

## Italy and Hungary. An incomparable comparison

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**Abstract: Italia e Ungheria. Una comparazione ardua.** A superficial glance at the recent past might suggest that Italy and Hungary reveal various common problems, for example the tension between a political majority or, as in Italy, an entire political class and the judiciary. An in-depth analysis discloses all the differences among the two countries, mainly because Italy is certainly a democracy with no alternative whilst, on the contrary, the Hungarian transition to democracy is definitely uncomplete. European constraints, either from the European Court of Human Rights or from the EU, might be a common characteristic but the similarities end here.

**Keywords:** Methodology of comparison; consolidated democracy; transition to democracy; European common framework and principles; Judiciary and its independence.

### 1. Italy and Hungary: some similarities, many differences

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Comparative law sometimes suggests - and sometimes requires - that comparisons should be made between two or more different countries, their legal systems and their constitutional history on condition that they have some characters in common.

If one compares Italy and Hungary, one can note that the two countries had much more in common during the 19th Century and the first half of the 20th than they did after World War Two.

It is therefore misleading to draw parallels between two countries that have followed very different paths, regardless of whether they chose that path freely or not. A superficial glance at the recent past might, however, suggest that there are some apparently similar characteristics. A rough analysis reveals the same problem in the tension between a political majority or, as in Italy, an entire political class (with exception of some populist movements) and the judiciary. The former is eager to change the rules enshrined in the Constitution and, even more, its spirit whilst the judiciary is resolute in defending of both. One is entrenched in the protection of privilege and the other seeking to compensate for the lack of ability and sensitivity of politicians. Upon closer consideration, the resemblance is rather vague.

Italy and Hungary found themselves on opposite sides of the dividing line decided at Yalta, which was imposed on Europe.

## 2. Italy: a democracy without an alternative

In Italy, the “blocked government” and the “*conventio ad excludendum*”<sup>1</sup> against the Communist Party were the very conditions for protecting and expanding democracy at the beginning of the post-Fascist era. The Italian Communist party was, by far, the largest party in Europe<sup>2</sup> and in any other Western country, and had more members, for instance, than its French counterpart. Many combatants in the civil war from Communist units never really laid down their arms and vengeance was taken against former Fascists all over Northern Italy up to 1948. For about ten years after 1945, serious fears of new outbursts were shared by Anglo-American observers and Italian politicians.

Furthermore, the country had been completely destroyed after three years of fighting and any economic recovery would have been impossible without American help, which took the form of the Marshall plan. A full recovery, along with an economic boom lasted until 1968 and needed strong state support, above all, in the poor Southern regions and the islands. The enduring presence of public bodies in various sectors of the national economy may have helped to create a servile attitude towards governmental parties, which was superimposed on some degree of sycophantic temperament. This was mainly felt in the South where it was a relic of centuries of foreign domination and the presence of the feeble State. This favoured distorted social relations.

The implementation of the Constitution itself was partially delayed: Title V of Part II on the creation of the Regions and Article 75 on popular referenda. Constitutional law scholars spoke of a “frozen democracy” and of “majority filibustering”<sup>3</sup>. The Catholic Church was able to influence national policies and to permeate vast areas of popular culture, up to 1974, when the first referendum on the law introducing divorce was held. Alcide De Gasperi, the Christian Democrat Premier between 1948 and 1954, had to make considerable efforts to limit the Vatican’s influence on government and to keep the right wing of the ecclesiastical hierarchies in check. It is well known that De Gasperi was refused a private hearing by Pope Pius XII despite being a fervent Catholic.<sup>4</sup>

However, industry was reconstructed and the country started to grow rapidly. From 1954 to 1964, both the gross national product and average income per head almost doubled, although more than 8 million people still worked in the agricultural sector. National productivity grew by around 84% over the same

<sup>1</sup> L. Elia, *La forma di governo dell’Italia repubblicana*, in P. Farneti (ed.), *Il sistema politico italiano*, Bologna, 1973, 331: this formula described a kind of tacit agreement according to which the Communist Party, due to international circumstances, was doomed to an opposition role, while the Christian Democrats were “obliged” to govern.

