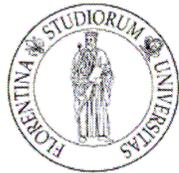


Athens European Week, Autumn 2013
«European water and sanitation services vs sustainable development?»
Ecole des Ponts - ParisTech
Paris, November 19, 2013

«What went wrong and why in the governance of water policy in Italy»



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Contents

for a Political Science point of view

1. Water and sanitation services (WSS) policy In Italy before 1994
 1. WSS policy design in Italy: Galli Law and following legislation.
 1. Implementation (1995-2011).
 1. Current picture in the governance of WSS
 1. Discussion and remarks

The WSS policy in Italy before 1994

Italian WSS before 1994

- Water industry fragmentation : over 13,000 undertakings plus a prominent role of public entities.
- shared governance of water policy :
 - State and Regions : framework planning
 - municipalities : budget and WSS delivery
- WSS : not an independent and structured policy sector.
- outdated Water management, technology and financial profile
- Low cost recovery, generating bad performances.

The water industry before 1994

Management	Waterworks	All water services
Municipalities (direct management)	80,13	82,58
Municipal firms and/or consortia	10,42	8,11
Public law companies	0,60	0,68
Private law companies	2,80	2,75
Others	6,04	5,88
Total	100,00	100,00
<i>N</i>	(4.635)	(7.826)

**WSS policy design in Italy :
the Galli Law (L.36/94) and
following legislation**

The Galli Law (L.36/1994)

- Vertical integration of water management, reducing the fragmentation of responsibilities in the whole water cycle from source to disposal, thus establishing an “Integrated Water Service” (*IWS*).
- Regulatory approach through a clear-cut separation of water services from the range of direct public-administrative activities to improve the water and sanitation services from a technological point of view (industrialisation) and to make them more efficient.
- Water sector independent of the fiscal system so that it could operate on the sole source of income deriving from tariffs.
- Introduction of an end-user tariff policy granting full autonomy to the water industry, covering full costs: running expenses as well as maintenance, restoration, innovation and a call for private investments.

The old ATO's role: planning and control

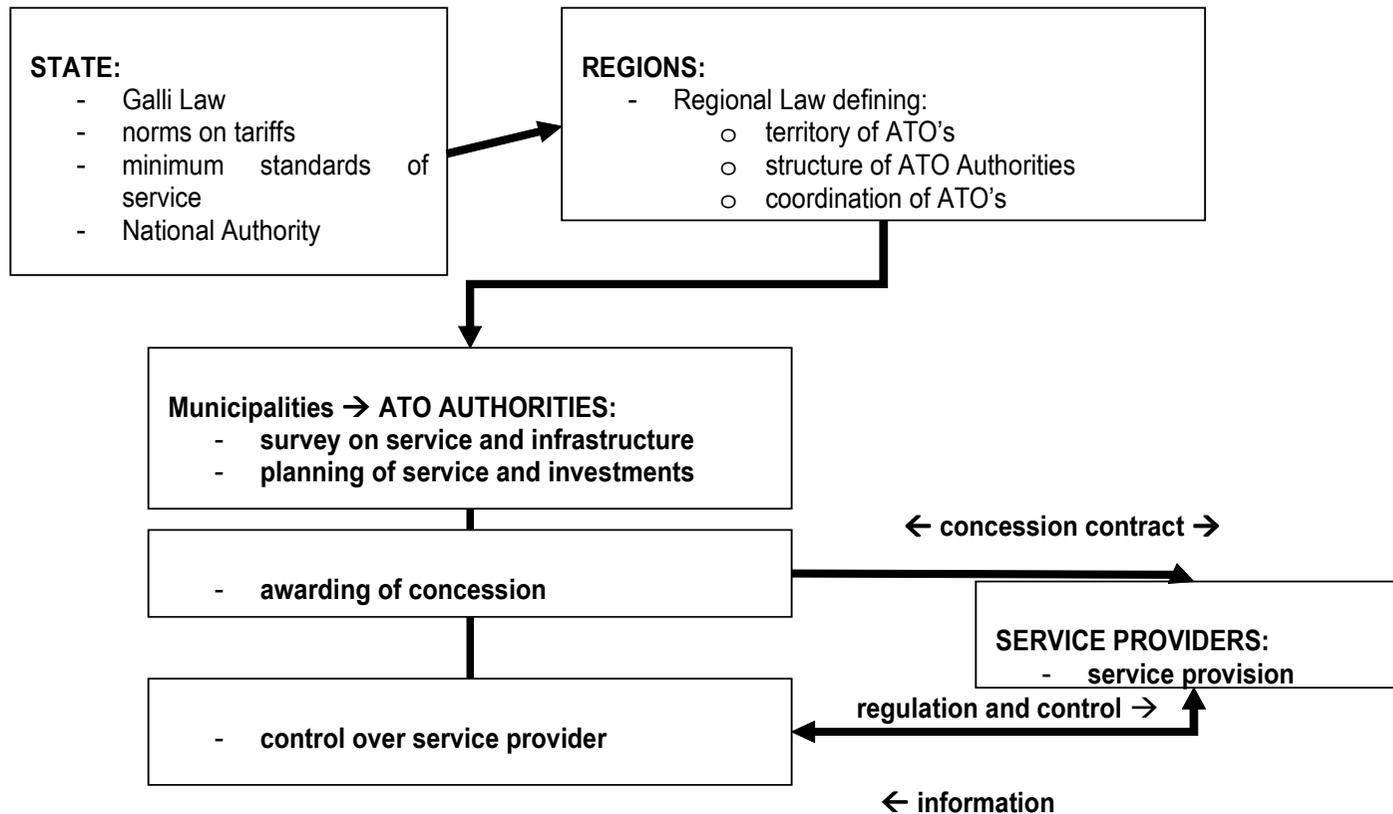
The legal framework entitled the Authorities (AATOs) to become the Regulator of the IWS as planners and controllers, while the service (distribution and sewerage) management was delegated to industrial players through a concession:

