

The failed amnesty of the ‘years of lead’ in Italy: continuity and transformations between (de)politicisation and punitiveness

Federica Rossi

School of Law and Social Sciences, London South Bank University, UK

Introduction

The 1970s in Italy were characterised by the persistence and prolongation of political and social unrest that many Western countries experienced during the late 1960s. The decade saw the multiplication of far-left *extra-parliamentary* organisations, the presence of a militant far-right movement, and a crescendo in the use of politically motivated violence and state repressive measures (Della Porta, 1984; Della Porta e Pasquino, 1983; Lumley, 1990; Sommier, 1998; Tarrow, 1998). The increasing militarisation and use of political violence, from sabotage and damage to property, to kidnappings and targeted assassinations, were justified by left-wing groups both as necessary means to achieve a revolutionary project and as defence against the threat of a neo-fascist coup (Sommier, 1998; 2008). Violence from far-right militants also took different forms, including bombings in public places that made dozens of victims: Piazza Fontana in Milan in 1969, Piazza della Loggia in Brescia in 1974, on the train *Italicus* in 1974 and at Bologna train station in 1980 (Catanzaro, 1990; Della Porta, 1984). The state’s responses were largely repressive, with the fast-paced adoption of emergency legislation and exceptional measures, particularly between 1978 and 1982 (Cento Bull and Cooke, 2013; Author, 2011; Schimel, 1986), that led to mass arrests of political activists and sympathisers.

Threats against the state in post-war Italy have largely been dealt with a punitive approach based on penal repression (Gallo, 2015; Nelken, 2005; Pavarini, 1994; Violante, 1997). However, mechanisms of leniency have often tempered the ‘punitive potential’ (Gallo,

2015) of the criminal law and penal code inherited from Fascism, with amnesties and pardons being frequently used in the aftermath of social and political unrest, as well as routinized tools of penal management for common offences. In the case of the 1970s, however, no measure of this kind was passed, and forms of relative clemency were limited, selective and individualised.

This paper endeavours to explain why attempts to grant an amnesty for politically motivated offences committed during the 1970s failed, by reintroducing the penal dimension of the debates, often overlooked in studies on the issue. It posits that the withholding of the amnesty over the years resulted not only from the long-lasting firm position of the Italian state (*fermezza dello stato*) towards the 1970s' armed struggle and the refusal to acknowledge its political and collective significance, but also from changing attitudes, discourses and practices about punishment, justice and victims that have re-shaped the controversies of the past through the lenses of the present. Based on the study of draft bills, bills and acts concerning clemency measures and relevant parliamentary discussions, this paper aims to historicise the political debates on amnesty and pardon since the 1980s, to show how they have been contextually constructed, and invites to think and problematize the discontinuities in the public and political discourses about clemency and punishment.

Previous analyses have privileged the political angle to explain the absence of an amnesty after the 1970s, by focusing on political oppositions and definitional struggles of the political violence. Rayner (2006) underlined how the issue of amnesty was particularly contentious because debates were inscribed in a multiplicity of fields, professional logics, interests and discourses that shaped actors' anticipations and perceptions of 'what is possible (or not)', thus operating as 'crossed vetoes'. Nubola (2011) highlighted that discussions about amnesty inevitably imply political and historical evaluations, while Dematteo (2006) and Wahnich (2006) emphasised the lasting controversies and political struggles over divergent

historical interpretations of the 1970s¹ and a fortiori ‘over the ways to make these interpretations available or not on the public space’ (Wahnich, 2007: 92).

While building on the studies above, this paper argues that to fully understand the penal treatment of militants convicted for politically motivated offences during the 1970s, it is necessary to re-inscribe the debates on clemency also in the field of penality and understand how they have been shaped by changing judicial practices and penal policies, as much as by deep-rooted political considerations and divides. It takes this structuring tension between the criminal and the political as the main prism to analyse variations and continuities over time. The ‘years of lead’, as they are commonly referred to, cannot be easily qualified either as war or as peace (Linhardt and Moreau de Bellaing, 2013) and this in-betweenness has impacted the ways in which political violence has been dealt with, or rather the reasons for which its legacy remains still largely unresolved. The ‘armed struggle’ has been primarily framed as a criminal issue, as the state has resorted to criminal justice (CJ) tools and delegated the resolution of the crisis to the ordinary judiciary (Canosa & Santosuosso, 1982: 22; Fiorentino & Chiamonte, 2019: 158). This resulted in harsh sentences and detention conditions for individual perpetrators, and *a fortiori* the de-politicisation and individualisation of acts borne out of a specific political and social context. But it also created the conditions for prolonging the polemics about the state’s responsibilities, collective and political dimension of the ‘armed struggle’ and demands for political tools of pacification, such as amnesty, pardon, truth and reconciliation commissions. This article argues that the absence of amnesty (but the reiteration of its possibility over time) and the judicialisation of 1970s’ politically motivated crimes have led to the perpetuation of debates on this period of Italian history, by making it a topic of incessant political and judicial controversy and object of political instrumentalisation.

The socio-historical analysis of those debates allows to observe the progressive delegitimation of amnesty and pardon as tools to address the penal and political legacies of the

1970s and resituate it in a wider changing landscape of penal discourses and practices in a more punitive direction in Italy since the early 1990s (Corda, 2016). The 1980s and 1990s were decades of profound transformation of Italian society: political corruption scandals and the end of the Cold War accelerated the restructuring of the political field, with the arrival of new populist parties with a neoliberal orientation, and the decline of traditional political forces; more market-oriented economic policies promoted liberalisations, privatisations and the de-structuring of the labour market; finally, the figure of the judge gained a new social (and political) legitimacy.

These changes had long-term repercussions on Italian penalty. Since the 1990s penal policies and public discourses on crime and punishment have been increasingly framed in terms of retributivism, individual responsibility, and dismissal of social and political causes (Corda, 2016; Fiandaca, 2013; Pavarini, 1994; 2013; Selmini, 2011; Wacquant, 1999), whilst crime and crime control have become objects of electoral contest. This resulted in the expansion of the realm of the penal, growth of the incarceration rate and emergence of a new punitive *doxa*, similarly to what observed in other Western countries (Fassin, 2017; Garland, 2001; Pratt, 2007; Pratt et al., 2005; Selmini, 2011; Simon, 2007; Wacquant, 2009). These trends have nevertheless coexisted in Italy with structural and contingent factors (Corda, 2016) and periodic instances of ‘pragmatic moderation’ (Gallo, 2018) that partly contained them. Thus, the study of the debates on clemency for 1970s’ politically motivated crimes, constitutes an observatory on how punitive trends are translated and complexified locally, in specific circumstances and in resonance with cultural and historical traditions (Melossi, 2001).

By focusing on a specific case, and articulating literature on penalty, political transformations and transitional justice, this paper therefore contributes to academic debates on punitiveness and processes of judicialisation and criminalisation of the past. It invites an analysis of punishment (or its suspension) as a contended area of action and representation of

social phenomena and historical events where the political and the criminal inevitably entangled.