<sup>2</sup> A description of its electoral success in provided in M. S. Piretti, *Le elezioni politiche in Italia dal 1848 a oggi*, Bologna, 1995, App. 2.

<sup>3</sup> See e.g. M. Cotta, *Classe politica e Parlamento in Italia, 1946-1976*, Bologna, 1979, 5 ff.; C. Chimenti, *La democrazia bloccata fra alternanza e consociazione*, in *Parlamento*, 1982, issue 1-2, 50; S. Cassese, *La riforma costituzionale in Italia*, in *Riv. trim. dir. pubbl.*, issue 4, 889 ff.; E. Cheli, *La forma di governo italiana nella prospettiva storica*, in *Rass. Parl.*, 1998, 294 ff.;

<sup>4</sup> And despite his daughter having taken perpetual votes: see e.g. A. Riccardi, *Pio XII e Alcide De Gasperi, Una storia segreta*, Rome-Bari, 2003.

period. Massive internal migrations towards the North spurred on the industrialisation of the country. Last, but not least, Italy was one of the promoters of the European Communities in the 1950s, accounting for 12% of European industrial production and with an unemployment rate of 3% in 1962. A good national health service was created in 1978, which expanding existing services. A welfare system was founded on the basis of an institutional-redistributive model,<sup>5</sup> albeit with many defects in terms of patronage and inefficiency. Italy moved from the condition of an underdeveloped, almost totally destroyed country to that of a modern nation during the first fifteen years of Christian Democrat dominance and centrist governments. However, this was not immune from income and regional inequalities, pockets of backwardness and cultural limitations. Some reforms may have been conceived of and implemented by the Christian Democratic leadership group not only as a result of a genuine democratic inspiration but also were attempts to isolate the opposition Left and to neutralise its political demands. Nevertheless, the economic results were impressive and unparalleled in Western Europe.

However, the absence of any alternative government was clearly due to the enduring strength of the Communist party, which reached two million members in 1956 and won between six and twelve million votes in various elections. Its level of mobilisation remained high and included its own dedicated and faithful press, the capacity to attract the sympathy of many intellectuals, strong support from the trade unions and control of cultural circles. Even the Hungarian revolution of 1956 did not give the Communist leadership cause to question the Party. Togliatti declared that the success of the uprising could only have ended up in a reactionary restoration<sup>6</sup>, just as in 1953 he had inspired the front page of *L'Unità*, the official newspaper of the Communist Party, commenting on Stalin's death as "The death of the man who did most for the liberation of mankind". Only one small group of intellectuals signed a manifesto, stressing the anger of the Hungarian working class, its love for freedom and its wish to work towards a different kind of Socialism. Out of the leadership, only Antonio Giolitti left the party for the Socialist area, followed by a few intellectuals such as Vezio Crisafulli and Luciano Cafagna. The number of members dropped dramatically by around one million, although the number of votes increased slightly from 1953 to 1958, when the Hungarian tragedy had been almost forgotten. On the other hand, the Socialist Party started its process of separation from the Communist allies and from the "frontist" array. On 6th November 1956, Socialist Party Secretary Pietro Nenni gave a strong speech against the Soviet Union in the Chamber of Deputies, announcing the return of the Stalin prize.<sup>7</sup>

<sup>5</sup> According to the classification offered by P. Flora, A.J. Heidenheimer, *The Development of Welfare States in Europe and America*, New Brunswick, N.J., 1981.

<sup>6</sup> *Sui fatti d'Ungheria*, in *L'Unità*, October 30, 1956, quoted in G. Crainz, *Storia della Repubblica. L'Italia dalla liberazione ad oggi*, Rome, 2016, 76.

<sup>7</sup> The facts are analytically described by S. Lanaro, *Storia dell'Italia repubblicana. Dalla fine della guerra agli anni novanta*, Padua, 1992, 219 ff.