- **PLANS:** the ATOs must draft a periodical WSS plan, focussing particularly on tariffs, investments and strategies.
- **CONTROLS:** the ATOs are called to monitor service providers' performance and their compliance to the contractual conditions fixed by the plans, especially concerning tariffs and investments .

Tariffs regulation in the Galli Law

- Tariffs' standard is full cost recovery (OPEX and CAPEX) and the achievement of financial equilibrium;
- Tariffs follow a price cap criterion
- In 1996 the *Metodo Tariffario Normalizzato* (MTN) was set, fixing a standard of 7% for capital remuneration. We are waiting for a new methods
- Since 1996 the MTN has never been updated by the Ministry of Environment.

Expected Governance by Galli Law



Further regulation (1)

- 2001** The Italian government introduced norms that compelled municipalities to award concessions through competitive procedures and required all service providers awarded concessions non-competitively to be privatized.
 - 2002** Infringement procedure against budget law norms on competitive tendering and in-house providing
 - 2003** Revision of norms on competitive tendering toward 'in house'
 - 2004** Restrictive interpretations of the in-house clause by Council of State and by Antitrust Authority (see the ECJ) decision that states that direct, non competitive award of concessions is only permitted when the local authority exercises over the concessionaire “a control which is similar to that which it exercises over its own departments”, and the concessionaire carries out “the essential part of its activities with the controlling local authority or authorities”.
-

Further regulation (2)

- 2006** Decree 152 is discussed in parliament on water and waste management
 - 2008** L. 133: compulsive competitive tendering (with exceptions)
 - 2009** Decree 135 'Ronchi': compulsive competitive tendering
 - 2010** Law 42: abolition of ATO for water and waste management

 - 2011** Two Referenda abrogated

 - 2011** Berlusconi's Cabinet Summer Act bringing back norms abolished by referenda except for water and sanitation services

 - 2011** "Save Italy Decree" by Prime Ministry Monti

 - 2012** Supreme Court sentence against the above mentioned Acts by Berlusconi's and Monti's Acts
-

water policy governance since 2008

Acts n. 112/2008 and n.135/2009

Right wing majority led by Mr. Berlusconi set that :

- WSS currently managed 'in house' should be sent on tender by 2013;
- But municipalities can avoid the tender (and keep the in house provision)
- Then they must select one of the three following alternatives:
 - a. demonstrate that the current in house provision is more efficient than a concession;
 - b. sell 60% of stock of the current public companies;
 - c. keep the current concession going (if the provider is a joint stock company), but sell 70% of stock to private investors.

In any case, municipalities can continue to sell the concession through tender to private or public or mixed provider or to sell a percentage of stocks.