The article is organised in two parts that historically and chronologically retrace the unfolding of political debates in Italy about amnesty and pardon for offences committed during the 1970s. The first part examines the first phase and state's responses to political violence from the mid-1970s to the early debates on clemency measures, in the immediate aftermath of the 'end of terrorism' (early 1980s). The second part analyses the second (late 1980s-early 1990) and third phases (late 1990s-2000s). In the former, proposals for amnesty and pardon progressively lose support in a context of political uncertainty, growing judicialisation of politics and rise of penal populism. The latter is characterised by the disappearance of proposals for clemency and increasing political uses of the 1970s, in a context characterised by a populist approach to crime, 'security', punishment and their pervasive presence in political campaigns.

The end of the armed struggle: between punitiveness and clemency

Amnesty and *indulto* are important mechanisms in the Italian constitution (art. 79) written in the transition from the fascist regime to democracy in 1946-1948. In the legal doctrine, they are defined as means to achieve national reconciliation and social pacification. *Indulto* is a form of collective pardon, remitting part or the entirety of a penalty, while amnesty involves a collective cancellation of the offence, cessation of the penalty and may involve protection from prosecution (art. 151 and 174 c.p.). Historically, in Italy, amnesty was created as a tool of pardon for political acts, in the context of the 19th century workers' movements and, despite the routinisation of its use over time, it has long been associated with political crimes (Santosuosso and Colao, 1986). Whilst 'Togliatti's amnesty' used for national reconciliation in the transition from Fascism to democracy in 1946 remained the reference par excellence, five amnesties were passed following social movements and periods of political

unrest in the 1950s-60s and another one in 1970, after the wave of students' and workers' protests 1968-69 (Colao, 2011; Santosuosso and Colao, 1986). Similarly, the amnesty discussed in Italy about the 'years of lead' could be defined as 'a sovereign act of forgiveness for past acts, granted by a government to all persons (or to certain classes of persons) who have been guilty of crime or delict, generally political offences – treason, sedition, rebellion, draft evasion – and often conditioned upon their return to obedience and duty within a prescribed time' (Garner and Black, 1992: 82-83)

State's responses, from 'public order' to counter-terrorism

During the 1970s, Italian institutions dealt with the widespread use of violence by militant groups by resorting to 'normal' –routinized practices and pre-existing legislative tools—, as well as 'exceptional' means of CJ, such as new laws and investigation practices elaborated *ad hoc* to address the circumstances. Until 1975, a series of 'public order' acts were passed, that toughened the legislation especially relating to preventive incarceration and recidivism, and widened discretionary powers of the police and judges. Particularly repressive, the 'Reale Law' (152/1975) also introduced the distinction between common and 'political criminality', to subject the latter to a more punitive scope. Following the increasing use of firearms and specifically after the kidnapping of Aldo Moro, leader of the Christian Democracy party (DC)² in 1978 by the Red Brigades (BR), the notion of 'political criminality' was replaced and redefined in the legislation and public sphere by that of 'terrorism'. Between 1978 and 1981, emergency laws (*leggi d'emergenza*) and counter-terrorism measures were adopted at a speedy pace, often as decree laws³. These granted larger powers to police forces and investigating judges, introduced aggravations for offences committed with political aims and for 'subversive association', extended the terms of preventive incarceration, remand and minimum sentences for politically motivated offences and offences committed to further the

aims of political organizations. (Author, 2011; Schimel, 1986). The early 1980s were characterised by the appearance of the first *pentiti* (justice collaborators), waves of arrests and trials, and the incarceration of several hundreds of radical left activists, many of whom sentenced to very long terms (22 years and over). According to data available (Curcio, 1994), 4087 activists were detained at the beginning of the 1980s, in prisons around the country, including a few hundred in maximum security facilities⁴.

The crescendo of punitive legislation since 1975, specifically targeting political activism, was deployed across all stages of the criminal justice process, from investigation processes to detention conditions. Highly controversial from the outset, emergency laws were denounced by many left-wing politicians and lawyers as ‘undemocratic’, for infringing the rule of law and constitutional guarantees, and restricting political and civil liberties. They also testified, ‘intentionally or by omission, to a delegation to judges of the monopoly of the resolution’ of the conflict (Violante, 1997: XIX) that had significant long-term impacts (Author, 2011). Firstly, it contributed to the emergence of a new figure of the judge with increased ‘political weight and social credibility’ (Violante, 1997: XIX; see also Fiandaca, 2013; Vauchez, 2004): judges came to embody simultaneously the authority of the expert on the phenomenon of the armed struggle; that of guardian of the democratic state in contrast to the inability or unwillingness of political actors to solve the crisis; and that of the heroic victim that is sacrificed for the common good⁵. The affirmation of an (un)contested expertise of judges on the ‘truth’ about the 1970s, that focused on its criminal dimensions, has tended to exclude competing (non-judicial) accounts⁶, and led to a durable framing of political violence as a criminal phenomenon, necessitating a CJ response to identify and punish individual perpetrators, rather than political intervention. Finally, the reliance upon criminal justice and emergency legislation has also generated a new punitive drive in criminal law and the development of new judicial practices⁷, cultures and approaches, that persisted beyond the

‘year of lead’ (Corda, 2016; Fiorentino & Chiaramonte, 2019; Della Porta, 2001; Vauchez, 2004).

The study of debates within the Parliament, the judiciary and in the national press during the 1980s shows that discourses in favour or against clemency in this first phase were shaped by simultaneous judicial, political and historical arguments. Discussions were taking place in different social fields and reflected their different values, interests and form of expertise: firstly, the evaluation of ‘terrorism’ as an ongoing or a bygone threat and the effectiveness of ‘emergency legislation’ (mainly in the judicial field); secondly, the anticipation of the public (un)acceptability of such measure (especially in the political field); finally, the historical interpretation of the 1970s’ political violence and the role of the state. Political prisoners themselves were divided on the issue of clemency, their positions reflecting their personal and political evaluations of past engagements, but also persistent political rivalries.

If attempts to reverse the over-criminalisation (and over-penalisation) of political crimes fail in this first phase, it is not so much because of a punitive consensus, but rather because of the collusion of multiple rationalities and diverging interests.

Dissociation or amnesty: hostilities and divides behind bars

The imprisonment of political activists in high numbers posed a series of challenges to the prison system in the early 1980s: internally, it saw protests and broader politicization of inmates; externally, it was criticised for the conditions of detention and mass imprisonment of militants. These circumstances encouraged the emergence of demands, from both inside and outside custodial institutions, for a ‘political solution’ to close the season of political violence, unveil the ‘truth’ about the ‘years of lead’, including the role of state actors and agencies in sustaining far right violence, and to exit the logic of the emergency.

The first calls for an amnesty appeared in 1979⁸, in the aftermath of the ‘7th April’ case, a mass arrest⁹ of activists and intellectuals from the leftist decentralised movement of *Autonomia Operaia*, including Toni Negri¹⁰. The publication of a text entitled *Terrorismo? Nein danke*¹¹, by Negri, triggered discussions that profoundly divided political prisoners on the significance of the armed struggle and whether to negotiate (or not) with the state¹². The movement of ‘dissociation’, by which some detained militants publicly distanced themselves from their previous engagements and renounced violence as a means of political struggle, was translated into parliamentary debates that resulted in the adoption of the law on dissociation in 1987. The law allowed individual prisoners to benefit from sentence remissions and detention arrangements if they admitted their personal responsibilities in criminal acts, repudiated violence and disengaged from their political organisation, as demonstrated by their conduct and declarations¹³.

