powers in the Service of Implementation' 5 *Italian Law Journal*, 471 (2019).

[7] W.A. Niskanen, 'Non-Market Decision Making: The Peculiar Economics of Bureaucracy' 58 *American Economic Association*, 293-294, 294 (1968), emphasis added.

[8] M. Friedman, 'The Methodology of Positive Economics' *Essays In Positive Economics* (Chicago: University of Chicago Press, 1966), 3-16, 30-43.

[9] W.A. Niskanen, n 7 above.

[10] B. Ackerman, 'The New Separation of Powers' 113 *Harvard Law Review*, 689 (2000): 'Constitutionalists should, therefore, extend their thinking to embrace the distinctive structural problems involved in controlling the fourth branch of government: the bureaucracy. This is perfectly obvious to professors of administrative law, who bitterly resent the dominance of constitutional lawyers in the pecking order of legal academics'. Ackerman also has encouraging words on comparative public administration: 'Unfortunately, comparative public administration is not a well worked field, and most of the outstanding studies fail to focus on the relationship between different constitutional structures and divergent policymaking styles and outcomes.' (ibid 706).

Ackerman's words, this essay wants 'to embrace the distinctive structural problems involved in controlling the fourth branch of government,' the bureaucracy.[11]

Parallel to Niskanen's microeconomic model of public administration, jurists have appreciated a different theory of organizational behavior that qualifies public managers' conservative decision-making as 'defensive administration'.

> 'Defensive decision-making occurs when a manager ranks an option as the best for the organization yet deliberately chooses a second-best option that protects him or herself against negative consequences.'[12]

Artinger et al developed an empirical study through interviews of hundreds public managers, which can be qualified as a 'boots on the ground' approach to the study of public decision-making: they went out and asked public managers themselves what they thought of their own behavior, in their own awareness. Artinger et al came to the conclusion that

> 'a major cause [of defensive decision-making was] a team's approach to failure, that is, whether the reaction to failure is to seek someone to blame as opposed to identifying the underlying causes in order to learn how to prevent similar failures in the future.'[13]

Such situation appears warranted by the Niskanean monopolistic nature of public administration whereby there is little incentive in 'identifying the underlying causes [of failure] in order to learn how to prevent similar failures in the future'. This article proposes than that the two theories are consistent with one another and 'defensive administration' can be absorbed in the theory of bureaucratic behavior as a more general one. Both theories in fact, show that public managers may tend to privilege the circumstances of their own job *vis-à-vis* what is 'best for the organization'.[14]

Last but not least, we need to recall here a central instance of literature that the Niskanen and Artinger hypotheses of organizational behavior are in contrast with. The mainstream behavioral hypothesis in fact, is the so-called Weberian State view of the 'civil servant', acting mechanically and impersonally in favor of the state, *sine ira et studio*.[15] The two views that are put in contrast here constitute

[11] ibid 689.

[12] F.M. Artinger et al, 'C.Y.A.: frequency and causes of defensive decisions in public administration' 12 *Business Research and Law Review*, 9-25 (2019).

[13] ibid

[14] ibid 9.

[15] P. D'Anselmi 'Ideal Types and Behavioural Hypotheses: Public Law, Max Weber and the New Public Administration' 20 *Max Weber Studies*, 168-189 (2020): 'We need to move one step below here and move from top constitutional structures to neutral organizational arguments about the bureaucracy. Impartiality of the bureaucracy was a central tenet in Weber's account of the bureaucrat '*sine ira et studio*' (180). Max Weber's citation is in M. Weber (1978), *Economy and Society. An Outline of Interpretive Sociology* (Berkeley: University of California Press, G. Roth and C. Wittich eds, 1978), 975.

'the Weberian civil servant and the bureaucrat' that recur in this article.

3. Comparative Conviction Rates

Interestingly, literature on conviction rates has taken into account the two views of the public manager that have been put in contrast at the end of the previous section:

> 'We model the trade-offs theoretically in two models, one of a benevolent social planner and one of a prosecutor who values not just the number of convictions but the conviction rate and unrelated personal goals.'[16]

Having recalled the literature on organizational behavior, let us now move to the specific literature on criminal justice.

