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The Drafting of the Post-War Constitutions in France and Italy. Differences and Similarities

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The process of drafting constitutions can be an interesting subject of study not only for scholars of constitutional law but also for anyone interested in politics and economics. In fact, this complex and multifaceted process lies at the intersection of many disciplines and is strongly linked to the historical and social environment in which it takes place. As a result, the text of any constitution provides a fairly detailed picture of a specific social, historical and cultural context. This is particularly true of the drafting of the post-war Italian and French constitutions. Indeed, the historical events that preceded the enactment of the French constitution of 1946 and the Italian one two years later provide insights into the respective drafting processes, which were different but also share some similarities. Guerrieri's research questions derive from these considerations about the embeddedness of constitutions in specific historical circumstances. In the eight essays that make up the volume, he carefully traces various aspects of the historical and political events that preceded the two constitutions, focusing on both the elements that unite the two constitutional experiences and the aspects that make them different.

For his comparison of the drafting processes in France and Italy, the author draws on both archival sources and secondary literature to produce a comprehensive legal-historical account. The volume's first essay analyses the development and functioning of the French parliament during the two world wars. In order to understand the role of the parliament in shaping the dynamics of the constitutional drafting process, Guerrieri first shows that it established itself as a decisive body during the First World War, when its influence actually increased (15). At the same time, there was a constant effort on the part of the government to assert itself vis-à-vis the legislative, and despite the

succession of no less than five different prime ministers between 1914–1918, the executive managed to increase its *force de gouverner* (20). From the end of the First World War onwards, the influence of parliament began to weaken, a process which reached its peak with the formation of the government led by Édouard Daladier in April 1938 (26).

While the first essay sets the historical stage, in the second Guerrieri focuses on the politics behind the realisation of the 1946 French constitution. Specifically, in this part of the book he provides a detailed picture of the political scene just after the Second World War. The first postwar Constituent Assembly was dominated by three mass parties: whereas the right had collapsed in the polls, there was a large Christian Democratic political force in the centre, with the Communist and Socialist parties holding the absolute majority on the left (38). This political polarisation was reflected in the Assembly's draft of the constitution, which, however, subsequently failed to find a majority.

After the failure of the first National Constituent Assembly to agree on a draft constitution, a second was elected in June 1946. The three mass parties again won 75 per cent of the vote, although the balance of power was significantly altered: this time, the socialists and communists did not win an absolute majority (48). The second Assembly's work produced the following results: Regarding the parliament, the three parties agreed to return to a bicameral system, and in terms of the government formation process, a compromise was reached in the form of a ›double investiture‹ of the Prime Minister: in contrast to the previous draft of the constitution, the President of the Council would not be elected by parliament but instead appointed by the head of state. However, before forming the government, he would also have to be invested by the National Assembly, in

* SANDRO GUERRIERI, *Costituzioni allo specchio. La rinascita democratica in Francia e in Italia dopo la liberazione*, Bologna: Società Editrice Il Mulino 2021, 216 p., ISBN 978-88-15-29227-8

the form of an absolute majority vote of its members. Only after these two ›investitures‹ would the government he formed be subject to a vote of confidence by the assembly. However, during the final phase of the debate in the Chamber, this second passage was suppressed and it was decided to leave only the investiture vote to the President of the Council. In addition, a rule on the procedure of constitutional review was included in the text (50–53). The essay shows that the French Fourth Republic was born on the basis of a limited consensus: in fact, the constitution was only approved by 53.2% of the Assembly's members, with 32.4% abstaining. Because of these figures and a series of problems linked to this period (the ›industrial weakness‹, the succession of unstable governments and the Algerian crisis), the Fourth Republic was in later years referred to as *mal-aimée* (58).

The final essay in this part of the book focuses on French colonialism, a topic often omitted in discussions of the French constitution. Guerrieri shows that the colonies were given fairly broad representation during the constitutional drafting process, with a significant number of representatives of the colonised territories in the Constituent Assembly; half of these 64 deputies represented the colonists, the other half the indigenous peoples (96). However, while the constitution of the Fourth Republic established equal rights and duties for everyone in the French empire (111), the emphasis was still on the leading role of France: the presidency of the Union was exercised by the French head of state (112). The essay concludes that the drafting process did not erase many of the traditional features of French colonialism (116).

After these initial essays on the French experience, Guerrieri focuses on exploring whether the French constitution had any influence or impact on the Italian drafting process. The first question that post-war Italian voters had to answer was whether their new state was to be a monarchy or a republic. A referendum on this matter was held in June 1946, leading to the victory of the republican form. Italy began work on its constitution when the French text had already been drafted and promulgated, and, drawing on several reports of the Italian Constituent Assembly (*Assemblea Costituente*), Guerrieri shows how the French experience was certainly taken into account in Italy. Of particular interest is that, while there were undoubtedly many Italian politicians who admired the French constitution and tried to reproduce

some of its principles and rules, there was no shortage of those who stressed the need to distance themselves from it: ›It is remarkable, but it is not a masterpiece; it is not superior to the one we are making‹, were phrases uttered in reference to the purely consultative Council (154–155).