Militants in prisons progressively polarised into opposing lines, according to their position in favour of or against ‘dissociation’ and/or amnesty. The main contentious aspect between dissociation and amnesty, was that the former required from detainees a disavowal and condemnation of their former political engagements and involved an individualised penal process, assessed case-by-case. Amnesty, on the other hand, would constitute a collective measure applicable to categories of offences, independently from the conduct, beliefs and declarations of the individual after their arrest. Advocates of amnesty therefore perceived it as a measure that would preserve and recognise the political and collective significance of the armed struggle. On the contrary, the process of dissociation was sustaining the individualisation of political and criminal responsibilities for acts that were conceived and committed as collectively, thus distorting their meaning and reinforcing the dominant judicial narrative of the 1970s violence as a series of individual acts rather than a collective revolt.

Nevertheless, it was not until the mid/late 1980s that several political prisoners, mainly ex members of the Red Brigades, officially positioned themselves against dissociation and launched a campaign in favour of ‘one political solution for all’.

From prisons to parliament and the judiciary: political controversies and professional logics

In the early 1980s, some left-wing members of the Italian Parliament (MIP) and lawyers¹⁴ publicly supported clemency measures and presented bills to Parliament to repeal the ‘emergency legislation’, revoke the aggravations it introduced for crimes committed with political aims and close the season of political violence. The study of parliamentary debates on these bills shows that the DC, majority party, was overall strongly opposed to clemency measures, with the exception of Francesco Cossiga, former Minister of the Interior during the years 1976-78¹⁵, who was also one of the rare politicians agreeing with the definition of the 1970s as ‘low intensity civil war’.¹⁶ The position of the Communist Party (PCI) was much more ambivalent, with some representatives agreeing in principle with an amnesty but believing that ‘time was not ripe’, and many others preferring selective clemency measures like dissociation and reforms of the penal system. In this period, the PCI was involved in elaborating a reform of the prison system that introduced gradual decarceration mechanisms based on the observation and evaluation of individual prisoners’ conduct. The law was adopted in 1986 and commonly referred to as the ‘Gozzini law’.¹⁷ The Italian Socialist Party (PSI) was overall the most favourable, among major parties, to measures of clemency, including a general amnesty.

The first and most comprehensive bill of amnesty and pardon for ‘offences committed with terrorist aims’¹⁸ was presented by the radical left party *Democrazia Proletaria* (DP) in 1985. Its promoters emphasised the ‘deep damages to the penal system and the democratic fabric’ caused by the counter-terrorism legislation, the necessity ‘to counterbalance the level

of “over-penalisation” and call the state ‘to act with equity to rectify the injustices that resulted from the emergency trials’¹⁹. This proposal was never examined in parliament, but the possibility of including political crimes was discussed as part of an amnesty bill for ordinary crimes, presented the following year by some socialist MIPs²⁰. However, diverging and irreconcilable positions appeared about the categories of political offences that were to be included or excluded and the scope of the law finally passed in December 1986 was very limited and excluded offences for which most political activists were sentenced. The analysis of these debates evinces that despite a relative convergence on the necessity of ‘exiting the emergency’, political forces, with few exceptions, lacked the political willingness to back collective measures of clemency, justified by the fear that ‘terrorism’ was not yet ended and the public was not ready to accept clemency.

In a similar way, but responding to different professional logics and interests, the issue of clemency divided the judiciary. Counter-terrorism practices and emergency legislation had already polarised judges and lawyers, around the interpretation of constitutional guarantees, protection of civil and political rights and the (un)democratic character of emergency laws adopted in the late 1970s. Some judges from the left-wing union *Magistratura Democratica* backed a measure of general amnesty over dissociation as early as 1983²¹ as a way to abandon the ‘culture of emergency’ (Santosuosso, 1984). The vast majority of the judiciary were nevertheless against any form of collective clemency, and more favourable to individual and gradual measures of decarceration as outlined in the dissociation or Gozzini laws. Arguments against a general amnesty were based upon the fear of resurgence of political violence, but also on the definitional controversies on the armed struggle as a political or a criminal/terrorist phenomenon: as Grevi (1984: 72), lawyer and advisor to the government in 1978, put it, ‘measures of this kind would recall too closely situations similar to the end of a civil war – and therefore they would contribute to attribute, de facto, to their beneficiaries a status that does

not correspond to the reality of our terrorism’.

Vigorous hostility to any form of clemency, including dissociation, came from those judges who specialised in counter-terrorism and led the investigations against armed groups. In 1984, thirty-six judges addressed a letter to three key state institutions warning against the still present ‘terrorist threat’, emphasising the dangers of sentence remissions schemes that did not require from the defendant an active cooperation with the investigations, and of premature abandonment of the emergency legislation²². Clemency measures were not only perceived by these judges as a delegitimisation and dissolution of their professional work and personal sacrifice (Vauchez, 2004) in a period when they were gaining an unprecedented social legitimacy, but also as a potential dispossession of tools developed against the armed struggle, and that they were re-adapting to investigate Mafia organisations.

More symbolically, the contended ground for competency and action between the political and the judicial was at stake, in a period of redefinition of power relations between institutions. Dissociation and the Gozzini law offered forms of selective leniency that would keep the control of the penal treatment of political prisoners within the judiciary, and therefore not defy the judicial monopoly of the definitions of the means, criteria and values to apply in dealing with political crimes. Conversely, an amnesty – as a political act that intervenes to modify or nullify a judicial decision – would have de-criminalised the issue and brought it back to the political realm, its different logic and interests.

The law on dissociation was formally enacted in 1987 as a measure of individual and selective pardon. Though very contentious, it drew enough support within the institutions, for at least three reasons. Firstly, it did not involve a collective pardon, as applications were evaluated case by case and was therefore consistent with the principle of individualisation of penal responsibilities. Secondly, it was a scheme of selective sentence reduction, that was perceived as less politically costly, because granted only to ‘deserving’ prisoners, who had

repudiated violence and shown regret for their actions. Finally, because it required from detainees to demonstrate this renouncement with their conducts and public declarations, it also constituted a powerful means of re-legitimation of liberal democracy and the state itself, similar to processes of abjuration before the Inquisition (Sommier, 2000). The main critiques to the law and its effects pointed to the fact that it was rooted in the understanding of responsibility in penal, individual and subjective terms, therefore reducing the historical interpretation of complex political and social phenomenon to a sum of individual criminal acts. From a legal perspective, the law on dissociation was criticised for failing to abandon the culture of the ‘emergency’ and ‘exception’ and on the contrary protracting it, by establishing the differentiation of detained militants on the grounds of their procedural conducts rather than on the acts they were sentenced for (Ferrajoli, 1987). The re-categorisation of detained militants according to their public declaration or silences, subsequently contributed to over-criminalise those militants who chose, for ethical, personal or political reasons, not to declare themselves as ‘dissociated’ (Cesoni, 1983). An amnesty law, on the other hand, carried the potential to resignify the events, by symbolically reinstating the collective and political significance of acts of violence in their historical circumstances and therefore include the ‘years of lead’ in the political history of the country, rather than in its criminal history (Wahnich, 2007).

As will be shown in the following section, draft bills and bills of amnesty laws including politically motivated crimes committed during the 1970s continued to be presented before the Italian Parliament until the years 2000s. Yet, the actual prospect of an amnesty started to fade away from the early 1990s, as the issue became increasingly instrumentalised.

