

Elites, democracy, and parties in the Italian Constituent debates, 1946–1947

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Discussions of the role and legitimacy of elites in democratic societies have rarely taken the shape of debates about the internal organization and working of political parties. In this article, I purport to look at the party as a battling ground for competing accounts of the role elites should play in modern democratic societies. However, I will not focus on theoretical analyses of the party. Rather, I will look at how political actors discussed the party in the context of the constituent debates at the Italian Constituent Assembly of 1946–1947. These debates do not explicitly deal with the role elites should play in democratic society. Instead, they center on whether and how the constitution should regulate political parties. Yet while discussing details of legal regulation, the constituents offered contrasting understandings of modern democracy, competing accounts of the role of the masses as well as of the elites, and creative attempts to create stable compromises between the two in a changing society. It is through the reconstruction of these rather practical debates that I aim to uncover how one of the main questions of modern democracy—the relation between elites and masses—has been dealt with politically. This, I suggest, is not only interesting for political or historiographical reasons, but also has theoretical relevance. Not only it directly speaks to recent debates about partisanship and intraparty deliberation, but it is also by looking at political institutions and the reasoning behind their creation that one can recover complex political thinking.¹ This, I believe, is made particularly interesting by the fact that it results from long and complicated processes of negotiation of contrasting values as well as from the translation of political ideals into working institutional structures. Reconstructing these processes of negotiation and translation is what I plan to do in this article.

1 | THE PREMISES

The relationship between elites, parties, and democracy changed greatly in the years between the end of the 19th century and the first decades of the 20th. This period of Italian history is marked by a series of attempts to make traditional legal theory fit with the fast-changing political reality, which in turn fed into attempts to regulate politics, the state, and its legal system.² One of the main figures in this context is legal theorist Vittorio Emanuele Orlando

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(1860–1952), who inaugurated the Italian “formalist school.”³ This represented the dominant approach to the study of the state and its relationship to the people from the turn of the century up until the fascist regime, but its influence was felt also during the works of the Constituent Assembly. One of the key tenets of the formalist school was its account of the state. Far from being a political actor, the state is a legal structure, a legal persona: it is above all political struggles, as it is identified with the legal system in its neutrality, abstractness, and impartiality.⁴ According to this view, the state is the ultimate source of authority—it is the bearer of sovereignty—and from it descends the power of all other institutional bodies (Fioravanti, 1990). The key institution of the state is the “gabinetto,” the cabinet. This is not a partisan political office, but rather mediates between the people as represented in parliament, on the one side, and the political will of the king expressed through the royal prerogative, on the other. The mediation between these two poles, as operated by the cabinet, implies that state legislation is the product of no specific political will (Orlando, 1889). Consequently, political parties are completely bracketed off. The legitimacy of the cabinet derives from the parliament but also, crucially, from the monarch. Hence, parties only have a limited influence in shaping the cabinet’s decisions. Moreover, parliamentary actors are not mandataries of the people. Even less so, they are not representatives of group interests. By contrast, they have been selected to interpret and shape the will of the nation. To do so, they must remain free from mandates and partisan affiliations. The representative process, according to Orlando, is thus, only functional insofar as it allows for the selection of the best candidates, the elite, and has no connection to the representation of interests or the composition of society. As many other liberal theorists in the 18th century, Orlando and his school attributed no role to political parties: the state had a juridical personality of its own, and its representatives were an elite of likeminded notables with no commitment to partisanship. This made the party irrelevant, both as a political actor and as an object of scholarly enquiry.⁵

However, the formalist school started to be challenged after the end of World War I. As was the case around Europe, Italy was shaken by the irruption of the masses into politics. This put the traditional liberal state, with its emphasis on the elitist dimension of parliament and cabinet neutrality, under relevant pressure and led to an exacerbation of social conflict, which in turn fed into theoretical analyses. Scholars, such as Santi Romano (1875–1947), relied on German and French institutionalism to emphasize the plurality of competing forces present in society and the inherent normativity of social facts (Lanchester, 1990). Law does not arise from the neutral workings of the state, but results from the juridical character of society, which expresses itself through the groups composing it. Yet this attention to social pluralism did not translate into a reassessment of the status of the party. Instead of recognizing the party as the representative of society’s pluralism, Romano turned to the theory of corporations. These were the basic units of social organization and had to be represented politically. In addition, for all their interest in pluralism, Romano and his colleagues never went beyond the liberal formalist dogma of state sovereignty (Gregorio, 2008). The state remained the source of all political authority, even though social facts had normative juridical character. The emphasis on corporations as connected to state sovereignty thus helped challenge liberal formalist orthodoxy, but did not assign any specific role to the political party, which remained in the background (Gregorio, 2008).