Reaction: the referenda (June 2011)

Since 2009 an emerging coalition of approximately 299 different groups* gathered a popular petition calling for a referendum about water policy. The petition was approved by the Supreme Court and the referendum took place on 12 and 13 June

In fact, there were two different referenda against regulations issued from Laws 152/2006 and 112/2008. They proposed:

1. To abrogate the compulsive competitive tendering and keep the 'in-house' management whenever the marketisation is not workable (Art. 23 bis, Decree n.112 of 25 June 2008);
2. To abrogate the capital remuneration fixed by the price cap.

* environmental associations, left-wing movements, trade unions, consumer protection associations, confessional associations and catholic Church, a party, newspapers and magazines, cultural associations etc.

The electoral result of June 2011

- ✓ Both referenda were approved by the electoral body, achieving the legal participation level, and respectively gaining **95,3%** and **95,8%** of votes.
- ✓ The electoral result contributed to dismantle the regulatory design of the Acts n.112/08 and 135/09, namely by the current Government.
- ✓ Legally, the referenda moved back the concession regime to the Galli Law initial framework.
- ✓ Empirically, they radically changed water politics and policy agenda because they de-legitimized any political intention to push water governance toward a more privatized approach.
- ✓ Instead, they created the political opportunity for legal innovation, calling for a different updating of the initial Galli Law framework.

A contradictory and ambiguous legal framework

- On the one hand, the legal framework compelled municipalities to award concessions through competitive procedures and called for a privatisation of all service providers
- On the other hand, it kept the possibility for an in house concession
- Both solutions (in house and competition, public delegation and private players) are co – existing and stratified along more than ten years.
- Lastly, the basic regulatory administrative unit (the ATO's) has been abolished through Law 42/2010 engendering additional uncertainty. The Government compelled the Region to design new ATOs since December 2012.
- Additionally the National Committee, that worked as a weak Regulator, was retrograded to a Commission without any legal power of oversight. The New AEEG (authority for energy and gas) was invested by the task of water, but without any significant role.

Piecemeal and contradictory legislation sustained competitive tendering and reduced its scope at the same time, generating ambiguity instead of a clearer legal framework, and partially dismantling the genuine governance design induced by the Galli Law.

Implementation and outcomes (1994-2011)

Return on implementation (1995-2013)

A jeopardized process

- In general, the implementation of the Galli Law (and of the subsequent Acts) was not coordinated by a unique player. It didn't deal with a **top down** process, but with a **bottom up** one .
- It revealed a significant localistic inclination to emphasize resources and strategies in implementation (timing, legal form for ATO, ATO's boundaries, strategy for awarding) induced by the current situation in each region.
- As a result, the policy design has been shaped according to the social, political, economical and cultural features of each Region and reflecting its capabilities or its limits. This way, **the dynamics resulted as a decisive independent variable** for the policy outcome.

A slow and localistic process

Evidence about geography of implementation

- Timing and nature of implementation vary from one area of Italy to another.
- **In the North** : highest concentration of municipal companies since the early twentieth century. Municipalities own their company => stronghold of localism and fragmentation of local utility management => the reform encountered resistance because of the strong autonomy of municipal enterprises
- **In the Centre** : municipal enterprises of this kind are rather less present. WSS mostly undertaken by municipal authorities directly. implementation of formal procedures and a large number of present concessions came about earlier than in other areas of Italy
- **In Southern Italy** a culture of “formal compliance” evidenced: the various steps (setting up of Authorities, survey of infrastructures, definition of investment plans) had all been accomplished under a formal profile with a strong coordinating role from the Ministries.