Conviction of the defendant is not per se a sign of justice being properly administered. High conviction rates may be a sign of too short a distance – or independence – between the judge and the prosecutor, which is not a virtue of a judicial system. On the other hand, low conviction rates too may be the sign that a lot of innocent people are brought to trial, imposing significant personal and social costs in direct outlays, ie the cost of the courts and of the judicial system. Cost is even higher when implicit costs are considered to society, including defendants' tribulation and low deterrence *vis-à-vis* the rest of society.

Such considerations are made in instances of grey literature about conviction rates or criminal procedure in general.[17] It is important to recall here that regression analysis has been performed in the US case-law and it has concluded the US prosecutorial reality to be a mix of the Weberian and the Niskanen bureaucrat because 'higher budgets are associated both with higher number of convictions and with higher conviction rates'.[18] Rasmusen et al thus confirms a basic model of the prosecutor's 'production function': conviction rates and cases sent to court are in a negative relationship with each other. Increasing budgets move out such relationship in the 'conviction rate vs. number of cases sent to court' plane.

Coming now to comparative criminal procedure, a key element is 'the use of discretion during the investigation and prosecution stage of criminal proceedings'.[19]

[16] E. Rasmusen et al, 'Convictions versus Conviction Rates: The Prosecutor's Choice' 11 *American Law & Economics Review*, 47 (2009), available at https://tinyurl.com/mn3taxyy (last visited 31 January 2026).

[17] A. Birrell et al, 'The Trial Penalty: The Sixth Amendment Right to Trial on the Verge of Extinction and How to Save It' *National Association of Criminal Defense Lawyer*s, NACDL Trial Penalty Recommendation Task Force (2018), 84, available at https://tinyurl.com/5b9fzfbx (last visited 31 January 2026), such work emphasizes the racial discriminatory element in US criminal justice; R. Morgan, 'Summary Justice: Fast, but Fair? Centre for Crime and Justice Studies' *King's College London* (2008), available at https://tinyurl.com/3ujeb2m7 (last visited 31 January 2026).

[18] E. Rasmusen et al, n 16 above.

[19] M. Caianiello and J. Hodgson eds, *Discretionary Criminal Justice in a Comparative Context* (Durham, NC: Carolina Academic Press, 2015). Covers prosecutorial discretion, plea agreements,

Such elements will be shown and discussed in the next section, where we examine the specific procedural circumstances that have been foreshadowed above, whereby public prosecutors operate and make their own decisions as public managers.

III. Comparative Criminal Procedure

Public prosecutors do make decisions. As such they are public managers. The key decision public prosecutors make is to press charges and send a case to court or dismiss the case. Therefore, we illustrate the procedure and the organizational circumstances that may account for the diverse behavior and performance of prosecutors so that we ascertain that *ceteris paribus* condition is verified and our comparison is controlled for those circumstances that appear to be different across countries. In the following we provide an overview of criminal procedure in the US, EW and Italy. Prosecutors are the 'gate keepers of criminal justice.'[20] Therefore, this essay focuses on the prosecutors as shorthand for the whole decision-making chain of intermediate proceedings, between the investigation and the beginning of trial.[21] The criterion to select the topics for the following comparative overview is to understand the points that make prosecutors have a choice, independent of the nuances of different jurisdictional regulations. Prosecutors do have a choice and (implicitly) govern their own conviction rates. This is the key reason that accounts for the *ceteris paribus* condition: independent of the individual steps of the procedure, prosecutors are by and large responsible for the conviction rates they obtain in court.

In the examined countries the burden of proof is on the Government and criminal proceedings are divided into three stages: investigation, intermediate proceedings, and trial. Length of investigation appears to be limited in the US only by statute of limitations whereas in Italy it appears to be limited to eighteen months.[22] The prosecutor decides when the investigation is complete and decides whether to discontinue the proceedings or to press charges on the suspect.

In the intermediate proceedings a court assesses the charge and decides whether prosecution should proceed. In the US such court is the Grand Jury.[23] In the US the pre-trial is called 'Preliminary Hearing' and it is a 'mini trial.'[24] In EW, the Magistrates Court assesses the seriousness of a crime and sends 'indictable only' offences to the Crown Court. Such proceedings are called pre-trial court hearings.[25]

and exclusionary rules in the People's Republic of China, Italy, Spain, and Switzerland. Table of contents available at https://tinyurl.com/3buxaten (last visited 31 January 2026).

