

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

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journals.sagepub.com/home/euc**Federica Rossi** 

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Abstract

The ‘years of lead’ commonly refer in Italy to the decade of the 1970s, characterized by widespread conflictuality, the use of violence for political aims and harsh state repression of political activism. Political violence has been primarily handled with both normal and exceptional means of criminal justice, yet debates on amnesty and reconciliation have been recurrent over the years. This article traces the history of the debates on amnesty and pardon for politically motivated offences to show how they have been shaped by changing national and international contexts. On the one hand, the ‘failed amnesty’ reflects the long-lasting repressive approach adopted by the Italian state to address the question of the political violence in the 1970s and the reluctance to acknowledge its collective and political character. On the other hand, this article argues that, beyond the apparent continuity of a punitive approach, the gradual disappearance of amnesty from political debates in the 1990s–2000s is symptomatic of a more paradigmatic shift resulting from the combination of different factors and trends, such as the transformation of the Italian political landscape in the early 1990s, the emergence and affirmation of a new punitive discourse, as well as the increasing delegitimation of amnesties in transitional settings. Thus, through a specific case-study, this article draws links between criminal justice and penal trends, political transformations and developments in transitional justice, and consequently intends to contribute to the discussion of the concept of punitiveness and the effects of the expanding international criminal law on the treatment of politically motivated offences.

Keywords

Amnesty, Italy, penalty, political violence, punitiveness, clemency

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Introduction

The 1970s in Italy were characterized 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* organizations, the presence of a militant far right movement, and an upsurge in the use of politically motivated violence and state repressive measures (Della Porta, 1984; Della Porta and Pasquino, 1983; Lumley, 1990; Sommier, 1998; Tarrow, 1989). The increasing militarization and the 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 defences 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 had 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 rapid adoption of emergency legislation and exceptional measures, particularly between 1978 and 1982 (Cento Bull and Cooke, 2013; Rossi, 2011; Schimel, 1986), which led to mass arrests of political activists and sympathizers.

Threats against the state in post-war Italy have largely been addressed 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 individualized.

This article 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, which is often overlooked in studies on the issue. It posits that the withholding of amnesty over the years resulted not only from the enduring 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 reshaped 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 article aims to historicize the political debates on amnesty and pardon since the 1980s, to show how they have been contextually constructed, and invites one to think about and problematize the discontinuities in the public and political discourses on 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, and Dematteo (2006) and Wahnich (2006) emphasized 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 article 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 divisions. It takes this structuring tension between the criminal and the political as the main prism through which to analyse variations and continuities over time. The ‘years of lead’, as they are commonly termed, 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 handled, or rather the reasons its legacy remains still largely unresolved. The ‘armed struggle’ has been primarily framed as a criminal issue, because the state has resorted to criminal justice tools and delegated the resolution of the crisis to the ordinary judiciary (Canosa and Santosuosso, 1982: 22; Fiorentino and Chiamonte, 2019: 158). This resulted in harsh sentences and detention conditions for individual perpetrators, and a fortiori the depoliticization and individualization 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, the collective and political dimension of the ‘armed struggle’ and demands for political tools of pacification, such as amnesties, pardons, and truth and reconciliation commissions. This article argues that the absence of amnesty (but the reiteration of its possibility over time) and the judicialization of politically motivated crimes in the 1970s have led to the perpetuation of debates on this period of Italian history, by making it a topic of persistent political and judicial controversy and an object of political instrumentalization.