It must be added that the Communist Party was able, at least before 1956 but also later, to attract the sympathy of several intellectuals, absent a genuine liberal culture not amenable to the Christian democrats nor represented by the other government parties. Such a fatal attraction was so strong as to draw harsh criticism from the Communist press of all manifestations of modern art and literature,<sup>8</sup> from Gide to Picasso, from Chaplin to Camus, in terms that were not overly different from the Nazi definition of “degenerated arts”. The only way to explain the success of such a reactionary culture is by the absence of any intermediate space between the pervasive Catholic Church and the opposing Marxist circles and associations. The only way out was to refer to foreign culture, above all, English-speaking countries.<sup>9</sup> A very small number of high-level intellectuals, such as Norberto Bobbio, realised that this kind of struggle was unacceptable and needed to be checked in the light of critical reason.<sup>10</sup>

Centrist and, after 1963, centre-left governments were able to promote and steer the recovery of Italy from the initial condition of complete destruction and to return it to the international community on an equal footing; to open its economy up to international trade and the free movement of goods and services around Europe and to help Italian culture to reach pre-eminence throughout the arts.<sup>11</sup> This came with the obvious price of some problems on several levels. The Communist-inspired trade unions encountered some difficulty in establishing themselves and their members’ careers were sometimes adversely affected in some industries, until “Statute of Workers” was approved in 1970. The Catholic Church was overwhelmingly present until the end of the 1960s<sup>12</sup> and the party holding the relative majority may have drawn some benefit from this tradition. Public radio and television were managed in such a way as to be fully open to the representation of political viewpoints different from those of the governing majority, although pluralism was subject to some limitations. The expansion of the economy was probably uneven, both geographically and socially. Clientelism and job-hunting under party shelter may have been more important than merit or ideology<sup>13</sup> and the dominance of parties in all areas of social life was overwhelming<sup>14</sup> and finally a form of bargaining pluralism became the rule.<sup>15</sup>

<sup>8</sup> See e.g. R. Guarini, G. Saltini, *I primi della classe. Il “culturalcomunismo” dal 1944 al 1964: un’antologia per ricordare*, Milan, 1978.

<sup>9</sup> See S. Lanaro, *L’Italia nuova. Identità e sviluppo 1861-1988*, Turin, 1988, 174 ff.

<sup>10</sup> N. Bobbio, *Politica e cultura*, Turin, 1955.

<sup>11</sup> The most optimistic interpretation of the Italian post-war experience is provided in J. LaPalombara, *Democracy, Italian Style*, New Haven, Conn., 1987.

<sup>12</sup> This is the interpretation of P. Allum, *Italy: Republic without Government*, London, 1973.

<sup>13</sup> The expression dates back to Sir L. Namier, *The Structure of Politics at the Accession of King George III*, London, 1929, and is used with reference to Italy both by P. Allum, *Italy, Republic without Government*, cit., and M. Gilbert, *Il Governo e la politica dell’Italia repubblicana*, in S. Woolf (ed.), *L’Italia repubblicana vista da fuori, (1945-2000)*, Bologna, 2007, 85, 107 ff.; see also J. LaPalombara, *La clientele come canale di pressione*, in P. Farneti (ed.), *Il Sistema politico italiano*, cit., 147.

<sup>14</sup> See G. Pasquino, *La partitocrazia*, in Id., *La politica italiana. Dizionario critico 1945-95*, Rome-Bari, 1995, 341 ff.

<sup>15</sup> This is the title of the book by D. Hine, *Governing Italy: The Politics of Bargained Pluralism*, Oxford, 1993.

It is however hard to say whether the exacerbation of Cold War conditions, the blocked government and exclusion of substantial changes in the composition of political majorities depended on governing parties or on the stubbornness of the principal minority party in sticking to the diktats of the Third International and the Soviet Union, expressing only a few timid signs of dissent, at least until 1968 and the Prague Spring, on its incapacity of showing a moderate, social democratic face and of elaborating a genuine reformist program. Togliatti's "Italian path to socialism" did not have any real meaning, while Berlinguer's "historical compromise" may have incorporated a measure of hypocrisy. Foreign commentators spoke of the self-destructive attitude<sup>16</sup> of the Communist Party and it was unprepared for the fall of the Berlin wall.