This situation changed toward the end of the 1920s, when two events made understanding and theorizing the party, its elite and the relationship to the masses an inescapable priority. First, in 1929 parliament passed an internal regulation recognizing parliamentary groups as official political actors. It also deliberated that seats within parliamentary groups had to be distributed proportionally to the number of votes received by each party. As a result, parliament stopped being comprised of individual figures, freely interacting and deliberating. By contrast, the institutionalization of parliamentary groups made the party protagonist in parliament. Second, toward the end of the ‘20s the Partito Nazionale Fascista became increasingly more prominent. This sparked debate about the role, function, and nature of political parties in general and of the PNF in particular. While initially supported by Orlando and the liberal formalists as a means to restore the sovereignty of the state against the irruption of the masses, the PNF soon raised an array of unexpected questions. Far from being the means to restore the supremacy of the legal state, the PNF started acting according to its own—very political—logic. Not only it attacked the royal prerogative, thus, dismantling one of the key features of liberal parliamentarism, but it also imprinted a clear political direction onto the Italian state. This became

evident in the moment the PNF started deploying a narrative of revolution, thus, hinting at its role as interpreter of the people's will in a new constituent phase (Fioravanti, 1990).

Sergio Panunzio (1886–1944) and Carlo Costamagna (1880–1965) analyzed the changes underwent by the Italian state in the '20s and early '30s. Their focus was on the role and function of government in the modern state, which had passed from one of mediation between king and parliament to one of prominence over both institutions. With Mussolini, government was no longer Orlando's neutral cabinet, but a highly political office, tightly connected to the PNF. The party thus became, for the first time, object of extensive investigation. It was studied as the bearer of a generalized vision of politics capable of creating political unity. This unity derived from the party's capacity to organize the various groups composing society into corporations. By organizing society along corporatist lines, the party would indeed unite the population into a whole, working to pursue a shared set of political goals. These would then be reflected and endorsed by an increasingly more powerful, centralized, and personalized government. The result, according to the so-called "jurists of the regime," was a close entwinement between party and government aimed at organizing social pluralism into unity and giving rise to the fourth function of the state: the "corporative function."⁶

By the time Panunzio had theorized the corporative function of the state, it was evident that Orlando's liberal state was no longer in existence. The fascist attempt to bring together masses and governmental elites via the PNF demonstrated that the state was not a neutral legal actor. This had a long-lasting impact on subsequent legal thought. It is indeed in the late '30s and early '40s that a new generation of scholars made the government's political prominence the corner stone of Italian state theory. This new generation included thinkers, such as Vezio Crisafulli (1910–1986), Piero Calamandrei (1889–1956), and Costantino Mortati (1891–1985), all of whom were educated during the Fascist *ventennio* but played pivotal roles in the constituent phase and in the subsequent transition to the republican regime. They differed from Orlando's liberals in that they did not assume the state to be neutral, and rejected the dualism of king and parliament typical of the 19th century liberal state. By contrast, and similarly to the jurists of the regime, they emphasized the prominence of politics in directing state action. Yet, differently from Panunzio and his colleagues, they did not believe this to derive from the corporative function of the state. On the contrary, Mortati argued that the latter was but a peculiarity of the fascist regime, which in turn was but a transitory phase in the development of the modern state (1940). The core feature of the modern state was the political function of government: its capacity to have a unitary political agenda.⁷ Yet government would be powerless without the background work of the political party. The latter translated society's competing political visions into political programs. It thus assumed a quasi-normative function, as whatever it set to be its political goal could become the object of governmental action and the source of state legislation. And, it is precisely the central role played by parties in setting the governmental agenda that became the focus of the constituent debates in 1946 and 1947. These offered the stage for old and new understandings of the party to compete and shape the relationship between masses and parliamentary elites in the newly founded Italian republic.