[20] United Nations Office on Drugs and Crime, 'Public Prosecutors as the 'gate keepers' of criminal justice' *UNODC*, 2020.

[21] Office of the United States Attorneys, 'Steps in the Federal Criminal Procedure' *Department of Justice*, 9 November 2022.

[22] Italian code of criminal procedure, Art 407.

[23] Offices of the United States Attorneys, n 21 above.

[24] ibid

[25] Gov UK, 'Criminal Procedure Rules and Practice Directions 2020' *gov.uk*, 3 April 2023:

In Italy, the court that assesses the charge and decides whether the prosecution should proceed is the judge for pre-trial hearing.[26] In Italian praxis, only pre-trial motions are entertained in the pre-trial hearings, and the pre-trial court does not check the available evidence. The pre-trial courts act this way, claiming they do not have the resources to perform the 'mini trials'.

When the investigation is finished, in the US, the prosecutor presses charges in front of the Grand Jury. If the prosecutor is successful, indictment follows, and arraignment of the defendant takes place in front of a judge. Such process implies arrest of the defendant in all cases.[27] Arrest implies fingerprinting, mugshot and handcuffing. The idea is that at trial the defendant is under arrest. After that the defendant may be released on bail.[28] Arrest in EW appears to be more limited.[29] Arrest of the defendant in Italy is warranted only in specific circumstances defined by the constitution: peril of escape, manipulation of proof, or relapse.[30] In the case the defendant is arrested, there is no pre-trial hearing, and the case is sent to court for trial by the 'judge for investigation'.[31]

Plea deal and plea bargaining are key moments in the US procedure. At arraignment, the prosecutor may offer the defendant a plea deal. The defendant needs declare and may plead guilty or plead not guilty. If the defendant pleads not guilty, refuses the deal and exercises their right to a trial. Then a trial takes place. If the defendant pleads guilty, then a negotiation between the prosecutor and the defendant takes place about charges and penalty. Such negotiation is ratified by the judge. Negotiations take place instead of ordinary trial.[32]

> 'Bargaining is not officially part of the system in England and Wales, except in complex fraud cases, but the judicial sentencing guidelines suggests those who plead guilty at the earliest hearing over other crimes may be given a reduction of up to a third of their sentence'.[33]

'In general, Crown Court deal with more serious court cases and requires a jury, while Magistrates Courts often deal with less serious offences, and require no jury.' D. Clark, 'Conviction rates for Magistrates Courts and Crown Court in England and Wales from 2nd quarter 2013 to 1st quarter 2023' *Statista.com*, 11 October 2023.

[26] In Italian: *giudice per l'udienza preliminare* – GUP.

[27] US arrest at arraignment appears prima facie in contradiction with habeas corpus and presumption of innocence principles.

[28] See Office of the United States Attorneys n 21 above.

[29] US Department of Justice Office of Justice Programs, I.R. Scott, 'Criminal Prosecutions in England and Wales' 13 *Justice System Journal,* 38-49 (1977).

[30] Italian code of criminal procedure, Art 274.

[31] In Italian: *Giudice per le indagini preliminari* - GIP. Of the 262,766 terminated cases of 2022, only 24, 294 had seen their defendants arrested or 9 per cent (see P. Curzio, *Relazione sull'amministrazione della giustizia nell'anno 2022*, Corte Suprema di Cassazione, January 2023, 60 [Report on the administration of justice in the year 2022, Supreme Court of Cassation].

[32] The process may not always be as smooth as it sounds: E.C. Viano, 'Plea Bargaining in the United States: a Perversion of Justice' *Revue internationale de droit penal*, 83, 109-145 (2012).

[33] Incentives to plea bargaining need to be taken into account, including what one could

Such procedure is available in Italy as well, with the same benefit of one third of the sentence[34] albeit less practiced. In the US, plea deal appears to be more flexible than in Italy. Of course, when a defendant pleads guilty, it counts as conviction.