The socio-historical analysis of those debates allows us to observe the progressive delegitimation of amnesty and pardon as tools to address the penal and political legacies of the 1970s and to re-situate them 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 liberalizations, privatizations 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 penality. Since the 1990s penal policies and public discourses on crime and punishment have been increasingly framed in terms of retributivism, individual responsibility and the dismissal of social and political causes (Corda, 2016; Fiandaca, 2013; Pavarini, 1994; 2013; Selmini, 2011; Wacquant, 1999), and crime and crime control have become objects of electoral contest. This resulted in the expansion of the realm of the penal, the growth of the incarceration rate and the emergence of a new punitive *doxa*, similar to what was 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 the politically motivated crimes of the 1970s constitutes a viewpoint 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 the literature on penalty, political transformations and transitional justice, this article therefore contributes to academic debates on punitiveness and the processes of judicialization and criminalization of the past. It invites an analysis of punishment (or its suspension) as a contended area of action and of representation of social phenomena and historical events where the political and the criminal inevitably become entangled.

The article is organized in two parts that, historically and chronologically, retrace the unfolding of political debates in Italy about amnesties and pardons for offences committed during the 1970s. The first part examines the first phase and the 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 and third phases (late 1980s–early 1990s and late 1990s–2000s). In the second phase, proposals for amnesty and pardon progressively lost support in a context of political uncertainty, the growing judicialization of politics and the rise of penal populism. The third phase was characterized by the disappearance of proposals for clemency and by increasing political use of the history of the 1970s, in a context characterized by a populist approach to crime, ‘security’ and 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), which was written in the transition from the fascist regime to democracy in 1946–8. 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, whereas amnesty involves a collective cancellation of the offence and 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 routinization of its use over time, it has long been associated with political crimes (Santosuosso and Colao, 1986). Although ‘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–1960s and another one in 1970, after the wave of students’ and workers’ protests in 1968–9 (Colao, 2011; Santosuosso and Colao, 1986). Similarly, the amnesty discussed in Italy in relation to 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, 2006).

The 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 both ‘normal’ means of criminal justice – routinized practices and pre-existing legislative tools, as well as ‘exceptional’ means, such as new laws and investigative 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 the discretionary powers of the police and judges. The ‘Reale Law’ (152/1975), which was particularly repressive, also introduced the distinction between common and ‘political’ criminality in order 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, in 1978 by the Red Brigades,² 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 rapid pace, often as Decree Laws.³ 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 (Rossi, 2011; Schimel, 1986). The early 1980s were characterized 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 were sentenced to very long terms (22 years and over). According to available data (Curcio, 1994), 4087 activists were detained at the beginning of the 1980s in prisons around the country, including a few hundred in maximum security facilities.⁴

The upsurge in 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 (Rossi, 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 who is sacrificed for the common good.⁵ The affirmation of the (un)contested expertise of judges on the ‘truth’ about the 1970s, which focused on its criminal dimensions, has tended to exclude competing (non-judicial) accounts.⁶ This led to an enduring framing of political violence as a criminal phenomenon, necessitating a criminal justice 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 practices,⁷ cultures and approaches that persisted beyond the 'years of lead' (Corda, 2016; Della Porta, 2001; Fiorentino and Chiamonte, 2019; Vauchez, 2004).

The study of debates within the Parliament, the judiciary and in the national press during the 1980s shows that discourses in favour of 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 forms 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 measures (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-criminalization (and over-penalization) of political crimes failed 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 divisions 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 criticized 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 bring the period of political violence to a close, to reveal the 'truth' about the 'years of lead', including the role of state actors and agencies in sustaining far right violence, and to exit from 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 decentralized movement of *Autonomia Operaia*, including Toni Negri.¹⁰ The publication of a text entitled *Terrorismo? Nein danke* by Negri¹¹ triggered discussions that profoundly divided political prisoners on the significance of the armed struggle and whether to negotiate (or not) with the state.¹² The 'dissociation' movement, by which some detained militants publicly distanced themselves from their previous activities 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 (Law 34/1987). 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 organization, as demonstrated by their conduct and declarations.

