

Contemporary Italian Institutions and Politics

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Syllabus

Lesson 1. The making of the Italian Constitution and its evolution

This lesson will examine the origins of the Italian Constitution of 1947, including the pre-Republican period, and will underline the importance of the fracture realised in 1993 that ended all the anti-fascist political parties which were the ‘fathers of the Constitution’.

The lesson will address:

- Italy’s transition from a liberal State to a democratic and social State, which is clearly represented by the comparison between the Albertine Statute, conceded by Carlo Alberto of Savoy in 1848, and the Republican Constitution, approved by the Constituent Assembly on 22 December 1947;
- the fascist regime that started in 1922, whose end coincided with the Second World War;
- the new phase that opened in 1993 with a brand-new, mainly majoritarian electoral system imposed by the citizens on the political class through two abrogative referenda; this phase is characterised by a series of failed attempts to reform the Constitution, in which Silvio Berlusconi played a crucial role;
- the stalemate that occurred in the aftermath of the 2013 elections and a new start of the constitutional reform process;
- the rigidity of the Italian Constitution and its explicit limits to constitutional amendments, which mirror the main features of the process that led to its approval;
- the 16 constitutional amendments that have been approved since 1948, and the three constitutional referendum held in 2001 (approval), 2006 and 2016 (rejections).

Lesson 2. Popular sovereignty, the separation of powers and political direction: electoral systems, referendums and the parliamentary form of government

The starting point for this lesson is the Italian Constitution’s clear recognition, from its very first Article, of the democratic principle. The forms and limits established by the Constitution are crucial in determining how Italian democracy works and shaping the relationships among the traditional instruments of representative democracy and those of direct democracy.

As the Italian form of government is based upon a parliamentary system, the main instrument for the exercise of popular sovereignty is the election of the Parliament. The choice of the Constituent Assembly not to decide which system for the elections of the Chamber and the Senate would be employed revealed itself to be absolutely decisive for Italian history. In fact, the main cleavages between the different phases of the Italian Republican Constitution were characterised by some controversial changes of the electoral law: in 1993, when the proportional system was abandoned in favour of a new mainly majoritarian electoral law (called ‘Mattarellum’), as well as in 2005, when a majority bonus system was approved (called ‘Porcellum’). A new phase seems to have begun when both the ‘Porcellum’ and a new two-round system with a majority bonus was approved only for the election of the Chamber of Deputies (the so-called ‘Italicum’: law no. 52/2015) were declared unconstitutional by the Constitutional Court (judgments no. 1/2014 and no. 35/2017). This led to the approval of the new electoral law, mainly proportional (law no. 165/2015, the so-called ‘Rosatellum’), applied in 2018 election.

Finally, the lesson will deal with the late implementation, only in 1970, of the different forms of referendums provided by the Constitution and, more generally, with the current adjustment of the point of equilibrium between representative and direct democracy.

Lesson 3. The Italian Parliament: a symmetrical bicameralism called into question

The Italian Constitution established a symmetrical bicameral legislature comprising a Chamber of Deputies and Senate. This lesson will set out the main characteristics of these two houses and assess their institutional effectiveness in the light of the changing electoral politics.

The symmetrical bicameral system did not present a problem as long as the two houses were formed according to the proportional electoral system, which was in force from 1948 to 1992. Neither the distribution of votes nor the distribution of seats resulted in much differentiation between the two houses. Moreover, strong political parties were in fact able to ensure the convergent behaviour of the Chamber and Senate in the confidence relationship with the Executive as well as in the legislative process, thanks to a strict control of the intense legislative activity of the standing committees.

The need to reform the bicameral system, already recognised during the 1980s, became much stronger after 1993. Both the majoritarian electoral system and the crisis of the political parties increased the risks of deadlock and divergence between the two houses, which actually came to pass, rather dramatically, after the February 2013 elections. It is not by chance that after these elections the process for constitutional reform, already attempted many times in the last three decades with very limited outcomes, received a new start, seeming to proceed at a faster speed and along a clearer direction. However, also in this case the reform was not achieved, as it was clearly rejected in the constitutional referendum of 4th December 2016.

The lesson will address, in particular:

- the main organisational features of the Italian Parliament;
- the pivotal rules of procedure of the two houses;
- the legislative process;
- decree-laws and legislative decrees: normative instruments of the executive, both used very frequently by the executives, especially since the 1970s;
- the budgetary process, established according to the new Article 81 Const. (revised in 2012) and now inserted in the EU common budgetary timeline;
- the oversight function (including the evaluation of public policies).

Lesson 4. The Government, between politics and administration

In Italy, Governments have traditionally been unstable and unable to pursue a clear political and administrative agenda. Two of the objectives of the 1993 electoral reform were strengthening the government and ensuring a bipolar, if not bipartisan, system. These objectives have been only partially achieved and with many difficulties: the Government's average length has significantly increased, but the recent experiences of the so-called 'technocratic-led governments' (Ciampi, 1993–94; Dini, 1994–95; Monti, 2011–13) show a persistent difficulty in having executives which are directly legitimated by the voters and, at the same time, complying with EU budgetary and policy obligations.