The Communist Party was essentially funded by the Soviet Union until the end of the 1980s, which distorted fair competition between parties and forced the other parties to look for other sources of funding, some of which were illegal. Reliable sources<sup>17</sup> have estimated that around seven billion U.S. dollars were received by the Party between 1950 and 1987 from the Soviet Union and other Communist States in form of direct payments and percentages on commercial deals concluded between the Italian cooperative movement and those States. This flow of money helped the Communists to build up and maintain a powerful organisation of around five thousand employees, including party club officials and press workers. This peculiar financial system eventually aroused suspicions but was never unmasked. However, when the "clean hands" scandal swept away the governing parties in 1992, the Communist structure emerged almost unscathed and engaged with the uneasy and uncompleted task of ideological transformation with the aim of transforming itself into a modern Social Democratic party of government.

Centripetal pluralism<sup>18</sup>, according to authoritative political scientists, describes the evolution of the Italian party system up until the end of Cold War was imposed both by international and domestic factors – the nature of the opposition was a key element within a peculiar political process. Moreover, it must be remembered that the Italian path to democracy was able to preserve peace and constitutional order without resorting to constitutional clauses e.g., Article 19 of the German Basic Law, which excluded anti-systemic parties and movements from all democratic dialogue for the sake of upholding liberal-democratic principles in a border area of Western Europe. It is probably true that the size of the Communist Party and the role displayed by its partisan groups during the Civil War would have prevented the introduction of similar clauses into the Italian Constitution. Yet, it was a tall order to bring Italy to the

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<sup>16</sup> See again J. LaPalombara, *Democracy, Italian Style*, cit.,

<sup>17</sup> See e.g. V. Riva, *Oro da Mosca*, Milan, 1999.

<sup>18</sup> This is the formula identified by P. Farneti, *Il Sistema dei partiti in Italia 1946-1979*, Bologna, 1983, and successive editions. For an opposing interpretation of the Italian party system, see G. Galli, *Il bipartitismo imperfetto: comunisti e democristiani in Italia*, in P. Farneti (ed.), *Il sistema politico italiano*, cit., 261 ff. and G. Sartori, *Bipartitismo imperfetto o pluralismo polarizzato?*, *ibidem*, 287 ff.

forefront of the international community while dragging along the ballast of the largest anti-systemic forces in the West. Such an effort however had cultural and social costs.

There are good reasons for an honest and disillusioned observer not to interpret Italian political and constitutional history after World War II as a process of increasing liberation from conservative forces, spurred on by the use of referendums and the war on corruption declared by the Judiciary in 1992. This interpretation<sup>19</sup> distorts the real course of events and the considerable efforts made by the entire country in achieving economic progress, cultural improvement and social solidarity, whilst overcoming a number of hurdles. Living under a dictatorship imposed by a superpower capable of smothering any revolt in blood would have been and actually was, quite a different story.

### 3. The “Second” Republic: Mafia, politicians and judges

Similar considerations must be made in relation to recent history after 1989, or rather after 1992, year of the Mafia slaughters. In Italy there has been no real constitutional clash between the Court on the one side and Parliament or the political class on the other, let alone a judicial struggle against Mafia organisations which has been hampered by politicians.

It is absolutely true that the end of full proportional representation did not result in a genuine two-party system and it has never been possible to reach a consensus on constitutional reform, even when the development of EU law made this necessary. It is also true that Mafiosi tend to worm their way into party organisations, with a preference for those whose position in power appears to be stable and lasting, just like organised crime over the world. It is likely that the fresh outburst of Mafia violence against politicians and judges in the 1990s may have been triggered by the progressive turning of the screws against Mafiosi, both in terms of repressive legislation and conditions of incarceration.<sup>20</sup> That does not mean that previous agreements between the Mafia and ministers, mainly Christian Democrats, implied any preferential treatment. The existence of such an agreement has never been proven and it is unlikely that national politicians ever had any relationships with Mafia organisations. Describing Italian history as a Mafia novel, or as a story of secret covenants and commitments taken by national politicians with organised crime is absolutely misleading and is offensive to the efforts of at least two generations of honest administrators, who were able to rescue the Italian economy and society from a condition of poverty, destruction and heightened cultural conflict and to prevent the country from leaving the Western bloc and experiencing long decades of “Real Socialist” dictatorship. This is not tantamount to an assertion of perfection – the limits of reconstruction are still apparent to public opinion, in cold

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<sup>19</sup> Proposed, amongst the others, by A. Antonuzzo, G. Vosa, *Changing the Constitution to Overrule the Court: comparative notes from Hungary and Italy*, unpublished paper.