Militants in prisons progressively polarized into opposing camps, 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 activities and involved an individualized 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 individuals after their arrest. Advocates of amnesty therefore perceived it as a measure that would preserve and recognize the political and collective significance of the armed struggle. In contrast, the process of dissociation was sustaining the individualization of political and criminal responsibility for acts that were conceived and committed 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 lawyers¹³ 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 bring the period of political violence to a close. The study of parliamentary debates on these bills shows that the Christian Democracy party, the majority party, was overall strongly opposed to clemency measures, with the exception of Francesco Cossiga, former Minister of the Interior during the years 1976–8,¹⁴ who was also one of the rare politicians agreeing with the definition of the 1970s as 'low intensity civil war'.¹⁵ The position of the Communist Party was much more ambivalent, with some representatives agreeing in principle with an amnesty but believing that 'the time was not ripe', and many others preferring selective clemency measures such as dissociation and reforms of the penal system. In this period, the Communist Party 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' (from the name of its promoter, the communist senator Mario Gozzini). The Italian Socialist Party was overall the most in favour, among the major parties, of measures of clemency, including a general amnesty.

The first and most comprehensive bill of amnesty and pardon for 'offences committed with terrorist aims' was presented by the radical left party Proletarian Democracy (*Democrazia Proletaria*) in 1985. Its promoters emphasized 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-penalization"' and call the state 'to act with equity to rectify the injustices that resulted from the emergency trials' (Bill C3294, 20 November 1985).¹⁶ 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 MIPs (C4061; S1859). However, diverging and irreconcilable positions appeared on 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 had been sentenced. The analysis of these debates shows 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' had 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 polarized judges and lawyers around the interpretation of constitutional guarantees, the 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 1983 as a way to end the 'culture of emergency' (Santosuosso, 1984).¹⁷ The vast majority of the judiciary were nevertheless against any form of collective clemency, and were more sympathetic to individual and gradual measures of decarceration as outlined in the dissociation or Gozzini laws. Arguments against a general amnesty were based on the fear of a resurgence of political violence, but also on the definitional controversies over the armed struggle as a political or a criminal/terrorist phenomenon. As Grevi (1984: 72), lawyer and adviser 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.'

Strong hostility to any form of clemency, including dissociation, came from those judges who specialized in counter-terrorism and led the investigations against armed groups. In 1984, 36 judges addressed a letter to three key state institutions warning against the still present 'terrorist threat', emphasizing the dangers of sentence remission schemes that did not require active cooperation by the defendant with the investigations, and of premature abandonment of the emergency legislation.¹⁸ Clemency measures were perceived by these judges not only as a delegitimization and squandering of their professional work and personal sacrifice (Vauchez, 2004) in a period when they were gaining unprecedented social legitimacy, but also as a potential deprivation of tools developed against the armed struggle and that they were re-adapting to investigate Mafia organizations.

More symbolically, the contended ground for competency and action between the political and the judicial was at stake, in a period of the redefinition of power relations between institutions. Dissociation and the Gozzini law offered forms of selective leniency that would keep 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 decriminalized the issue and brought it back to the political realm, with 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 gained enough support within the institutions for at least three reasons. Firstly, it did not involve a collective pardon, because applications were evaluated case by case and it was therefore consistent with the

principle of the individualization of penal responsibilities. Secondly, it was a scheme of selective sentence reduction, which was perceived as less politically costly because it was granted only to ‘deserving’ prisoners who had repudiated violence and shown regret for their actions. Finally, because it required detainees to demonstrate this renunciation by their conduct and public declarations, it also constituted a powerful means of re-legitimizing liberal democracy and the state itself, similar to processes of abjuration before the Inquisition (Sommier, 2000). The main critiques of the law and its effects pointed to the fact that it was rooted in an understanding of responsibility in penal, individual and subjective terms, therefore reducing the historical interpretation of complex political and social phenomena to a sum of individual criminal acts. From a legal perspective, the law on dissociation was criticized 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 conduct rather than on the acts they were sentenced for (Ferrajoli, 1987). The re-categorization of detained militants according to their public declarations or silences subsequently contributed to the over-criminalization of 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 re-signify the events, by symbolically reinstating the collective and political significance of acts of violence in their historical circumstances and therefore including 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 covering politically motivated crimes committed during the 1970s continued to be presented before the Italian Parliament until the 2000s. Yet the actual prospect of an amnesty started to fade away from the early 1990s, as the issue became increasingly instrumentalized.