Moreover, the transformation realised in 1993 required a different administrative apparatus, at the central as well as the local level, where the political and the administrative functions are more clearly distinguished, with some elements of a 'spoils system' for the highest positions.

The lesson will focus on:

- the structural features of the Government, with its essential and additional components;
- the confidence relationship between both houses and the Government;
- the constitutional principles of public administration;
- the regulatory and directive functions of the administration exercised by the Government, with references to these regulations (and their typology);
- the distinction between politics and administration and the limits to the 'spoils system' rule; and
- the auxiliary bodies and the rather large family of independent authorities.

Lesson 5. The President of the Republic: 'squeeze-box' powers?

The powers of the Italian President of the Republic are often explained using the metaphor of the 'squeeze-box' (or 'accordion'): in times of a stable majority in both houses, the President's role is limited (although it is never just symbolical), whereas in times of a fragmented party system, with a narrow and uncertain majority in the Parliament, the President's role expands. The transformation of 1993, in theory going towards a majoritarian democracy, should have reduced these powers. On the contrary, because of the heterogeneity and instability of ruling coalitions, it led to their increase. This phenomenon was particularly clear, for instance, during the 'Bribesville' scandal in 1992–93; at the end of the first Berlusconi Government, in 1994; in the final phase of the last Berlusconi Government, in 2011; and, even more clearly, after the 2013 elections. This variability of presidential powers – and the different ways in which every President made use of her powers – has led to divergent views in regard to the definition of the presidential role. The still dominant approach defines it as a '*pouvoir neutre*', a sort of guarantor of the correct application of the Constitution. Contrarily, other scholars tend to understand it as a body that contributes, although normally not in a leading position, to political direction.

In order to understand the role and the actual powers of the President of the Republic, out of a long list included in the Constitution, the following points will be addressed:

- the President's responsibilities (as also clarified by decision n. 1/2013 of the Constitutional Court);
- the classification of presidential acts, according to the different meanings of the countersignature;
- the main functions of the President of the Republic, normally identified with the appointment of the President of the Council (and, under her/his proposal, the Ministers) and the power to dissolve the Chamber of Deputies and the Senate and therefore to call for new elections.

A list of the Presidents of the Republic and of the constitutional role each of them played in the different phases of the Constitution will conclude the lesson.

Lesson 6. The Constitutional Court and the role of the Judiciary

In its first part, this lesson will offer an account of the activity of the Constitutional Court as the 'living voice of the Italian Constitution'. Consequently, after a short description of the main features of the Italian system of judicial review of legislation, born out of an encounter between the Kelsenian model and the American one, the lesson will deal with the following topics:

- *a delayed implementation* (1948–56): theoretical and political bias against the judicial review of legislation;
- *getting rid of the remnants of the fascist regime*: the Constitutional Court's first years of activities and the modernisation of the legislation inherited from the previous system (examples will be taken from cases on the equality of men and women in a family context; criminal law; the right to strike, etc.);
- *building the toolkit*: the Constitutional Court and its relationship with other judicial bodies; the shaping, especially since the 1970s, of new types of decisions (interpretative, manipulative, etc.);
- *a Court victim of its own success*: the late 1980s and the overload of cases; shrinking the docket; trusting lower courts; encouraging interpretation according to the Constitution;
- *the Court of conflicts*: from constitutional review of legislation to conflict of powers as the core business of the Constitutional Court (1995–2005): politics versus judiciary;
- *the implementation of the constitutional reform on regionalism* (2001–10); and
- *the voice of the Italian Constitutional Court in the global context*: the relationship with other European courts; foreign law and international law; an integrated approach to the Constitution (balance of rights, reasonableness and proportionality).

In its second part, this lesson will deal with the role played by the judiciary in the transformation of the Italian democracy at the beginning of the 1990s, which caused the dissolution the old political parties involved in a number of corruption cases. Since then, a tension has dominated the relationship between the judiciary and the political institutions and, more relevantly, the constitutional position of the judiciary has dramatically evolved. This lesson will explore the evolving relationship between law and judges, politics and judiciary.

Bibliographic References

Main texts:

- Maurizio Cotta, Luca Verzichelli, *Political Institutions in Italy*, OUP, 2007
- (for updates and further materials) papers given by the instructor

Other references:

- Giuseppe Franco Ferrari (ed), *Introduction to Italian Public Law*, Giuffrè, 2008
- Erik Jones, Gianfranco Pasquino (eds), *The Oxford Handbook of Italian Politics*, OUP, 2015
- Robert Leonardi, *Government and Politics of Italy*, Palgrave, 2017
- Giovanni Orsina, *Berlusconism and Italy. A Historical Interpretation*, Palgrave, 2014

Assessment

One written test (5 open questions) the last day of the course (1 hour)