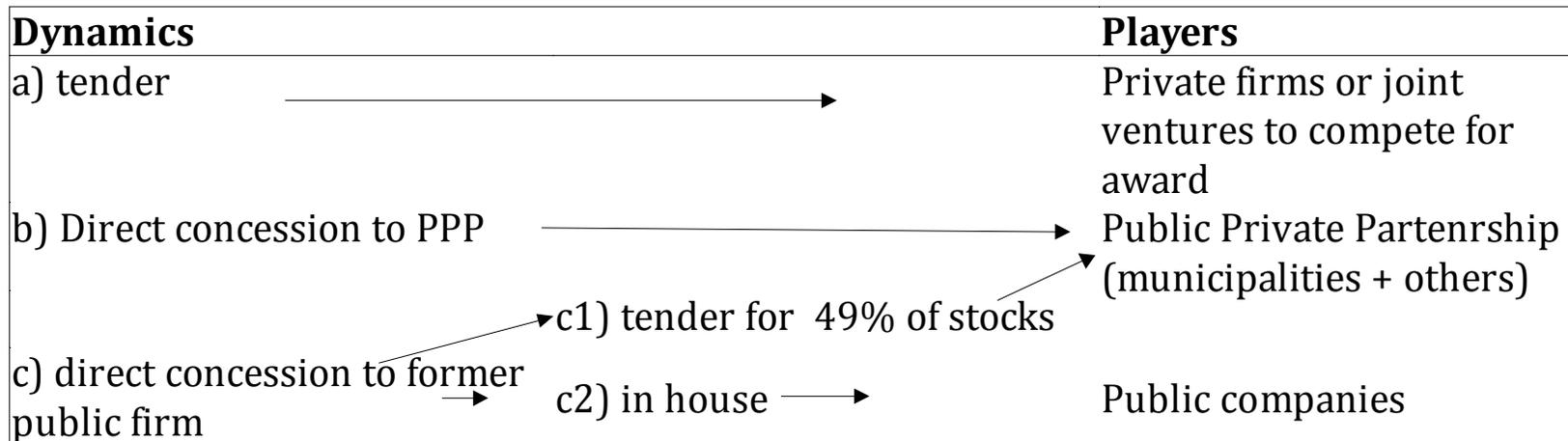
Heterogeneous implementation of ATOs

REGION	Law	Number of ATO's	Mode of cooperation	Leader authority
TOSCANA	21/07/95	6	consortium	leading munic.ty
LAZIO	22/01/96	5	agreement	province
BASILICATA	23/12/96	1	agreement	province
ABRUZZO	13/01/97	6	consortium	leading munic.ty
PIEMONTE	20/01/97	6	conference	province
CAMPANIA	21/05/97	4	consortium	province
LIGURIA	95 & 97	4	agreement/consortium	province
CALABRIA	03/10/97	3	agreement/consortium	province
SARDEGNA	17/10/97	1	consortium	region
UMBRIA	01/12/97	3	consortium	province
VENETO	27/03/98	8	agreement/consortium	province
MARCHE	22/06/98	4	consortium	province
LOMBARDIA	20/10/98	11+1	conference	province
MOLISE	03/02/99	1	agreement/consortium	province
SICILIA	27/04/99	7	agreement/consortium	-
EMILIA-ROMAGNA	28/07/99	9+1	agreement/consortium	province
PUGLIA	06/09/99	1	(Commissioner)	region
FRIULI-VEN-GIULIA	23/06/05	1+1	agreement/consortium	to be agreed

Four different strategies for awarding

In spite of the procedure, the Ato's positively awarded the concessions through four different strategies:

- a. Directly through the tender (concession to providers);
- b. Directly to Public Private Partnership (PPP);
- c. Indirectly to PPP awarding a percentage of stocks;
- d. to Public companies ('in house').