Quantitative evidence on plea dealing supports the above description. In the US federal system, in 2021-2022, there were 63,073 cases of guilty plea over 70,223 total defendant terminations.[35] The percentage cases of guilty plea over total defendant terminations were 90 per cent. In EW, 66 per cent pled guilty at Crown Court in the year ending June 2023.[36] That same Crown Court disposed of 96,000 cases.[37] In Italy, in year ending June 2022 there were 18,041 cases of guilty plea over total defendant terminations 262,766.[38] The percentage was 6.9 per cent.

A 'silent'[39] element of procedure is the scheduling criterion of trial hearings. In fact, a key difference between the US and the EW systems *vis-à-vis* Italy appears to be the praxis of scheduling of trial hearings. In the US and in EW trial hearings are scheduled in 'series': one hearing of a trial is scheduled next to the previous hearing of the same trial and one trial is scheduled after the previous trial is finished. In Italy trials are scheduled in 'parallel': hearings of one trial are intertwined over time with the hearings of many other trials, possibly rotating the whole caseload of the court panel between one hearing and the next hearing of the same trial.[40]

consider 'perverse' effects, as reported by D. Boffey: 'Rise of plea-bargaining coerces young defendants into guilty pleas, says report' *The Guardian*, 6 October 2022, available at https://tinyurl.com/dtfrsffe (last visited 31 January 2026), citing fairtrials.org report 'Young minds big decisions', October 2022. See also https://tinyurl.com/ycy4tbd7 (last visited 31 January 2026). D. Alge (2014), '*Plea bargaining in England and Wales: some comparisons with the USA'*, in *Academy of Criminal Justice Sciences Annual Meeting*, 18-22 February 2014, (Philadelphia, USA: unpublished, 2014), available at https://tinyurl.com/2srmbpjd. Also, Id, *Pressures to Plead Guilty or Playing the System? An Exploration of the Causes of Cracked Trials*, PhD thesis The University of Manchester Faculty of Humanities, School of Law (2009). On incentives to plea bargaining, more later.

[34] In Italian: *patteggiamento*. Art 444 of the code of criminal procedure.

[35] Judicial Caseload Indicators - Federal Judicial Caseload Statistics 2022 year ending March 31st 2022 caseload statistics 2022 tables Table D-4 - fjcs_d4_0331.2022. U.S. District Courts–Criminal Defendants Disposed of, by Type of Disposition and Offense, During the 12-Month Period Ending March 31, 2022, author's percentage calculations, available at https://tinyurl.com/bdfwsurr (last visited 31 January 2026).

[36] National statistics – Criminal court statistics quarterly: April to June 2023 – Published 28 September 2023, available at https://tinyurl.com/3v234nw6 (last visited 31 January 2026).

[37] 'Court statistics for EW' *House of Commons library*, Georgina Sturge, 31 January 2023, CBP-8372, 8.

[38] P. Curzio, n 31 above, 60.

[39] For instance, the European Commission for the Efficiency of Justice - CEPEJ does not collect information on such element of procedure. 'European judicial systems: Efficiency and quality of justice' *Cepej studies*, No 23, ed 2016 (2014 data), s 5.4, 217-237.

[40] In Italy, it is not uncommon that a trial last years. Whereas in the US and EW the length of one trial is likely to be measured in weeks or months since its inception. Comparative data are available for Disposition Time, which is a ratio of 'stock' measures of trials that include dismissed cases and is therefore optimistic, because it is dampened by the large number of dismissed cases that have very short length (in Italy there is about one million cases per year of which about 600.000 are dismissed: P. Curzio, n 31 above). Disposition Time in 2014 was 82 days in EW and 386 days in Italy (European Commission for the Efficiency of Justice, n 39 above, Table 5.32, 230). Looking at

Another key element affecting criminal procedure is constituted by the incentives that the system places on individual prosecutors. In the US federal judicial system, prosecutors are part of the executive branch and are evaluated on their performance.[41] EW Crown Prosecution Service also monitors conviction rates and other parameters.[42] On the other hand, Italian prosecutors are part of the judicial branch of government and share the same status and the same career with judges. In the Italian procedure, prosecutors do not have any personal incentive to pursue the conviction of defendants, because the outcome of trials is not considered in the evaluation of prosecutors or judges for advancement in their careers. Rather, career advancement is based on seniority.[43] More specifics and comments on the comparative procedure will be warranted by the following quantitative data.