2 | THE CONSTITUENT ASSEMBLY (1946–1947)

The period preceding the election of the Constituent Assembly in June 1946 saw the role and public perception of political parties vary substantially. When Mussolini's dictatorship fell, the temporary head of government Pietro Badoglio forbade the creation of parties and constituted a government of experts. In his view, the proliferation of political parties threatened national unity and was not compatible with the national interest (Gregorio, 2008). Yet this decision was not to last, as the parties' role in the resistance had made their presence and influence on the territory too widespread to be dispensed with. Although banned until the end of the war, parties formed the Comitato di Liberazione Nazionale (National Liberation Committee), orchestrated strategies of partisan warfare and interacted with the allies. As a result, they became protagonists of postwar politics and, soon after the liberation of southern Italy, a new government was formed with the participation of all six major political parties involved in the resistance. This was followed by a "government of transition" to manage the process of regime change and facilitate the installation

of the Constituent Assembly. Yet notwithstanding the parties' prominence on the political scene, when the time came to debate their role and function in the new Italian constitution several tensions came to the fore. As the following paragraphs will discuss, the assembly was divided along different lines of fracture that became visible when discussing whether the party should be constitutionally regulated. What was at stake, I argue, was not just the regulation of the party, but also how masses and elites would interact in the newly established republic.

The first signs of tensions surfaced when representatives of all elected parties met in the First Subcommittee of the Commission for the Constitution to discuss the general structure of the constitutional project. The tension crystallized in November 1946, when the commission debated whether the political party should figure in the constitution and, in case, how. Most deputies took it for granted that, given the prominence of mass parties, these should be the object of a specific set of constitutional norms. However, this did not appear equally self-evident to proponents of Orlando's liberal parliamentary state. Deputy Ottavio Mastrojanni voiced scepticism.⁸ As he made repeatedly clear, making the party an object of constitutional regulation meant attributing it functions, roles and responsibilities traditionally assigned to the state. This would, in turn, give to the largest parties in parliament—the mass parties—means to control and “permanently exert their influence on all organs of national life” (ACa, p. 411). Partisan control of state apparatuses had two consequences: first, it would have emptied all parliamentary functions of their relevance and purpose. Parties would substitute themselves for parliamentary and administrative organs, thus, forcing deputies “to become employees of their party, as they would have to be accountable to the latter in the exercise of their mandate” (ACa, p. 411). Second, this substitution would “dig up the fascist system, where government's representatives were constrained in the exercise of their functions by the Fascist Federation” (ACa, p. 411). This line of argument, it should be noted, is a reiteration of the traditional formalist critique of party politics: while the parliament should be a space for deliberation among an elite of notables, the intromission of parties would shift the balance towards the masses, thus, forcing deputies to respond to the requests of the extraparlimentary party and its members.

Yet Mastrojanni was not alone in his defense of the elitist model of parliamentary politics. His colleagues working at the first draft of the first article of the constitution publicly maintained that sovereignty could only belong to the state, understood as a legal persona. This not only went hand in hand with the denial of constitutional recognition for the party, but it was also reflected in the liberal party's decision to run for elections without a program. This followed in the footsteps of a series of publications by various liberal thinkers, among whom Benedetto Croce, who defended the formalist understanding of the party as a “preparty”: an informal grouping of notables who, when elected to parliament, would deliberate freely and independently of all partisan mandates (Gregorio, 2008). The liberal party thus decided not to give itself a central organization and did not make any promise to the electorate, the idea being that representatives should be chosen because of their personal capacity to understand the interest of the country and not on the basis of partisan—and hence partial—affiliations. This approach was clearly underpinned by the same 19th century's vision of parliamentarism that informed Mastrojanni's intervention in the First Subcommittee and his colleagues' defense of state sovereignty. In the first months of the Constituent Assembly, liberal deputies were thus fundamentally at odds with ideas of popular sovereignty, mass parties, and party competition.⁹