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 1987–8, following declarations by Renato Curcio and other non-dissociated Red Brigade militants affirming that the ‘armed experience’ was over and it was time to start a discussion about its social roots (Curcio et al., 1987).¹⁹ In this phase of the late 1980s to the early 1990s, only very sporadic crimes were still committed by the much reduced 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 such as the Communist Party in a more social-democratic direction.²⁰ At national level, the context was characterized by the resurgence of Mafia violence and by the landmark political corruption scandal Clean Hands (*Mani Pulite*) in 1991–2. The scandal led to a dramatic restructuring of the Italian political field (Briquet, 1995; Nelken, 1996; Vannucci, 2016):²¹ traditional mass parties such as the Christian Democracy party and post-war parties declined or even disappeared, while new right-wing parties entered the field, such as the neoliberal *Forza Italia*,²² or gained a new legitimacy, such as the nationalistic National Alliance²³ or the populist and xenophobic Northern League.²⁴

A changing context: The delegitimation of clemency and the depoliticization of the crime problem

Following the declarations of detained Red Brigades militants, a proposal for a collective pardon applicable to ‘sentences for crimes committed with terrorist aims’ was presented by MIPs from various left-wing parties in 1989.²⁵ Parliamentary debates indicate the existence of a consensus on the ‘end of terrorism’ and ‘a diffuse process of resocialization of those sentenced for terrorism’.²⁶ 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”’,²⁷ in conformity with ‘juridical principles to abandon the inconsistencies and distortions of judicial practices of the emergency’²⁸ and to alleviate their effects on those sentenced under this framework.²⁹ Supporters of the bill particularly emphasized that it was motivated not by an unthinking attitude of forgiveness (*perdonismo*) or ‘a flexible and pietistic conception of punishment’, or by the wish to ‘forget terrorism’, but, on the contrary, by the necessity of re-establishing the ‘rigorous application of the principle of proportionality’.³⁰ Thus, the debates were structured almost exclusively around juridical and penal considerations, while the more traditional political and social justifications for clemency – such as rehabilitation and social pacification – were only marginally raised. The depoliticization of clemency for political prisoners and its reduction to a technical question of penal rigour suggest a more paradigmatic loss of legitimacy of the political discourse and possibility of action over issues increasingly considered to be solely relevant to the judicial sphere. During the same period, a reform of Article 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, acting on a delegation from the Parliament agreed by simple majority vote, but emanate from the Parliament and require a two-thirds vote in each chamber and on each article of the law. This reform epitomizes 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 because it exemplifies the depoliticization of the crime problem and the judicialization of politics: the loss of the primacy and legitimacy of the political to define criminality, identify its causes and devise its solutions in the social and political fields is translated into 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 were marked by growing moralism and a social demand for repression in Italian society, under the simultaneous effect of political corruption scandals, the fight against the Mafia, a media emphasis on the drug problem, and 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, the particular and widespread cultural attitude to the crime question ‘as an issue to be solved by politics rather than by penal repression’ (Pavarini, 1994: 52) 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 were 'higher levels of penalty socially invoked and institutionally legitimized' (Pavarini, 2013: 60), but lenience, forgiveness and clemency (for both political and common offences) were also concurrently delegitimized.³¹ Although 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 marked the beginning of a 'punitive turn', visible in public discourses, legislation and penal practices, 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 re-situated 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 a 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 MPs was discussed and approved by the Parliament's Justice Commission,³² but it was never brought to the chambers owing to early elections in 1994. Arguments in support echoed the ones used in previous debates: a consensus about 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 to address 'a question on extremely limited juridical considerations'.³³ The main promoter of the proposal, however, also encouraged envisaging pardon as an 'act that could soothe tensions and contribute to clarifying events that are still obscure'.³⁴ In 1992, the Parliamentary Committee of Inquiry on Terrorism in Italy had concluded the first round of investigations without any significant success in determining the political causes and wider responsibilities of the violence of the 1970s, aims for which it had been established. In the 1990s, a new understanding of amnesties as instruments to terminate periods of conflict, reconcile societies and help the 'truth' to emerge appeared in the discourse of some actors in Italy, looking at successful experiences in transitional justice 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 opposing parties, Giovanni Pellegrino (Democrats of the Left) and Alfredo Mantica (National Alliance), both members of the Parliamentary Committee of Inquiry, as one of the 'possible solutions to come to terms, once and for all, with the past'. They suggested renouncing 'a retributive model of penal justice in favour of a system that would allow the events to be retraced and establish not only responsibility for the crimes, but also contextualize them historically . . . for the benefit of a historical memory shared by all Italians' (Mantica and Pellegrino, 2000).