IV. Analysis and Findings

We analyze at this point the basic data that has triggered this study: conviction rates. US Federal data show a conviction rate of 92 per cent.[44] The conviction rate is the sum total of 90 per cent guilty pleading[45] and 2 per cent of total who had pled not guilty, went to trial and were found guilty, thus generating a conviction rate

data out of context, and with little experience of judicial statistics, ie a general media point of view, Disposition Time of 386 days may appear reasonable, as it is about one year. However, comparison of data is much more telling: Disposition Time in Italy was five times what it was in EW, a staggering difference. Let us also underline here that 'parallel scheduling' of trials is only a matter of praxis in the Italian case. In fact, as in the other countries, other Italian law mandates 'serial' scheduling: the Italian code of criminal procedure, art 477, 'duration of debate', para 1, says: 'When it is absolutely impossible to finish the debate in only one hearing, the president [of the court] sets that the debate is resumed the following non holiday day'. In fact, there have been trials that have been held through serial scheduling of hearings. The 'Mondo di mezzo' trial held 240 hearings in one year. Web news 'Mafia capitale' [Mafia in the capitol city], 27 June 2017, available at https://tinyurl.com/3c9wtdbh (last visited 31 January 2026). It is also worth mentioning that parallel scheduling makes each trial longer over time and thus subject to incidents such as, for instance, changes in the composition of the three-judge bench, which carries delaying implications. Also, parallel scheduling makes the length of the trial a central variable towards statute of limitations. Italy had a statute of limitations rate between 14 and 17 per cent with 45,143 cases (P. Curzio, n 31 above, 57) over a total 262,766 or 324,632 cases (Ibid, 60).

[41] US General Accountability Office, 'U.S. Attorneys: Performance-Based Initiatives are Evolving' *Gao.gov*, 28 May 2004, 35.

[42] Crown Prosecution Service - key measures Key Measures within filename Key-Measures-Q1-Q3-2018-19-1, available at https://tinyurl.com/4f4ecn5s (last visited 31 January 2026); CPS data summary Quarter 1 2023-2024, The Crown Prosecution Service, available at https://tinyurl.com/nc5durwb (last visited 31 January 2026).

[43] It may be worth mentioning that when Minister of Justice, Marta Cartabia, in 2022, proposed an evaluation system for the Italian magistrates, the trade union of the magistrates objected that 'it could generate anxiety.' See V. Stella, 'Pagelle ai magistrati, l'Anm non ci sta: «Mettono troppa ansia…»' *Il Dubbio*, (2 March 2022), available at https://tinyurl.com/5ywb9zwc (last visited 31 January 2026).

[44] Judicial Caseload Indicators n 35 above.

[45] ibid

of 92 per cent. More broadly, in the USA, 'about 90 percent of the federal defendants and 75 percent of the defendants in the most populous counties were found guilty.'[46] 'The conviction rate in England and Wales was 83.6 per cent in Magistrates Courts and 77.9 per cent in the Crown Court, as of the first quarter of 2022.'[47] Italian data for the solar year ending June 2022, conviction rate was 52.2.[48]

A prima facie explanation for the US conviction rate (92 per cent: higher than EW's and much higher than Italy's 52.2 per cent) can be attempted at this point through the more stringent organizational circumstances that US prosecutors are faced with *vis-à-vis* Italian prosecutors. In fact, US prosecutors appear to be immersed in a procedural environment leading them to produce a higher performance. Recalling the elements of comparative criminal procedure outlined above, let us specify such differences in detail:

1) US prosecutors need to make their case in front of a Grand Jury which appears a harder evaluation than the evaluation that is done in Italy by the 'judge for preliminary hearings';

2) US prosecutors enjoy a criminal procedure that is rather intimidating towards the defendant: the experience of being arrested and being handcuffed may make a person willing to get out of the procedure at all costs;[49]