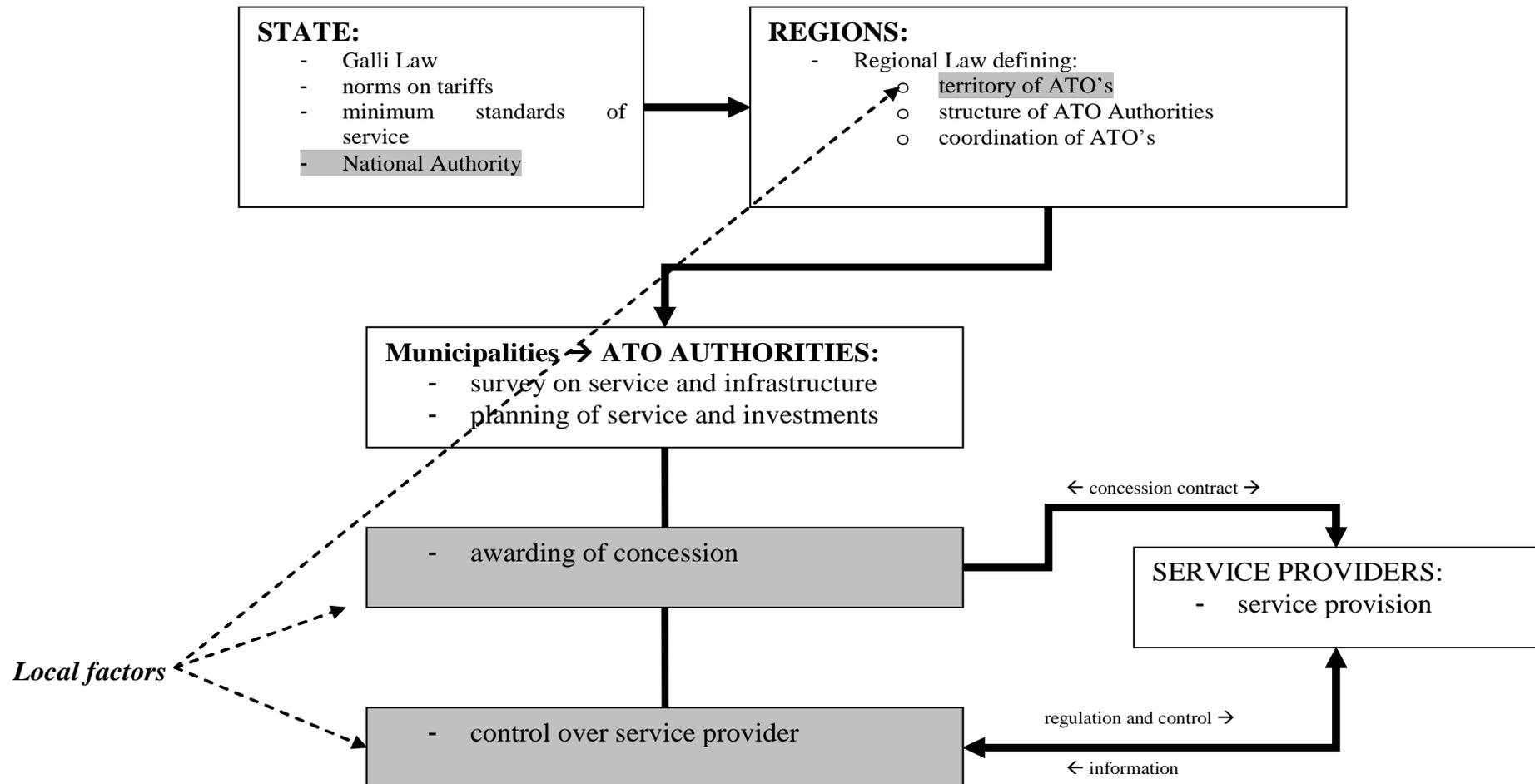
Forms of award of concession: Theoretical vs real

Forms of award of concession chosen and implemented

	Formal choice of model	Concession started	Actual ownership
Private (competition)	11	4	4
Mixed	33	25	14
Public	13	12	23

The current picture in the governance of water and sanitation services

Results: an altered governance



The policy governance in 2013

The current situation depicts a changing picture with a lot of uncertainties and ambiguities influencing an altered water governance:

- The separation between regulator and service provider has been biased by the fact that the ATO's have been abolished (and the government compelled the regions to make larger and effective ATOs in December 2012) . It deals with a Regulation without regulators.

- The awarding of concession has been radically made confused and unclear by a redundant and ambiguous legislation that introduced criteria quite different from the original policy design, on the one side, and by the recent referenda, that partially abrogated the changes, on the other. At the moment, it deals with a transition toward an unknown.

- The current governance is the effect of an adjustment process between the logics of the Galli Law design and the local social, political, economical and cultural contexts. It emphasized some perverse side effects, like the conflict of interests of mayor contemporaneously sitting in the ATO Assembly and in the service provider's board.

Can water governance be now considered as privatized?