<sup>20</sup> See e.g. A. Bolzoni, *La mafia dopo le stragi: cosa è oggi e come è cambiata*, Milano 2018.

economic figures and even more so in cultural and social terms. The incomplete eradication of organised crime is definitely one of the main shortcomings of the tumultuous yet contradictory post-war development. However, such drawbacks have their roots deep inside the national character and have nothing to do with any supposed inclination of the majority parties to protect the Mafia or other criminal organisations or to do deals with them. The truth is that the unitary state launched a campaign of harsh repression in the South immediately after 1861 deploying considerable military forces and Fascist governments widely resorted to illiberal police measures, although it was never possible to eradicate the Mafia entirely.

However, there is no doubt that the Judiciary has consistently occupied the political sphere, which has been abandoned by the political class due to its limited capacity or quality.

Despite the constitutional principle of mandatory criminal prosecution (Article 112), which is difficult to implement in practice due to the growing number of crimes, individual or local preferences have become increasingly relevant in deciding which cases deserve to be investigated or prosecuted and even appealed following an acquittal.<sup>21</sup>

Furthermore, judges and prosecutors have become ever more inclined to run for political and/or administrative office. The loss of legitimacy by the political class has persuaded the main political parties to run judges as candidates in order to reassure public opinion of the reliability of their candidates. No authorisation of the High Council of the Judiciary is necessary in order to run for political office. The current Justice Minister has suggested that formal legislation should be adopted. Many judges and prosecutors have been appointed to independent agencies in recent years and many others have worked as advisors to the Constitutional Court, the Office of the President of the Republic, the Houses of Parliament and ministries.

The High Council of the Judiciary has itself become highly politicised. Political segments or factions created inside the national association of magistrates (ANM) control its operation and it is now admitted that a number of important appointments may have been made on the basis of the political affiliation of the nominees.

The Judiciary has played a very aggressive role over the last twenty years also by intervening in disputes with enormous economic implications and has even interfered with legislative measures adopted or about to be adopted by the Government and Parliament.<sup>22</sup> Last but not least, both the ANM and individual magistrates often make public statements concerning applicable or even proposed legislation not only from a legal but also a political standpoint. Perhaps they are simply looking for the limelight.

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<sup>21</sup> See e.g. G.F. Ferrari, *Judicial Independence in Italy*, in S. Shetreet, W. McCormack, *The Culture of Judicial Independence in a Globalised World*, Leiden, 2016, 61 ff.

<sup>22</sup> The best example is the Ilva case in Taranto: see G.F. Ferrari, *Italian Perspectives on the Judiciary*, forthcoming in *Journal of International and Comparative Law*, 2017.

#### 4. Concluding remarks

An honest account of Italian constitutional history demonstrates few similarities with Hungary after World War II. In the Danube country a harsh dictatorship imposed after Yalta lasted for forty years and has left traces that it is difficult to eradicate. In Italy, the return to democracy and to economic development had to deal with some constraints rooted in the international framework. The result was the consolidation of an atypical form of democracy: criminal organisations have not been completely eradicated, political parties are barely able to engage in a reasonable manner with public opinion, the Judiciary is overwhelmingly occupying spaces left free by a political class that has lost much of its legitimation and populist movements are gaining increasing consensus, contributing to widening the gap between European and domestic politics.

In Hungary, it can be noticed that there is a genuine although sometimes overreaching effort to eliminate the characteristics of a totalitarian regime. In Italy, a kind of revenge for the incomplete implementation of a democratic regime that has been successful from many viewpoints throws an unfavourable light on the system's capacity to react to an enduring crisis. European constraints, either from the European Court of Human Rights or from the EU, might be a common characteristic but the similarities end here.