3) US prosecutors have great discretion in negotiating with defendants who plead guilty, whereas Italian prosecutors have less resources to induce a defendant to do so;

4) US and EW prosecutors are evaluated in their performance. Italian prosecutors are not evaluated on their performance;

5) US and EW serial scheduling praxis may very well feed back into prosecutors' decisions to press charges. Serial scheduling of trials may make prosecutors conservative about their procedure: pursuing a smaller and safer number of cases, also making more explicit the discretion they may apply on plea deals. Under serial scheduling, prosecutors must prepare for trial, which is a significant amount of work. Such circumstance creates an incentive to offer plea deals rather than having each case go to trial. On the other hand, parallel scheduling of trials may lead to formulate the hypothesis that Italian public prosecutors do not need to prepare for trial all at once, as trial hearings will be diluted over time; prosecutors do not need to study each case in detail and upfront, weighing the 'likelihood of

[46] P.B.S. *Research the System*, P.B.S. (2002), available at https://tinyurl.com/2tvk62k9 (last visited 31 January 2026).

[47] D. Clark, n 25 above.

[48] P. Curzio, n 31 above, 60 (author's calculation).

[49] Resuming here discussion on incentives to plea bargaining, as anticipated (n 33 above), from a theoretical point of view, taking into account the high generalized cost of a trial to a defendant (cash, emotional, social, and time per se), there is always a non-zero cost that a rational and innocent defendant would be willing to pay to get out of prosecution through a guilty plea and deal. The matter then appears only one of quantitative calculation: whether the deal that is offered by the prosecutor is lower enough than the expected generalized cost of a trial.

conviction'[50] in their decision-making as they will have time to work through the case and will see the end result of their action only in the long run.

We are probably looking here at two sides of the same coin, the coin being bureaucratic behavior, ie prosecutors as public managers pursuing ease of management, and revealing itself under the form of high conviction rates in the case of the USA and low conviction rates in the case of Italy. In the US case, organizational circumstances (legislation and procedure) lead to a high conviction rate with a high proportion of plea deals and possibly a not very high number of cases. In the Italian case, organizational circumstances lead prosecutors to moving decisions forward, to trial, so that more information is collected to arrive at a decision. In both cases, this is vertical partiality in action: bureaucrats pursue their own utility function 'alongside'[51] with the mission of the public organization they are part of. We may have found the same phenomenon taking place in apparently opposite situations and directions.

The US constitutional and legislative context is demanding on prosecutors and – at the same time – it provides them with powerful instruments to make their job easier at the expense of their equality *vis-à-vis* the citizens. US prosecutors act in a tighter environment whereby they have procedural dominance and are on the other hand controlled by departmental hierarchy on their performance. Therefore, they tend to pursue cases they can win. US prosecutors are being driven by law and procedure that are structured in their favor.

On the other hand, the Italian system is rather slack, and it leaves a lot of room for prosecutors to find ways to maximize their social impact that is at odds with their stated mission. In Italy, prosecutors are more independent and are less supervised. Data lead us to think that public prosecutors file complaints to check and probe the evidence available prior to trial. Their decisions are not discriminating enough. Prosecutors themselves appear to be following the popular adage: 'Sue me,' in other words: 'Let us hear what a judge has to say about this; I won't take responsibility for dismissing this case.'[52] Italian prosecutors to pursue public reputation, *power, ease in managing the bureau* through the maximization of the cases they send to court. *Salary* in the Italian case does not depend on performance. Therefore, Italian prosecutors are sending to court for pre-trial hearings – and then for trial – a higher quantity of cases than their capability of winning them would warrant.

In EW, prosecutors seem to occupy a middle ground between the USA and Italy, whereby probably virtue stands. EW prosecutors have rather high conviction

[50] The 'likelihood of conviction' was only introduced in Italy by legge 27 Sept 2021 no 134, Art 1, para 9 a), m) para 12, d). This law was dubbed as the 'Cartabia Reform.' It was put in place by the Draghi Cabinet Minister of Justice, Marta Cartabia.

[51] E. Rasmusen et al n 16 above: 'a prosecutor who values not just the number of convictions but the conviction rate *and unrelated personal goals*' (emphasis added).