Nevertheless, the primary sources clearly show how members of the *Assemblea Costituente* took inspiration from the French constitution. This was particularly the case in the area of fundamental rights and principles (135). In addition, the Italian constitution contains two articles which repeat several provisions of the constitution of the Fourth Republic, namely Article 40, on the right to strike, and Article 139, which prohibited a change away from a republican state form (147). The *Assemblea Costituente* was also influenced by the final text of the French constitution in the area of the rules governing the relationship between the state and the international order. This can be seen in Article 10, on the Italian legal system conforming to the generally recognised principles of international law, and in Article 11, on the rejection of war as a means to settle international disputes (148). Guerrieri concludes by noting that the drafting process of the French constitution actually acted as a cautionary tale to the Italian Constituent Assembly. Italian politicians took it as a warning of the serious risks of delegitimising constitutional work.

After this analysis of the French influence on the drafting of the Italian constitution, the last part of the book is devoted, first, to the differences between the French and Italian processes, and, second, to the role played by the Italian Communist Party in the drafting process. In Italy, as in France, the main architects of the constitutional text were the three mass parties that had emerged after Liberation, namely the Christian Democratic Party, the Socialist Party and the Communist Party (161). One of the main differences between the constitutional projects of the two countries was the extent of the powers exercised by the Constituent Assembly. While the Italian *Assemblea Costituente* was fully sovereign in the constitutional field but had only very limited legislative power, its French equivalent also enjoyed full legislative power. Moreover, the strong desire in Italy to limit the legislative powers of the Constituent Assembly was motivated precisely by the wish to avoid the mono-chamberalism of the French Revolution (166–167). Finally, the volume's last essay compares the strategies of the communist parties in the

two countries during the drafting of the constitutions. It finds that both established themselves as mass parties after the Second World War, and both framed their constitutional strategy as aimed at creating a progressive or new form of democracy that differed from the Soviet path (202). However, the author also highlights that, while it is certainly important to note the similarities between the two, it should be remembered that the Italian communists had the greater role of distancing themselves from fascism: we always need to bear in mind the two countries' different historical experiences.

In conclusion, the volume is clearly a valuable tool for better understanding constitutionalism in

Europe in the 20th century. However, after delving so deeply into the French case, one feels short-changed by the cursory way in which the Italian one is examined. The book clearly focuses on French constitutional development and examines the Italian experience only insofar as it was influenced by the former. One would have liked to have seen as detailed an examination of the historical context and the political choices of the Italian constitution as the author has undertaken for the French.



Bernardo Sordi

Il diritto internazionale visto dal problematico *State building* della penisola italiana*

Non sono molto frequenti le occasioni di riflessione interna delle singole discipline giuridiche sul proprio percorso storico. Questa ricerca collettiva va quindi salutata con soddisfazione perché, promossa in larga misura da internazionalisti, offre alla genealogia storica uno spazio significativo.

Il focus del volume converge sul periodo intercorrente tra l'unificazione politica del Regno, nel 1861, e il secondo dopoguerra. Qui si concentra l'articolata griglia dei saggi, in grado di offrire un apporto conoscitivo importante: sull'evoluzione della disciplina; sui protagonisti; sugli indirizzi metodici; ma anche sulle riviste e gli strumenti di principale divulgazione scientifica; intrecciando all'esame endodisciplinare una verifica degli snodi principali della politica estera italiana del tempo, dal passaggio dal Piemonte subalpino al Regno d'Italia (Marchisio, 285 e ss.), alla Questione romana e alla controversa personalità giuridica internazionale della Santa Sede (Di Ruzza, 310 e ss.); sino all'avventura coloniale (Scovazzi, 334 e ss.) e alla prima guerra mondiale (Bartolini, 359 e ss.), seve-

rissimo banco di prova degli equilibri europei, apertosi con la denuncia del trattato della Triplice alleanza e conclusosi con la problematica posizione italiana nella conferenza di pace e la ricerca di un nuovo ordine internazionale dopo il conflitto.

Il lettore trova quindi, con profitto, ritratti problematici e approfonditi dei principali protagonisti. A partire da Pasquale Stanislao Mancini (1817–1888), notevole personaggio della stagione risorgimentale, padre del fortunato principio di nazionalità come base della stessa legittimazione della soggettività internazionale, espresso in una celebre prolusione torinese del gennaio 1851 destinata a far scuola (anche in alcune norme chiave del primo codice civile unitario del 1865 sulla posizione dello straniero); uomo politico tra i più illustri dell'Italia liberale e caposcuola dei primi indirizzi della disciplina nel periodo immediatamente successivo all'unificazione (Greppi, 79 e ss.; Mura, 109 e ss.).

Sino al monumentale rilievo di Dionisio Anzilotti (1867–1950), il vero demiurgo dell'interna-

* GIULIO BARTOLINI (ed.), *A History of International Law in Italy*, Oxford: Oxford University Press 2020, 491 p., ISBN 978-0-19-884293-4