The foreclosing horizon of the amnesty

The last extensive political and public debate on a general amnesty for the ‘years of lead’ took place in 1987-88, following the declarations by Renato Curcio²³ and other non-dissociated Red Brigade militants, affirming that the ‘armed experience’ was over and it was time to open to a discussion about its social roots (Curcio et al., 1987). In this phase of the late 1980s-early 1990s, only very sporadic crimes were still committed by decimated left militant groups; the general context was changing and prefiguring significant transformations at national and international level. The end of the Cold War had implications for global geopolitics, but also influenced the national political field, entailing the redefinition of the identity of mass parties like the PCI in a more social-democratic direction²⁴. At national level, the context was characterised by the resurgence of mafia violence and by the landmark political corruption scandal Clean Hands (*Mani Pulite*) in 1991-92. The scandal led to a dramatic restructuring of the Italian political field (Briquet, 1995; Nelken, 1996; Vannucci, 2016)²⁵: traditional mass parties like the DC and post-war parties, declined or even disappeared, while new right-wing parties entered the field, like the neoliberal *Forza Italia* (FI)²⁶, or gained a new legitimacy, like the nationalistic National Alliance (AN)²⁷ or the populist and xenophobic Northern League²⁸.

A changing context: the delegitimation of clemency and the depoliticisation of the crime problem

Following the declarations of detained BR militants, a proposal for collective pardon applicable to ‘sentences for crimes committed with terrorist aims’, was presented by MIPs of various left-wing parties in 1989.²⁹ Parliamentary debates indicate the existence of a consensus upon the ‘end of terrorism’ and ‘a diffuse process of re-socialisation of those sentenced for terrorism’³⁰. Political forces also widely agreed on envisaging clemency as a tool ‘to restore

the penal and procedural equality that was weakened by the legislation of the “years of lead”³¹, in conformity with ‘juridical principles to abandon the inconsistencies and distortions of judicial practices of the emergency’³² and alleviate their effects on those sentenced under this framework³³. Supporters of the bill particularly emphasised that it was not motivated by a careless attitude of forgiveness (*perdonismo*) or ‘a flexible and pietistic conception of punishment’, nor by the will to ‘forget terrorism’, but on the contrary, by the necessity of re-establishing the ‘rigorous application of the principle of proportionality’³⁴. Thus, the debates were structured almost exclusively around juridical and penal considerations, while the more traditional political and social justifications of clemency— such as re-habilitation and social pacification – were only marginally raised. The de-politicisation of clemency for political prisoners and its reduction to a technical question of penal rigour, suggests a more paradigmatic loss of legitimacy of the political discourse and possibility of action over issues increasingly considered as solely relevant to the judicial sphere. During the same period, a reform of the art. 79 of the Italian Constitution, regulating amnesty and *indulto*, was being approved to restrict the use of clemency (law n.1/1992). Since 1992, amnesty and *indulto* laws are no longer a prerogative of the President of the Republic, on the delegation from the parliament agreed by simple majority vote, but are emanated by the Parliament, and require a two-thirds vote in each chamber and on each article of the law. This reform epitomises a self-limitation of political powers in their legitimacy and capacity to alter decisions of the judiciary and demonstrates the growing tendency of political forces ‘to delegate to the sole “sword of justice” the solution of many problems’ (Pavarini, 2013: 60, see also Fiandaca, 2013). The issue of political prisoners is in this sense rather paradigmatic as it exemplifies the depoliticisation of the crime problem and the judicialisation of politics: the loss of primacy and legitimacy of the political to define criminality, identify its causes and devise its solutions in the social and political field is

translated in the increasing ‘reliance on courts and judicial means for addressing core moral predicaments, public policy questions, and political controversies’ (Hirschl, 2008).

As Pavarini (1994; 2013) points out, the early 1990s are marked by growing moralism and social demand for repression in Italian society, under the simultaneous effect of political corruption scandals, the fight against the mafia, media emphasis on the drug problem, as well as the rise of judges as heroic figures. With the collapse of the old party-system and new conservative and populist forces appearing on the political scene, it was also a peculiar, and widespread cultural attitude to the crime question, ‘as an issue that to be solved by politics rather than by penal repression’ (Pavarini, 1994: 52) that gradually faded away. Consequently, measures of clemency became more politically costly in a period in which the political class was accused of excessive indulgence and immorality. Not only ‘higher levels of penalty [were] socially invoked and institutionally legitimised’, (Pavarini, 2013: 60) but also lenience, forgiveness and clemency (for both political and common offenses) were concurrently delegitimised³⁵. Whilst Italian penalty has continued to be, in several aspects, Janus-faced, oscillating between punitiveness and moderation (Corda, 2016; Gallo, 2015; Nelken, 2005; Violante, 1997), the early 1990s mark the beginning of a ‘punitive turn’, visible in public discourses, legislations and penal practices, and of which the delegitimation and abandonment of clemency is one of the indicators (Corda, 2016).

The failure to agree a measure of clemency for political crimes in this phase needs therefore to be resituated in this specific context of political and penal change, where the long-term reluctance of political actors to treat the armed struggle as a ‘political’ (rather than ‘criminal’) issue is coupled with the cautiousness dictated by historical contingencies.

Between the search for truth and reconciliation and the rise of penal populism

In 1993, in the immediate aftermath of the Clean Hands corruption scandal and in a

climate of great uncertainty for political parties, a bill for *indulto* for ‘terrorist crimes’ backed mainly by left-wing MPs³⁶ was discussed and approved by the Parliament’s Justice Commission, but was never brought to the chambers due to early elections in 1994. Arguments in support echoed the ones used in previous debates: a consensus upon the end of terrorism and the necessity to rebalance the excesses of counter-terrorism. Some supporters of the proposal underlined that the intention was ‘not to deal with a historiographic problem’ but with ‘a question on extremely limited juridical considerations’³⁷. The main promoter of the proposal, however, also encouraged to envisage pardon as an ‘act that could appease tensions and contribute to clarify events that are still obscure’.³⁸ In 1992, the Parliamentary Investigation Committee on Terrorism in Italy had concluded the first round of investigations without any significant achievement in determining the political causes and wider responsibilities of the 1970s’ violence, aims for which it had been established. In the 1990s, a new understanding of amnesties as instruments to close periods of conflicts, reconcile societies and help the ‘truth’ emerge, appeared in the discourse of some actors in Italy, looking at successful experiences in TJ settings in Africa, South America and other regions (Jeffery 2014; Teitel 2003). The example of the South African Truth and Reconciliation Commission, was expressly invoked by two senators of opposed parties Giovanni Pellegrino (DS) and Alfredo Mantica (AN), both members of the Parliamentary investigation committee as one of the ‘possible solutions to come to terms once for all, with the past’. They suggested to ‘renounce to a retributive model of penal justice in favour of a system that would allow to retrace the events, and establish not only the responsibilities for the crimes, but also to historically contextualise them [...] for the benefit of a historical memory shared by all Italians’ (Mantica & Pellegrino, 2000).

The argument of coming to terms with the past was advanced by left-wing promoters of proposals for pardon especially in the late 1990s³⁹, in a context perceived as favourable to reopen a public debate⁴⁰ on a political ‘solution to a problem that is not only of criminal nature’.