However, the majoritarian view in the assembly embraced the principle of popular sovereignty and assumed the overarching presence of parties as the defining feature of modern democracy in general, and of the new Italian republic in particular. This view was supported by members of all mass parties: Christian Democrats, Communists, and Socialists alike. As a prominent member the latter group, deputy Lelio Basso was tasked with drafting a first version of the article recognizing constitutional dignity to the party. This was meant to offer a starting point for debates about the role of the party and read as follows: “all citizens have the right to freely and democratically organize themselves in political parties, with the aim of concurring to shaping the political life of the country.”¹⁰ Basso explained the need to constitutionally recognize the party as part of a wider “process of transformation of our democratic institutions, whereby parliamentary democracy, not being able to respond to contemporary challenges, is being substituted by the democracy of parties” (ACa, p. 409). This process of transformation necessarily passes through the constitutional recognition and regulation of the party, as this alone can guarantee the evolution from the “purely individualist forces of the old regime”

to the “new conception of party democracy” (ACa, p. 409). To strengthen the point, Christian Democrat Dossetti added that the very survival of democracy was intimately tied to the constituents’ capacity to discipline and consolidate “this new democratic reality” (ACa, p. 411). Needless to say, Dossetti was referring to the irruption of the masses into politics, which could only be managed through the mediation of political parties, whose fundamental role had to be recognized and disciplined in the constitution. Even Palmiro Togliatti, the leader of the Communist Party, joined the chorus of voices defending the relevance of political parties for modern democracy. While stressing the importance of including the masses, he praised Basso’s initiative, arguing that it invited citizens to organize politically. More specifically, he maintained that the constitutional recognition of the party helped “to lift large masses from the state of disorder they currently find themselves in, thus, raising the democratic life of the country to a higher level” (ACa, p. 410). As these few quotes suggest, all the deputies who supported the constitutional recognition of the party did so out of awareness that society had changed, and politics with it. The old elitist model of the liberal parliamentary state could no longer work in postwar societies. The latter, by contrast, needed to find ways to integrate the masses into politics and the party was the designated means to that end. As such, it played a prominent role in postwar politics, and demanded respect as well as recognition. The deputies thus decided to approve a slightly modified version of the article proposed by Basso and send it over for discussion to the plenary meeting of the Constituent Assembly.¹¹ This, as it will become clear in the following paragraphs, opened a can of worms. Although the constitutional recognition of the party was by then widely accepted, deputies disagreed on the specific terms and implications of the recognition.

3 | MORTATI AND THE PARTY

As soon as the draft of article 47 arrived at the plenary meeting of the Assembly, the deputies immediately focused on the second half of the article, which recited “and to concur with democratic method to determining the political life of the country.” The bone of contention was the reference to the democratic method. The members of the First Subcommittee had purposefully chosen vague terms, to leave the task of specifying the meaning and purpose of such a delicate passage to the Assembly. And indeed, the deputies spent most of their time debating the suitability of including references to democracy in an article on political parties. The main question was what “democratic method” could mean, in the specific context of the article. Would it refer to the process of formation of the party? To its method of action in relation to other parties and the state? Or to its internal working? While the discussion raged, Christian Democrat and constitutional theorist Costantino Mortati developed an amendment to article 47. It read as follows “All citizens have the right to freely gather in political parties, which should align to the democratic method in their internal organization as well as in all actions aimed at influencing national politics.” The idea behind the article was to clarify the ambiguity of the initial draft and offer some fixed points from which to develop a more structured debate in the Assembly. But before going into the details, it might be necessary to examine his understanding of the party, as this helps illuminating the reasoning behind his proposed amendment.

Mortati was born in 1891 in the south of Italy, studied law, philosophy, and political science in Rome under the guide of Panunzio, the fascist theorist of the state’s corporative function. During the war, he made contacts with eminent members of the Christian Democracy, among whose ranks he was elected at the Constituent Assembly. He was a well-respected member of Assembly, and contributed to writing large parts of the constitution. Much of his influence derived from his reputation as a fine constitutional thinker, and his career exemplifies how Italian legal theory had changed from Orlando’s liberal formalism, through the experience of fascism to the postwar focus on the normativity of society and the importance of political parties.¹² It was indeed his 1940 book *Costituzione in senso materiale* (Constitution in the material sense) that set the standard for thinking about the role of the masses in modern politics and contributed to informing debates at the Constituent Assembly. Following onto the footsteps of scholars active in the ‘30s, such as Panunzio and Romano, Mortati believed neither in the separation between law and politics, nor in the formalist account of the state as a legal persona. By contrast, he built on the work of Romano to argue that society is the source of all normativity including legal normativity.¹³