[52] On the other hand, it should be noted that the corresponding high rate of acquittals (47.8 per cent) shows independence of judges *vis-à-vis* prosecutors, an element of quality in the social organization of justice.

and plea dealing rates notwithstanding their discretionary power in guilty pleading is the same as in Italy, ie rather limited. On the other hand, their courts practice sequential scheduling of trials, thus inducing them to pursue only the trials they feel confident about.

V. Impact and Remedies

In practice, it appears we are confronted – in the US case – with a much more effective judicial system than the Italian one. At the same time, the impression is that some procedural and legislative measures make US prosecutors a little too powerful *vis-à-vis* defendants. The EW system appears more equitable. Probably the US system could benefit from loosening at least some of those procedural measures, like – for instance – handcuffing at indictment.

The Italian procedure appears – all in all – to provide many theoretical guaranties for defendants, albeit it imposes enormous costs on the criminal justice system (for instance, congestion of courts),[53] and on defendants (for instance, financial and human cost, such as job loss and social shaming). In moving decisions forward, prosecutors do congest the judicial system, apparently complicating their own work, among other things. However, such are long run and system consequences, meaning the congestion is for all, and time masks a lot of shortcomings through oblivion. On the other hand, individual – short run – incentives and public narrative prize caseload as a sign of 'having a lot of work to do'. Other short run incentives are also for starting a lot of cases. In fact, cases are in the news especially in their initial steps, such as arrest and seizure of wealth. Also, police investigators – who are the operational arm of prosecutors – have short run incentives; for instance, they receive a 'career praise'[54] when they make an arrest or gain media visibility. The media on the other hand, gain the public's attention by proposing the investigators' words verbatim to the public, in the indicative mode, as a matter of fact rather than investigative hypotheses. Social implications of the Italian procedure consist of an implicit cost to society, due to the ineffective public perception and low deterrence effect of criminal justice, which in turn feed back into defendants avoiding plea deal proceedings.

About possible remedies, in the Italian case, serial scheduling of trials would probably be the key change to make the system more effective.[55] The current

[53] See generally, S. Holmes and C.R. Sunstein, *The Cost of Rights Why Liberty depends on taxes* (New York: W. W. Norton & Co., 1999).

[54] In Italian *encomio*.

[55] It would be objected that in Italy criminal action by prosecutors is constitutionally mandated. However, such mandate does not imply a mandate to send to court each case. And in practice such mandate is 'managed' over time through statute of limitations and implicit discretion. Compulsory criminal *action* is different from compulsory *prosecution*. See generally J. Herrmann, 'The Rule of Compulsory Prosecution and the Scope of Prosecutorial Discretion in Germany' 41 *The University of Chicago Law Review*, 468-505 (1974); K.C. Davis, 'Discretionary Justice' 23 *Journal of Legal*

Italian scheduling system tends to mitigate the (implicit) use of discretion whereas explicit discretion is accepted in the US system.[56] It must be underlined here that once we consider praxis, it becomes evident that there is a 'creeping' discretion that comes in also in systems that try to avoid discretion. Once again, such discretion need not be conscious, but it is implicit in the piecemeal decisions that are made over the long run in the system of parallel scheduling of hearings.

In the Italian case, more remedies could include keeping explicit statistics on conviction rates. Moreover, the evaluation and rewarding system of prosecutors could take such statistics into account. Judicial reform in Italy states that the judge for the preliminary hearings should send to court only in the case of a 'reasonable prognosis of conviction'.[57] However, simply making the statement, without any specific measuring action, does not appear to change the incentives for individuals in the process, therefore it will probably not change the outcome very much.[58]

VI. Research Limitations and Future Studies

First of all, within the scope of this article, a deeper analysis of the US prosecutor's leeway in plea deals is needed, in order to quantitatively ascertain the limits of deal making the US prosecutor is subject to *vis-à-vis* the one third of the penalty limit in the examined European countries. Also nuances of the US procedure should be ascertained, like, for instance, knowledge on the part of the defendant of all information available to the prosecutor at the time of deciding about plea.