Attempts to re-politicise and re-legitimise clemency as a political act with social and humanitarian aims were nevertheless strongly opposed by right-wing representatives wielding the respect of ‘the sorrows of victims and their expectations of justice’⁴¹, to justify the necessity ‘even after many years, [for] rigour and severity’⁴². Their rhetorical emphasis on the rights of ‘victims of terrorism’, constructed in a mutually exclusive opposition to the rights of ‘terrorists’, and on the retributive significance of (harsh) punishment translates less a commitment to supporting the victims, than an instrumental use of crime and punishment for electoral purposes. It also epitomises, as indicated by Fiandaca (2013) and Fiorentino and Chiaramonte (2019: 159), the tendency to extend the prosecutorial logic and ‘model of leadership’ to politics (Simon, 2007: 37). The political actors and parties that entered the Italian Parliament from the mid-1990, against a background of corruption scandals, judicialisation and moralisation of politics, inaugurate a populist use of the criminal law and demagogic ‘law and order’ campaigns, that became the dominant feature of security politics and penal policies in the 2000s (Corda, 2016; Fiandaca, 2013; Pavarini 2013; Selmini, 2011; Wacquant, 1999).

The parliamentary debates of the late 1990s thus illustrate the erosion of the political and social purposes of clemency by punitive registers: the strategic simplification and reduction of complex juridical issues related to the 1970s to a question of individual liability, retribution and ‘justice’ for the victims, obfuscated and delegitimised the concerns for rights, judicial equity and consideration of socio-political circumstances (Fiorentino & Chiaramonte, 2019; Fiandaca, 2013; Author, 2011).

Punitiveness, political uses of the past and the disappearance of clemency

Until the mid-2000s, proposals for *indulto* for politically motivated crimes continued to be presented before the Parliament by left-wing politicians, although in much fewer numbers, and quickly came to a dead end⁴³. As argued by Rayner (2006), political actors tended

to see the context as not favourable to the social and political acceptance of an amnesty of the ‘years of lead’. The ‘terrorism emergency’ was reactivated at both international level – with the 9/11 attacks – and at domestic level, with the killing, in 1999 and 2001, of two lawyers working for the government to reform labour laws, by a new left-wing armed group, commonly called the ‘new Red Brigades’.

It was in this context that extradition procedures against some former left-wing militants residing in France since the 1980s⁴⁴ started. As a display of cooperation between two right-wing governments eager to demonstrate of ‘governing through security’, the politics of informal asylum – or ‘doctrine Mitterrand’ – that allowed several former militants to live in France, came to a sudden halt. Due to his reputation as a crime novelist and the mobilisation of French intellectuals against his extradition, the case of Cesare Battisti in 2004⁴⁵ received greater media coverage. The debates surrounding it symbolically crystallised, beyond the historiographical debates, the opposition between two rationales for punishment. The first, mainly represented by a group of French intellectuals and the Human Rights League (LDH), was supporting the suspension of Battisti’s extradition, on the ground that he had abandoned the armed struggle over twenty years earlier, formed a family, found a job and become a successful novelist. Punishment was therefore no longer making sense, for Battisti and others ‘political refugees’, because resocialisation and renouncement to political violence were clearly demonstrated by their life in France. French calls for amnesty were met on the other side of the Alps by the retributive rationale that ‘culprits deserve to be punished’, substantiated by the emotive register of victims’ sorrow and need for ‘justice’. Italian responses to the *affaire* were mostly coming from anti-terrorism judges and Battisti’s alleged victims, which was symptomatic of both the historical role played by judges in the management of the armed struggle, and a more recent ‘prosecutorial complex’ characterised by an “increasing willingness by prosecutors to use the media and speak as a voice for the crime victims” and advocate for

tougher penal policies (Simon, 2007: 43). Judges interviewed in the press were not only defending the validity of their decisions and the emergency legislation, but also presented themselves as the embodiment of a professional expertise delegitimising Battisti's French supporters as 'laypeople'⁴⁶, and 'giving voice to real victims' suffering and quests for justice' (Fiandaca, 2013: 106; Author, 2007).

Whilst the case revived the issue of amnesty, actual proposals and discussions in Parliament were only short-lived⁴⁷. What emerged from the public and media debates on Battisti's extradition was the persistent primacy of the judicial logic in the analysis of the 1970s and the political and media use of 'victims of terrorism' that disavowed any potential political, social and historical consideration. The existence of a socio-political context more favourable to the recognition of victims' traumas and claims (Fassin & Rechtman, 2009) was particularly visible in Italy regarding the 'victims of terrorism' of the 1970s⁴⁸. The main associations (founded in the 1980s) became more active and visible at national level in the 2000s, along with the creation numerous other associations and memory centres. Political actors also showed a greater willingness to endorse their claims: two important laws were passed in 2004 and 2007 in support of victims of the 'years of lead', to provide financial assistance (law 206/2004) and to establish the 'Day of remembrance dedicated to victims of terrorism and bombings of such origin (law 56/2007)'. Whilst institutional support to victims and their families was long overdue, right-wing politicians, activists and commentators routinely invoked their feelings and interests to oppose clemency and promote a punitive discourse denouncing supposedly lenient CJ policies benefiting 'terrorists' at the expense of their victims (Garland, 2001; Pratt, 2007; Simon, 2007). Over the past two decades, not only did right-wing politicians and activists oppose clemency proposals, but also staged several protests in occasion of release on parole of former militants or participation to public talks of former militants who had already, since long, served their sentence⁴⁹. Their successful resocialisation or their release, even after over twenty

years in prison, were portrayed and denounced as a scandal, a ‘moral harm’ to victims, or the sign of excessive leniency of the penal system. These orchestrated expressions of reprobation and public shaming can be assimilated to forms of extra-legal punishment (Fassin, 2017) that feed the punitive narrative and exemplify the extension of the prosecutorial complex to political action (Fiandaca, 2013).

The disappearance of proposals for amnesty in this third phase therefore is not the result of lassitude towards the issue of the 1970s’ armed struggle, but rather the product of a series of historical and political dynamics that have led to its increased political instrumentalisation. The penal treatment of former militants has become indeed one of the fields where right-wing populist parties have deployed their ‘tough on crime’ arsenal to gain political votes.

As stated earlier, the singularity of the 1970s in Italy lays in the fact that the decade escapes a clear and narrow definition in terms of ‘conflict’ or ‘criminality’ and sits into a controversial in-between. As such, the penal treatment of individuals convicted for politically motivated offences during the 1970s was influenced by political and penal changes occurring at national level from the 1990s, and by the spreading of a new ‘penal doxa’ (Wacquant, 1999) emphasising individual responsibility and dismissing collective causes as ‘excuses’. A similar narrative is observable in transitional contexts, where the choice of criminal prosecution and individual punishment increasingly prevail over non-judicial reconciliation mechanisms (Lessa and Payne, 2012; Jeffery, 2014; Lutz and Sikkink, 2001; Sriram, 2003). Over the recent years, amnesties have been ‘too easily dismissed as the absence of accountability, the very embodiment of impunity’ (Mallinder and McEvoy, 2011: 109), delegitimised by a prevailing anti-impunity position (Freeman and Pensky, 2012, Pensky, 2007) and presented as a second injustice done to victims (Pensky, 2007). Developments in international criminal law point to the same direction⁵⁰ and testify of changing attitudes towards the capacity and necessity of CJ to establish historical truths and responsibilities for past violence.