The argument about coming to terms with the past was advanced by left-wing promoters of proposals for pardon especially in the late 1990s,³⁵ in a context perceived as favourable to reopening a public debate on a political ‘solution to a problem that is not just of criminal nature’.³⁶ Attempts to re-politicize and re-legitimize clemency as a political act with social and humanitarian aims were nevertheless strongly opposed by right-wing representatives deploying respect for ‘the sorrows of victims and their expectations of justice’³⁷ to justify the necessity ‘even after many years, [for] rigour and severity’.³⁸ 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 into a commitment to support the victims than into an instrumental use of crime and punishment for electoral purposes. It also epitomizes, 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-1990s, against a background of corruption scandals, judicialization and moralization of politics, inaugurated a populist use of the criminal law and demagogic ‘law and order’ campaigns, which 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 discourses: 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 delegitimized concerns for rights, judicial equity and consideration of socio-political circumstances (Fiorentino and Chiaramonte, 2019; Fiandaca, 2013; Rossi, 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 reached to a dead end.³⁹ As argued by Rayner (2006), political actors tended to see the context as not favourable to the social and political acceptance of an amnesty for the ‘years of lead’. The ‘terrorism emergency’ was reactivated at both the international level – with the 9/11 attacks – and the 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 proceedings started against some former left-wing militants residing in France since the 1980s.⁴⁰ As a display of cooperation between two right-wing governments eager to demonstrate ‘governing through security’, the politics of informal asylum – or ‘the Mitterrand doctrine’ – that allowed several former militants to live in France came to a sudden halt. Because of his reputation as a crime novelist and the mobilization of French intellectuals against his extradition, the case of Cesare Battisti in 2004 received greater media coverage.⁴¹ The debates surrounding it symbolically crystallized, 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, supported the suspension of Battisti's extradition on the grounds that he had abandoned the armed struggle over 20 years earlier, formed a family, found a job and become a successful novelist. Punishment therefore no longer made sense for Battisti and for other 'political refugees', because resocialization and renunciation of 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 very emotive language about victims' sorrow and need for 'justice'. Italian responses to the *affaire* mostly came 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' characterized 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 not only defended the validity of their decisions and the emergency legislation, but also presented themselves as the embodiment of a professional expertise delegitimizing Battisti's French supporters as 'laypeople' and 'giving voice to real victims' suffering and quests for justice' (Fiandaca, 2013: 106; Rossi, 2007).⁴²