Private, mixed and public capitals in municipal corporations (subsectors of public services): absolute values (thousand Euro) and % of shares in a sample of six Regions (Lombardy, Emilia Romagna, Tuscany, Latium, Campania and Apulia)

(€*000)	Private		Mixed		Public		Total	
Gas, energy	467.431	20%	1.483.816	65%	329.454	14%	2.280.702	100%
Water and sanitation	52.628	3%	370.681	24%	1.095.217	72%	1.518.526	100%
Water and sanitation + energy	0	0%	60	2%	3.825	98%	3.885	100%
Multiutility	31.033	1%	49.098	1%	3.495.116	98%	3.575.246	100%
Telecommunications	25.387	43%	29.370	50%	4.202	7%	58.959	100%
Waste + environ.t	43.175	10%	60.058	13%	350.657	77%	453.890	100%
Waste + energy	7.929	19%	0	0%	33.211	81%	41.140	100%
Transport	43.904	2%	6.162	0%	2.368.762	98%	2.418.829	100%
Social serv. + cemet.s	1.104	19%	62	1%	4.708	80%	5.874	100%
Other	119	1%	3.417	18%	15.805	82%	19.341	100%
Public services (total)	672.710	6%	2.002.724	19%	7.700.959	74%	10.376.393	100%

Results: what went wrong (I)

The original design of economic regulation is embedded in a political system resulting as a dependent variable

Most decisions are negotiated and made outside ATO's assemblies, while these bodies are only called upon to ratify them. It is hard to generalise where actual decisions are made rather than in ATO's assemblies, but local party organisations, bilateral agreements between mayors, provincial administrations, and most of all pre-existing public enterprises – their boards of governors, and their industrial associations – represent some of the most important arenas for the decisions made in the ATOs.

Results: what went wrong (II)

Localism has been strengthened instead of being reduced

The proliferation of appointments (presidents and members of boards of governors) has created new opportunities for the consolidation of the local political elite, with emoluments and benefits often equal to those of elected members of local councils; this does not necessarily favour the fulfilment of the ATO's tasks, since it may distort its ends and logics.

Results: what went wrong (III)

Weakness of Regulation: weak Authorities (both at national and local levels) before their abolition

Authorities had to undergo a process of institutional learning to define their role and acquire familiarity with their new role as planners and controllers, as opposed to the previous monopolistic framework which granted mayors a vital source of consensus in water management. It meant very poor quality of investment plans, structured as patchwork collections of localistic demands rather than as strategic documents of water-basin planning, in an inability to exercise control, and in high levels of conflict among mayors. The authorities didn't possess the technical know how needed to deal with the service provider companies, especially when these were (partly) owned by large national (former municipal enterprises) or were multinational (French, English and British) corporations

Is the ownership the basic problem of the current governance?

Currently, in Italy we are dealing with a radical debate about public or private in water service and sanitation: which has to be considered as better?

The basic problem is not (or not only) the legal nature of ownership. Public has to be also considered in terms of Kant meaning: democratic access.

Attending on this problem, the current situation displays three critical lacks:

- **A lack of transparency, in terms of social participation.**
- **A lack of democratic accountability, in terms of capability to account who and why is the real decision maker.**
- **A lack of political legitimacy, in terms of social acceptance.**

Discussion and remarks

The main evidence

Nor private, neither public = *de - public-ization*, namely an empirical hybrid and systematically not homogeneous governance on the national territory where the current regulation is adjusted to the former social, political, economical and cultural variables. The water policy is shaped on the undiminished factors of Italian politics: localism and consensualism.

Open questions

Was Italy ready to implement a regulation design?

To what extent is now able to implement a similar policy design?

To what extent is the system able to deal with the partial dismantling induced by the recent legislation and the following referenda?

Regulation as a political escape way....

From a political science point of view, more than a deliberate strategy to set up a regulatory framework, the governance design enacted by the Galli Law (and following norms), offered Italian politicians a solution to escape away from a persistent legitimacy problem.

Adopting an innovative and fashionable legal framework, they created a lot of expectations for a strong improvement....

...and its unintended consequences

Unfortunately, most of the essential prerequisites were missing:

- *A cultural background for regulation*, as in planning expertise, as well in control approach, also including a competitive *weltanschauung* of democracy;
- *An emergent market* for water and sanitation service including private players, and not only (the most parts) owned by municipalities: i.e. public owners of private companies....

As a result, the current picture looks as a **watermelon**: on the surface a regulatory design, but the flesh is still consensualist, and it didn't change as expected...

What does water policy governance presently need ?

The current system needs an increase in legitimacy, because it is partially de-legitimized. This can be achieved through legitimization strategies including transparency, democratic access and an improvement of the regulatory asset, also with respect to the cultural approach and the creation of expertise. It particularly pertains to four strategies :

- 1. citizens' participation**
- 2. improvement of transparency**
- 3. benchmarking, a (serious) control and policy evaluation**
- 4. a national and unique Regulation Authority**