The case of the ‘years of lead’ in Italy is useful in this perspective, as it illustrates the limitations and effects of individual criminal accountability to address the legacy of collective violence, in contexts considered as democratic, and therefore in absence of regime discontinuity and formal TJ mechanisms. The absence of amnesty and the judicialisation of the ‘armed struggle’ in Italy has structured and exacerbated, rather than dissolved, the tension between ‘truth’ and ‘justice’, criminal accountability and political responsibilities, as it failed to produce, or even precluded the possibility for, a comprehensive account of what happened, how and why. While in post-conflict and post-authoritarian societies amnesties tend to decriminalise acts of the powerful, in Italy it would apply to former activists and encourage a reconsideration of the state’s responsibilities. In this sense, the long withholding of amnesty acted as a veil of impunity for the powerful, for it pinned the criminal responsibility of violence on a handful of individuals, shielded the state from accountability and thus foreclosed the possibility of examining the deeper roots of a decade of social and political unrest.

Conclusion

This article developed a socio-historical analysis of the debates about measures of clemency (amnesty, *indulto*, dissociation) for politically motivated offences committed during the 1970s in Italy and identified three successive phases. In the first phase, in the immediate aftermath of the ‘end of terrorism’ in the early 1980s, political and judicial approaches were marked by a vigorous punitive response, that nevertheless coexisted with selective leniency and relative openness to the possibility of clemency. During the second phase, from the late 1980s to the mid-1990s, proposals for amnesty and pardon gradually lost support, delegitimised both as tools of penal management for common offences and as mechanism to deal with the past, in a period of transformation of the political field and growing judicial and penal populism. During the third phase, from the end of the 1990s and more markedly in the 2000s,

the discourse around political prisoners shifted towards a more punitive register, that served the political interests of right-wing populist actors.

Often ascribed to long-lasting political divides and the ‘extra-ordinary’ character of the ‘years of lead’, the trajectory of the failed amnesty of convicted militants was here re-inscribed into the recent history of Italian ‘ordinary’ penalty. This enabled to show that although debates on amnesty have always been entrenched in controversies about the historical and political evaluation of the 1970s, the penal treatment of former militants has changed over time and adjusted to newer punitive rhetoric and thrusts. In the 2000s, an amnesty is politically no longer justified or justifiable, not because the ‘years of lead’ are an ‘old’, supposedly ‘dealt with’, issue, but rather because clemency does not fit into the new ‘law and order’ agenda and retributivist narrative. The *mise en scène* of the arrest of Cesare Battisti at the Rome airport in January 2019, in presence of armed police forces and both the Minister of the Interior Matteo Salvini (League) and the Justice Secretary Bonafede (Cinque Stelle) and broadcasted on TV and social media, perfectly exemplifies the entanglement of more recent forms of penal populism with the political instrumentalisation of the 1970s. Hence, the amnesty of the ‘years of lead’ has been eschewed by the intertwined transformation of the political and the penal in Italy since the 1990s. By resituating the failed amnesty of the ‘years of lead’ in this wider context of declining legitimacy and salience of clemency measures as political tools with social and humanitarian aims, this case also provides a singular insight into the ways in which global penal trends and punitive discourses take root in specific socio-political contexts and come to override and reshape (long-term) debates.

Finally, this case study demonstrates that the absence of an amnesty in hybrid conflict/non-conflict contexts of regime continuity, has created the conditions for the perpetuation of socio-historical, political and judicial controversies of the past into the present, with significant punitive outcomes for individual non-state actors and oblivion of socio-

political circumstances. The reliance on criminal law and punishment, including at international level, to manage social and political problems leads to insulate the (criminal) act from the social and historical context that made it possible, confound the perpetrator with the causes, and therefore devise solutions of limited social effectiveness. A fortiori, clemency measures retain the potential to reaffirm the legitimacy of the political to define problems and identify solutions outside courts and tribunals.

Notes

¹ Commonly called ‘years of lead’, this period has been qualified by different commentators as ‘low intensity civil war’, ‘terrorism’, ‘opposed extremisms’, ‘strategy of tension’.

² Aldo Moro (Christian Democracy) was one of the most prominent political figures at the time.

³ In the Italian Constitution, the legislative function is a prerogative of the Parliament (Art. 70), but in ‘extraordinary cases of necessity and urgency’ (art. 77) the government can adopt ‘temporary measures having the force of law’ (Decree Laws). Decrees need to be converted into law by the Parliament within 60 days.

⁴ *Carceri speciali* are maximum security prisons or detention conditions. Introduced by the reform of the penal system in 1975, they began to be used in 1977 for political activists.

⁵ Several judges were targeted by both left and right-wing groups.

⁶ On the competing approaches to ‘truth’ by judges and historians, see Ginzburg (1991) and Thomas (1998). As an example, counter-terrorism judges are frequently invited as speakers at academic conferences on the 1970s, as recognized experts of that historical period.

⁷ Investigative judges developed new techniques and information-sharing practices at the end of the 1970s, and started to work collectively in *pools*. (Bruti Liberati, 1997; Vauchez, 2004)

⁸ Two militants escaped in France wrote a letter to *Lotta Continua*, paper of the homonymous leftist organisation, to call for a political recognition of the armed struggle and an amnesty law that would stop the ‘increasing witch-hunt’ against political activists (Pace and Piperno, 1979).

⁹ Dozens of activists and intellectuals were arrested on 7th April, several hundreds in the following months, as part of the same investigation, and reached 25,000 arrests in the following years (Prette, 1994). Fiorentino and Chiamonte (2019) highlight how this inquiry reflected emerging global punitive trends.

¹⁰ Born in 1933, Antonio Negri is a Marxist philosopher. Arrested in 1979 and sentenced to 12-year imprisonment for ‘subversive association’, he fled to France, where he lived until 1997. In 1997, he returned to Italy, where he was detained until 1999, then on parole until 2003.

¹¹ Negri wrote this text in prison as a contribution to the political conference on repression held in March 1981 in Bologna, where he refuted any personal implication with the armed struggle and affirmed his public condemnation of armed political violence.

¹² Initially starting as informal exchanges inside prisons in the form of written documents, letters, articles and texts addressed to other political detainees or the public, these debates were rapidly relayed beyond the prison walls in the national press and became subject of public and parliamentary discussion.

¹³ Law 34/1987.

¹⁴ Radical Party (PR), Proletarian Democracy (DP), Independent Left (SI) and some members of the Communist Party (PCI) and the Socialist Party (PSI).

¹⁵ These years were the peak of political violence. In one of his first speeches after his election as President of the Republic, Cossiga affirmed his support for an ‘amnesty of pacification’ that would include individuals

sentenced for terrorism, to be granted on the occasion of the 40th anniversary of the Italian Republic in June 1986. (Santosuosso and Colao, 1986)

¹⁶ Cossiga's interpretation of the 'years of lead' was exposed in his letter to the Justice Secretary Claudio Martelli on 14 August 1991, partly reproduced in De Gregorio (1991).

¹⁷ From the name of its promoter, the communist senator Mario Gozzini.

¹⁸ Bill C3294, 20 November 1985.

¹⁹ *Ibid.* https://www.camera.it/_dati/leg09/lavori/stampati/pdf/32940001.pdf

²⁰ C4061; S1859.

²¹ A group of lawyers from Milan collaborated with DP to draft the bill presented in 1985.