Although the case revived the issue of amnesty, actual proposals and discussions in Parliament were only short-lived.⁴³ 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 and Rechtman, 2009) was particularly visible in Italy regarding the 'victims of terrorism' of the 1970s.⁴⁴ The main associations (founded in the 1980s) became more active and visible at national level in the 2000s, along with the creation of 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 a 'Day of remembrance dedicated to victims of terrorism and bombings of such origin (law 56/2007)'. Institutional support to victims and their families was long overdue, but right-wing politicians, activists and commentators routinely invoked their feelings and interests to oppose clemency and promote a punitive discourse denouncing supposedly lenient criminal justice policies that benefit 'terrorists' at the expense of their victims (Garland, 2001; Pratt, 2007; Simon, 2007). Over the past two decades, right-wing politicians and activists not only opposed clemency proposals but also staged several protests on the occasion of the release on parole of former militants or the participation in public talks by former militants who had long since served their sentence.⁴⁵ Their successful resocialization or their release, even after over 20 years in prison, were portrayed and denounced as a scandal, a 'moral harm' to victims, or the sign of excessive leniency in the penal system. These orchestrated expressions of condemnation and public shaming can be assimilated in 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 is therefore not the result of weariness towards the issue of the armed struggle of the 1970s, but rather the product of a series of historical and political dynamics that have led to its increased political instrumentalization. Indeed, the penal treatment of former militants has become 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 lies in the fact that the decade escapes a clear and narrow definition in terms of 'conflict' or 'criminality' and sits in 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 spread of a new 'penal doxa' (Wacquant, 1999) emphasizing 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 prevails over non-judicial reconciliation mechanisms (Jeffery, 2014; Lessa and Payne, 2012; Lutz and Sikkink, 2001; Sriram, 2003). Over recent years, amnesties have been 'too easily dismissed as the absence of accountability, the very embodiment of impunity' (Mallinder and McEvoy, 2011: 109), delegitimized 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 in the same direction and testify to changing attitudes towards the capacity and necessity of criminal justice to establish historical truths and responsibilities for past violence.⁴⁶

The case of the 'years of lead' in Italy is useful in this perspective, because it illustrates the limitations and effects of individual criminal accountability in addressing the legacy of collective violence, in contexts considered as democratic and therefore in the absence of regime discontinuity and formal transitional justice mechanisms. The absence of amnesty and the judicialization of the 'armed struggle' in Italy have structured and exacerbated, rather than dissolved, the tension between 'truth' and 'justice', criminal accountability and political responsibilities, because it failed to produce, or even precluded the possibility for a comprehensive account of what happened, how and why. Whereas in post-conflict and post-authoritarian societies amnesties tend to decriminalize 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 for 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 has 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 it 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 strong punitive response, which 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, delegitimized both as tools of penal management for common offences and as a 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 attitude, which served the political interests of right-wing populist actors.

Often ascribed to long-lasting political divisions and the 'extraordinary' character of the 'years of lead', the trajectory of the failed amnesty for convicted militants was here re-inscribed into the recent history of 'ordinary' Italian penalty. This enabled the demonstration 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 was 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 the presence of armed police forces and both the Minister of the Interior, Matteo Salvini (League), and the Justice Secretary, Bonafede (Cinque Stelle), and broadcast on TV and social media, perfectly exemplifies the entanglement of more recent forms of penal populism with the political instrumentalization of the 1970s. Hence, amnesty for the 'years of lead' has been eschewed by the intertwined transformation of the political and the penal in Italy since the 1990s. By re-situating the failed amnesty of the 'years of lead' in this wider context of the 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 the oblivion of socio-political circumstances. The reliance on criminal law and punishment, including at international level, to manage social and political problems leads the (criminal) act to be insulated from the social and historical context that made it possible, confounds the perpetrator with the causes, and therefore devises solutions of limited social effectiveness. A fortiori, clemency measures retain the potential to reaffirm the legitimacy of the political in defining problems and identifying solutions outside courts and tribunals.