Expansion of this study could see a study of European countries, with their likely diverse landscape of praxis: series scheduling in the North West of the Continent and parallel scheduling in the South East. Such study could test the hypothesis of a positive relationship between low conviction rates and parallel scheduling of trials. On the other hand, a global view could investigate China's high and India's low conviction rates.[59]

This study has proposed the judicial branch as a laboratory for the study of the bureaucratic phenomenon. The specificity of the empirical evidence provided here may induce doubt about the generalizability of the thesis of this article: the vertical partiality of public administration in general and the consequent inequality of the citizens *vis-à-vis* public administration. Public prosecutors, however, are

Education, 56-62 (1970).

[56] M. Caianiello and J. Hodgson eds, n 19 above.

[57] In Italian *ragionevole previsione di condanna*: Italian legge 27 September 2021 no 134, Art 1, para 9 a), m) para 12, d).

[58] 'Covenants without the sword are but words', T. Hobbes, *The Leviathan* (1651) xvii para 2.

[59] Dui Hua, 'China's Acquittal Rate Lowest in Two Decades' *Human Rights Journal*, 12 September 2023 states that 'The conviction rate in 2022 was 99.95% according to statistics in the China Law Yearbook'. Whereas India Court Conviction Rate data was reported as 54.20% in 2022': see https://tinyurl.com/5n99dnjc (last visited 31 January 2026).

only an example of public managers making only conservative decisions, ie moving only safe cases forward – in the US case – or by moving too many cases forward – in the Italian case. The argument of this study of course, could be pursued in areas of public administration other than the judicial branch. Evidence could be sought in the executive branch as well, where public managers would rather take delaying or negative decisions rather than take responsibility for positive action. In this case it is perhaps more difficult to identify a natural experimental structure offered by bureau organization. This is more difficult as management control systems and data transparency are far from being a widespread reality. There lies the power of the evidence provided here that leverages the inherent quality of the judicial as a decision-making evaluation system. Future studies should therefore point out data and examples of non-decisions in the executive branch. For instance, a 'signing crisis' was revealed in the Italian executive branch and the need for 'commissar' to get things done under the Next Generation European Union program in Italy.[60] What was happening was public managers were not taking responsibility for large contracts and were refusing to sign those contracts without some special form of immunity. Commissar – on the other hand – is a special figure of the administration and a commissar is waived several of the constraints that an 'ordinary' manager would need to comply with.

Future studies could endeavor to discover more about the hypothesis developed in this article, delving deeper into judicial statistics, such as caseload per professional. Scheduling of trials, however, is the key area that needs more attention.

VII. Conclusion

This study cast fairness of criminal justice as an issue of impartiality between the citizens and the public administration. Public administration is represented here through the judicial branch and its managers are shown to adhere to bureaucratic behavior. This article has revealed a 'vertical partiality' of public administration (the law) *vis-à-vis* the citizens. Members of the public administration pursue ease of management in discharging their tasks thus treating themselves with priority *vis-à-vis* the citizens' right to freedom. We have observed public prosecutors' behavior and performance data in three countries to make such point. We conclude that the prosecutor's social prominence reflects an uncertain glory: the quest for a 'just' conviction rate is rather elusive, and the answer probably resides in a continuous search. On the other hand, such comparative work is rewarding as we have come to identify some areas of the procedure that appear to be neglected at least from an analytical point of view: on the one hand the US prosecutor's leeway in deals of plead guilty and, on the other hand, the Italian operational parallel scheduling

[60] 'Commissar': a strict figure of authority, in Italian *commissari*. M. Bartoloni 'La regia del Pnrr a Palazzo Chigi: appalti e commissari più veloci', *IlSole24Ore*, 25 February 2023.

of trials *vis-à-vis* serial scheduling in the US and EW case.

From a theoretical point of view, this article found a limit to the impartiality of public administration in the public law provisions of criminal procedure. This article has shown empirically that we cannot reject the hypothesis of bureaucratic behavior on the part of civil servants, and it has provided a limit to the actual existence of the Weberian civil servant. This article also proposed a reconciliation in the analytic spectrum of the literature on bureaucracy arguing that 'defensive administration' theory can be absorbed in the theory of bureaucratic behavior and it can be understood as one instance of that theory.