²² The letter was leaked to the press and published in *Il Manifesto* on 24 May 1984.

²³ He was one of the founders of the BR in 1970, detained from 1976 until 1998. He was released on day parole in 1993 and worked since then in a publishing co-op.

²⁴ In 1991, during its annual congress the party split into a majority joining the Democratic Party of the Left (PDS) and a minority creating the Communist Refoundation Party (PRC).

²⁵ This redefined Italian politics to the extent that this period is commonly considered the end of the first Republic.

²⁶ FI was founded and led by the Italian businessman and media tycoon Silvio Berlusconi.

²⁷ The party was created in 1994 by a merger of the post-fascist *Movimento Sociale Italiano* (formed in 1946) and some politicians from the disbanded DC. It merged with Berlusconi's *Forza Italia* in 2009 into The People of Freedom (PdL), but a new split led to the creation of Brothers of Italy (FdI) in 2012

²⁸ It was part of the coalition government led by Berlusconi in 1994 and has since become one of the largest political forces.

²⁹ Four proposals were presented between 1987-1992, but only the bill C4395 (6 December 1989) was actually debated.

³⁰ Commissione Giustizia, 19 December 1989. Available from:

http://legislature.camera.it/_dati/leg10/lavori/Bollet/19891219_00_04.pdf

³¹ *Ibid*

³² Commissione Giustizia, 26 September 1991. Available from:

http://legislature.camera.it/_dati/leg10/lavori/Bollet/19910926_00_03.pdf

³³ Over the course of the debates positions diverged on whether the best way to achieve this was a general pardon or gradual measures based on the assessment of individual cases, including revisions of trials.

³⁴ Commissione Giustizia, 26 September 1991. Available from:

http://legislature.camera.it/_dati/leg10/lavori/Bollet/19910926_00_03.pdf

³⁵ As an example, the last law of amnesty and *indulto* for non-political crimes was passed in 1990, while the last *indulto* in 2006, as opposed to more than thirty amnesties and *indulti* granted between 1945-1990.

³⁶ Bill S1058, 11 March 1993; Bill C2329, 3 March 1993; bill C2216, February 1993.

³⁷ Commissione Giustizia, 21 July 1993. Available from:

<http://www.senato.it/service/PDF/PDFServer/DF/40705.pdf>

³⁸ Senator Emilio Molinari (Green Party, former DP), in the Justice Commission, 20 October 1993.

³⁹ It worth noting that while most of the proposals were initiated by left-wing politicians, a right-wing MIP from AN presented a proposal for *indulto* to include specifically far-right militants sentenced for the 1980 bombing in Bologna.

⁴⁰ Toni Negri was arrested and incarcerated on his return to Italy in 1997. The same year, trials against Adriano Sofri, former leader of *Lotta Continua* and known intellectual, ended, after nine years, with a custodial sentence, for complicity in the murder of a police official in 1972.

⁴¹ Commissione Affari Costituzionali, 9 September 1997. Available from:

http://leg13.camera.it/_dati/leg13/lavori/bollet/frsmcdin.asp?percball=/_dati/leg13/lavori/bollet/199709/0909/html/01/&pagpro=7n1&all=off&commis=01

⁴² Commissione Giustizia, 2 April 1997. Available from:

http://leg13.camera.it/_dati/leg13/lavori/bollet/frsmcdin.asp?percball=/_dati/leg13/lavori/bollet/199704/0402/html/02/&pagpro=33n2&all=off&commis=02

It is interesting to note that debates over a law to provide financial assistance and indemnities to victims and their families was being discussed at the same time, but it was only in 2004 that a comprehensive law in favour of victims was adopted.

⁴³ All proposals in this period were for *indulto*, rather than amnesty, except for those championed by the Senator for life Cossiga in 2004 (S2824), 2006 (S343) and 2008 (S198).

⁴⁴ Paolo Persichetti was extradited in 2002; Cesare Battisti was subjected to extradition in 2004, but fled to Brazil. He was arrested in Bolivia in January 2019, after his extradition from Brazil was signed by the President Temer, few days before Bolsonaro's inauguration. Marina Petrella's extradition procedure started in 2007, but was then suspended by the French President Sarkozy due to her deteriorating health conditions.

⁴⁵ Former member of the armed group called *Proletari armati per il comunismo*, he was sentenced *in absentia* in 1985 for the murder of two people and for complicity on two additional murders.

⁴⁶ Bourdieu (1986) analysed the divide between laypeople and professionals as an effect of the force of law.

⁴⁷ Except for few left-wing MIPs like Giovanni Russo Spina (PRC) and Paolo Cento (Green Party), the issue was not raised in Parliament.

⁴⁸ The role of victims in the Italian criminal justice process remains limited, however victims of terrorism and mafia have been increasingly object of media and political attention in the last two decades.

⁴⁹ This is particularly visible for Renato Curcio, whose public talks (in his role as publisher) are often cancelled due to political pressures and protests by victims' associations and far-right sit-ins.

⁵⁰ The Rome statute for example limits the possibility of national governments to grant amnesties.

Bibliography

Bourdieu P (1986) The Force of Law: Toward a Sociology of the Juridical Field. *Hastings Law Journal*, 38 (5).

Briquet JL (1995) La crise politique en Italie. Les interprétations de la crise dans la science politique italienne. *Politix*, 30.

Bruti Liberati E (1997) La magistratura dall'attuazione della Costituzione agli anni novanta. In Barbagallo F (ed) *Storia dell'Italia Repubblicana*, Vol. 3. Turin: Einaudi.

Canosa R & Santosuosso A (1982) Il processo politico in Italia. *Critica del Diritto*, 23-24.

Catanzaro R (1990) *Ideologie, movimenti, terrorismi*. Bologna: Il Mulino.

Cento Bull A and Cooke P (2013) *Ending terrorism in Italy*. Abingdon: Routledge.

Cesoni ML (1983) Sistema penale e strategia della differenziazione. *Critica del diritto*, 29-30.

Colao F (2011) I volti della nazione nelle amnistie politiche del Novecento. In: Härter K and Nubola C (eds) *Grazia e giustizia. Figure della clemenza fra tardo medioevo ed età contemporanea*. Bologna: Il Mulino.

Corcia, A (2016) Sentencing and Penal Policies in Italy, 1985-2015: The tale of a Troubled Country. *Crime and Justice: A Review of Research*, 45.

Curcio R et al. (1987) Occorre una soluzione politica per tutti. *Il Manifesto* 4-5 April.

Curcio R et al. (1994) *La mappa perduta*. Rome: Sensibili alle foglie.

De Gregorio C (1991) Anni di piombo, Cossiga li rilegge così... *La Repubblica*, 17 August 1991

Della Porta D (2001) A judges' revolution? Political corruption and the judiciary in Italy. *European Journal of Political Science*, 39(1), 1-21.

Della Porta D (1984) *Terrorismi in Italia*. Bologna: Il Mulino.

Della Porta D & Pasquino G (1983) *Terrorismo e violenza politica*. Bologna: Il Mulino.

Dematteo L (2006) Le refus de l'amnistie des 'années de plomb': Imbroglione historiographique et déni de la conflictualité. *L'Homme & la Société*, 159(1).

Fassin D (2017) *Punir, une passion contemporaine*. Paris: Seuil.

Fassin D, Rechtman R (2009) *The Empire of Trauma: An Inquiry into the Condition of Victimhood*. Princeton, NJ: Princeton University Press.