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Notes

1. Commonly called ‘years of lead’, this period has been qualified by different commentators as ‘low intensity civil war’, ‘terrorism’, ‘opposed extremisms’ and ‘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 on 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 who had escaped to France wrote a letter to *Lotta Continua*, the paper of the homonymous leftist organization, 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 7 April, and 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 years in prison 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 affirmed his public condemnation of armed political violence. The text was published in *Il Manifesto* on 22nd March 1981.
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 the subject of public and parliamentary discussion.
13. Radical Party, Proletarian Democracy, Independent Left and some members of the Communist Party and the Socialist Party.
14. 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).
15. Cossiga’s interpretation of the ‘years of lead’ was revealed in his letter to the Justice Secretary, Claudio Martelli, on 14 August 1991, partly reproduced in De Gregorio (1991).
16. URL: https://www.camera.it/_dati/leg09/lavori/stampati/pdf/32940001.pdf

17. A group of lawyers from Milan collaborated with Proletarian Democracy to draft the bill presented in 1985.
18. The letter was leaked to the press and published in *Il Manifesto* on 24 May 1984.
19. Curcio was one of the founders of the Red Brigades in 1970. He was detained from 1976 until 1998. He was released on day parole in 1993 and has worked since then in a publishing cooperative.
20. In 1991, during its annual congress the party split into a majority joining the Democratic Party of the Left and a minority creating the Communist Refoundation Party.
21. This redefined Italian politics to the extent that this period is commonly considered to be the end of the first Republic.
22. *Forza Italia* was founded and led by the Italian businessman and media tycoon Silvio Berlusconi.
23. The party was created in 1994 by a merger of the post-fascist Italian Social Movement (formed in 1946) and some politicians from the disbanded Christian Democracy party. It merged with Berlusconi's *Forza Italia* in 2009 into The People of Freedom, but a new split led to the creation of Brothers of Italy in 2012.
24. The Northern League was part of the coalition government led by Berlusconi in 1994 and has since become one of the largest political forces.
25. Four proposals were presented between 1987 and 1992, but only bill C4395 (6 December 1989) was actually debated.
26. Commissione Giustizia, 19 December 1989. URL (accessed 23 March 2021): http://legislature.camera.it/_dati/leg10/lavori/Bollet/19891219_00_04.pdf.
27. Commissione Giustizia, 19 December 1989. URL (accessed 23 March 2021): http://legislature.camera.it/_dati/leg10/lavori/Bollet/19891219_00_04.pdf.
28. Commissione Giustizia, 26 September 1991. URL (accessed 23 March 2021): http://legislature.camera.it/_dati/leg10/lavori/Bollet/19910926_00_03.pdf.
29. 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.
30. Commissione Giustizia, 26 September 1991. URL (accessed 23 March 2021): http://legislature.camera.it/_dati/leg10/lavori/Bollet/19910926_00_03.pdf.
31. As an example, the last law of amnesty and *indulto* for non-political crimes was passed in 1990 and the last *indulto* in 2006, in contrast to more than 30 amnesties and *indulti* granted between 1945 and 1990.
32. Bill S1058, 11 March 1993; Bill C2329, 3 March 1993; Bill C2216, February 1993.
33. Commissione Giustizia, 21 July 1993. URL (accessed 23 March 2021): <http://www.senato.it/service/PDF/PDFServer/DF/40705.pdf>.
34. Senator Emilio Molinari (Green Party, formerly Proletarian Democracy) in the Justice Commission, 20 October 1993.
35. It is worth noting that, whereas most of the proposals were initiated by left-wing politicians, a right-wing MIP from the National Alliance presented a proposal for *indulto* to include specifically far right militants sentenced for the 1980 bombing in Bologna.
36. 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* ('Continuous Struggle') and a well-known intellectual, ended, after nine years, with a custodial sentence for complicity in the murder of a police official in 1972.
37. Commissione Affari Costituzionali, 9 September 1997. URL (accessed 23 March 2021): http://leg13.camera.it/_dati/leg13/lavori/bollet/frsmcdin.asp?percbolel=/_dati/leg13/lavori/bollet/199709/0909/html/01/&pagpro=7n1&all=off&commis=01.

38. Commissione Giustizia, 2 April 1997. URL (accessed 23 March 2021): 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 a law to provide financial assistance and indemnities to victims and their families was being debated at the same time, but it was only in 2004 that a comprehensive law in favour of victims was adopted.
39. All proposals in this period were for *indulto*, rather than amnesty, except for those championed by Senator for Life Cossiga in 2004 (S2824), 2006 (S343) and 2008 (S198).
40. 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 President Temer a few days before Bolsonaro's inauguration. Marina Petrella's extradition procedure started in 2007, but was then suspended by French President Sarkozy owing to her deteriorating health condition.
41. A former member of the armed group called *Proletari armati per il comunismo*, Battisti was sentenced *in absentia* in 1985 for the murder of two people and for complicity on two additional murders.
42. Bourdieu (1986) analysed the divide between laypeople and professionals as an effect of the force of law.
43. Except for few left-wing MIPs like Giovanni Russo Spina (Communist Refoundation Party) and Paolo Cento (Green Party), the issue was not raised in Parliament.
44. The role of victims in the Italian criminal justice process remains limited, although victims of terrorism and the Mafia have increasingly been the object of media and political attention in the last two decades.
45. This is particularly visible for Renato Curcio, whose public talks (in his role as a publisher) are often cancelled because of political pressures and protests by victims' associations and far right sit-ins.
46. The Rome Statute of the International Criminal Court, for example, limits the possibility of national governments to grant amnesties.

References

- 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 and Santosuosso A (1982) *Il processo politico in Italia*. *Critical del Diritto* 23–24: 9–25.
- 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.
- Corda A (2016) *Sentencing and penal policies in Italy, 1985–2015: The tale of a troubled country*. *Crime and Justice: A Review of Research* 45(1): 107–173.
- 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.

- 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 and Pasquino G (1983) *Terrorismo e violenza politica*. Bologna: Il Mulino.
- Dematteo L (2006) Le refus de l'amnistie des 'années de plomb': Imbroglia historiographique et déni de la conflictualité. *L'Homme & la Société* 159(1).
- Fassin D (2017) *Punir, une passion contemporaine*. Paris: Seuil.
- Fassin D and 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.
- Florentino D and Chiamonte X (2019) *Il caso 7 aprile. Il processo politico dall'Autonomia Operaia ai No Tav*. Milan: Mimesis.
- Freeman M and Pensky M (2012) The amnesty controversy in international law. In: Lessa F and Payne LA (eds) *Amnesty in the Age of Human Rights Accountability*. 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 HC (eds) (2006) *Black's Law Dictionary*, 8th edn. 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 décanonnements 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 and 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. URL (accessed 23 March 2021): <http://www.senato.it/service/PDF/PDFServer/BGT/301446.pdf>.
- Melossi D (2001) The cultural embeddedness of social control. *Theoretical Criminology* 5.
- Nelken D (1996) The judges and political corruption in Italy. *Journal of Law and Society* 23(1): 95–112.
- Nelken D (2005) When is a society non punitive? The Italian case. In: Pratt J et al. (eds) *The New Punitiveness*. Cullompton: Willan.

- 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).
- Pratt J (2007) *Penal Populism*. London: Routledge.
- Pratt J et al, (eds) (2005) *The New Punitiveness*. Cullompton: Willan Publishing.
- Prette MR (ed.) (1994) 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. Usages et traitements des 'années de plomb' dans l'Italie contemporaine (1968–2010). 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 and Sparks R (eds) *Travels of the Criminal Question*. Oxford: Hart.
- Simon J (2007) *Governing through Crime*. New York: Oxford University Press.
- Sommier I (1998) *La violence politique et son deuil. L'après-68 en France et en Italie*. Rennes: PUR.
- Sommier I (2000) Repentir et dissociation: la fin des 'années de plomb' en Italie. *Cultures et Conflits* 40(4): 43–61.
- 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 (1989) *Democracy and Disorder. Social Protest and Politics in Italy, 1965–1975*. Oxford: Clarendon 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: Periódico de Opinião Pública e Conjuntura Política* 8(2): 62–68.
- Vauchez A (2004) *L'institution judiciaire remotivée*. Paris: 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(3).
- Wacquant L (2009) *Punishing the Poor*. Durham, NC: Duke University Press.