Ferrajoli L (1987) La legge sulla dissociazione: un nuovo prodotto della cultura

dell'emergenza. *Questione Giustizia*, 2.

Fiandaca, G (2013) Populismo politico e populismo giudiziario. *Criminalia*: 95-121

Fiorentino D & Chiaramonte X (2019) *Il caso 7 aprile. Il processo politico dall'Autonomia Operaia ai No Tav*. Milan: Mimesis.

Freeman M (2007) *Amnesty and accountability: the leniency dilemma*. Cambridge: Cambridge University Press.

Gallo, Z (2018), The penal implications of austerity, *European Journal of Criminology*, 16(2): 147-169

Gallo Z (2015) Punishment, authority and political economy: Italian challenges to western punitiveness. *Punishment and Society* 17(5).

Garland D (2001) *The Culture of Control. Crime and social order in contemporary society*. Oxford: Oxford University Press.

Garner B and Black H (eds) (2006) *Black's Law Dictionary*. St Paul, MN: Thomson/West.

Ginzburg C (1991) *Il giudice e lo storico. Considerazioni in margine al processo Sofri*. Turin: Einaudi.

Grevi V (1984) Sistema penale e leggi d'emergenza: la risposta legislativa al terrorismo. In: Pasquino G (ed), *La prova delle armi*. Bologna: Il Mulino.

Hirschl, R (2008) The Judicialization of Politics. In: Caldeira, GA et al. (eds) *The Oxford Handbook of Law and Politics*. Oxford: Oxford University Press.

Jeffery R (2014) *Amnesties, Accountability and Human Rights*. Philadelphia: University of Pennsylvania Press.

Lessa F and Payne L (eds) (2012) *Amnesty in the age of Human Rights Accountability*. Cambridge: Cambridge University Press.

Linhardt D and Moreau de Bellaing C (2013) Ni guerre, ni paix: Dislocations de l'ordre politique et décantonnements de la guerre. *Politix*, 104(4).

Lumley R (1990) *States of Emergency. Cultures of Revolt in Italy, 1968-78*. London: Verso.

Lutz E and Sikkink K (2001) The Justice cascade: the evolution and Impact of Foreign Human Rights Trials in Latin America. *Chicago Journal of International Law* 2.

Mallinder L and McEvoy K (2011) Rethinking amnesties: Atrocity, accountability and impunity in post-conflict societies. *Contemporary Social Science* 6(1).

Mantica A & Pellegrino G (2000) *Un contributo dall'esperienza della Commissione per la verità e la riconciliazione in Sudafrica*. Doc. XXIII, n. 64, Vol I - Tome IV. Available at: <http://www.senato.it/service/PDF/PDFServer/BGT/301446.pdf>

Melossi, D (2001) The cultural embeddedness of social control. *Theoretical Criminology*, 5.

Nelken D (2005) When is a society non punitive? The Italian case. In: Pratt J et al (eds) *The New Punitiveness*. Devon: Willan.

Nelken D (1996) The judges and political corruption in Italy. *Journal of Law and Society*, 23(1): 95-112.

Nubola C (2011) Giustizia, perdono, oblio. La grazia in Italia dall'età moderna ad oggi. In: Härter K and Nubola C (eds) *Grazia e giustizia. Figure della clemenza fra tardo medioevo ed età contemporanea*. Bologna: Il Mulino.

-
- Pavarini M (1994) The new penology and politics in crisis: The Italian case. *British Journal of Criminology*, 34(S1): 49-61.
- Pavarini M (2013) *Governare la penalità: struttura sociale, processi decisionali e discorsi pubblici sulla pena*. Bologna: Bononia University Press.
- Pensky M (2007) Amnesty on Trial: Impunity, Accountability, and the Norms of International Law. *Ethics and Global Politics* 1(1-2).
- Pensky M. and Freeman M (2012) The Amnesty Controversy in International Law. In: Payne L and Lessa F (eds) *Amnesty in the Age of Human Rights Accountability*. Cambridge: Cambridge University Press
- Pratt J (2007) *Penal Populism*. London: Routledge.
- Pratt J et al (eds) (2005) *The New Punitiveness*. Devon: Willan publishing
- Prette MR (1994) (ed) *Gli organismi legali – 7 aprile (inchiesta giudiziaria contro l'Autonomia)*. In: *La mappa perduta*. Rome: Sensibili alle foglie.
- Rayner H (2006) Veto entrecroisés: l'épineuse question de l'amnistie en Italie. *L'homme et la société*, 159(1).
- Rossi, F (2007). Lectures du passé et mobilisations au présent: le cas de l'affaire Battisti. In: Gargiulo G, and Seul O (eds) *Terrorismes: l'Italie et l'Allemagne à l'épreuve des années de plomb*. Paris: Michel Houdiard.
- Rossi, F (2011) *La lutte armée entre justice, politique et histoire*. PhD Thesis, University of Paris Nanterre, France.
- Santosuosso A (1984) Contro l'emergenza, *Critica del diritto*, 33.
- Santosuosso A and Colao F (1986) *Politici e amnistia. Tecniche di rinuncia alla pena per i reati politici dall'unità ad oggi*. Verona: Bertani Editore.
- Schimel A (1986) Face au terrorisme, des lois spéciales à l'italienne. *Sociologie du travail*, 28.
- Selmini R (2011) The governance of crime in Italy: Global tendencies and Local Peculiarities. In: Melossi, D Sozzo, M & Sparks, R (eds) *Travels of the criminal question*. Oxford: Hart.
- Simon J (2007) *Governing through crime*. NY: OUP
- Sommier I (1998) *La violence politique et son deuil. L'après-68 en France et en Italie*. Rennes: PUR.
- Sommier I (2001) Repentir et dissociation: la fin des 'années de plomb' en Italie. *Cultures et Conflits*, 40.
- Sommier I (2008) *La violence révolutionnaire*. Paris: Presses de Sciences Po.
- Sriram CL (2003) Revolutions in Accountability: New approaches to past abuses. *American University International Law Review* 19.
- Tarrow S (1988) *Democracy and disorder. Social protest and politics in Italy, 1965-1975*. Oxford: Oxford University Press.
- Teitel RG (2003) Transitional Justice Genealogy. *Harvard Human Rights Journal*, 16.
- Thomas Y (1998) La vérité, le temps, le juge et l'historien *Le Débat*, 102(5).

Vannucci A (2016) The 'Clean Hands'(Mani Pulite) inquiry on corruption and its effects on the Italian political system, *Em Debate, Belo Horizonte*, 8(2).

Vachez A (2004) *L'institution judiciaire remotivée*. Paris (France): LJDG.

Violante L (1997) Delinquere, perdonare, punire. In Violante, L (ed) *La criminalità (Storia d'Italia*. Annali, 12). Torino: Einaudi

Wahnich S (2006) Le débat sur les extradés italiens et le jeu des références historiques. *L'Homme et la Société*, 159(1).

Wahnich S (2007) Ecrire l'histoire des violences politiques ou les amnistier. In: Wahnich S (ed) *Une histoire politique de l'amnistie*. Paris: Puf.

Wacquant L (1999) How Penal common sense comes to Europeans. *European Societies*, 1.

Wacquant L (2009) *Punishing the poor*. Durham, NC: Duke University Press.