According to Mortati, all constitutions have a formal and a material aspect. Starting with the first, the “formal sense” of the constitution is the text and wording of the legal document. It regulates the working of state institutions but has no normative value of itself. It only *describes* the mode of existence of the legal-political order, but has no capacity to bring it into existence, let alone to justify its content or enforce obedience. By contrast, the sources of normativity are found in the material constitution, away from the formalism of the legal text and closer to the spontaneity of society. The material constitution is made of two aspects: the essential content and the normative material elements. Starting with the former, the normative essential content of the constitution is a *fine politico*, or “political goal.” This is a principle of unification and coordination of social and political life and, as such, shines through the formal legal text and gives it validity.¹⁴ Yet for its existence, this political goal necessarily depends on the presence of “normative material elements.” These are the concrete configuration of socioeconomic relations, which in turn is “the community itself, yet no longer considered as an undistinguished whole, but as organized according to a minimum level of organizational elements that are necessary to conceive of society as capable of action” (Mortati, 1998, p. 74). Society is thus the source of normativity for the constitutional formal text, as it is from it that the *fine politico* arises and it is through it that it maintains its prescriptive validity. The material aspects of the constitution precede and inform its formal legality.

The duality between formal and material constitution is thus meant to highlight the importance of society in shaping the political life of a country. Yet society is not a uniform actor with a homogeneous will, as this would be a nonexistent abstract entity. In the same way, also the sum of isolated individuals could not add up to form “society” as an entity capable of action. On the contrary, and this is where the party becomes relevant, society is always comprised of a plurality of social groupings—the normative material elements—, which Mortati later called *comunità intermedie* or “intermediate communities” (Mortati, 1959; see Pupo, 2015). The party is indeed the institutional arm of the intermediate community. It translates the community’s unarticulated preferences into systems of values and presents them not just as the “expression of a purely existential entity, but rather as a deontological one” (Mortati, 1998, p. 89). In other words, it is thanks to the party that the plurality of communities comprising society express their normative potential. The party turns their values into a *fine politico*, and competes for its affirmation as the source of constitutional normativity.

Although social normativity always finds ways to impose itself on the ruling elite, the characterizing feature of democratic modernity is that it does so through the party. Yet this can no longer be organized according to the 19th century model. Rather, it must adapt to the “new numerical entity of the electors as well as to the increased heterogeneity of their composition” (Mortati, 2015, p. 8). To do so, the party must play a double role: on the one hand, it should open itself up to the masses, let them take the lead and set the political agenda. On the other, it should not give up on forming elites and encouraging their deliberation in parliament. It was thus necessary to find the point of equilibrium between masses and elites in the organization of the party and Mortati’s proposed amendment to article 47 was an attempt at that, or so I argue. As mentioned above, this stated that the party should adopt the democratic method both internally and externally. Mortati did not spend much time thinking about the reference to democracy in the external life of the party, as this went hand in hand with the widespread acceptance of party pluralism.¹⁵ By contrast, the reference to democracy as applying to the party’s internal life required further development, as this was meant to involve the masses into party politics, while also opening space for elite formation.

Starting with the latter, Mortati was acutely aware of the risks incurred by parties, especially when run by oligarchies. Like Ostrogorski—whom he extensively read—Mortati feared the “substantial domination of cliques (*“cricche”*) of party leaders” (Mortati, 2015, p. 7). Yet to counter oligarchy, he did not believe temporary leagues to be a viable solution. On the contrary, he aimed to develop a model of political party capable of training, maintaining, and controlling its elites. These would rise to the top because of their personal qualities as well as training. For Mortati, the party should be in charge of the education of its elite, offering courses and trainings of various kinds. At the same time, possession of titles as well as political experience should play a key role in the choice of party managers and candidates. Although, as it will become clear later in the article, party candidates should be chosen by the membership through primary elections, these would be trained and preselected by the party. In addition, Mortati conceded that party management would also be entitled to put forward a certain number of candidates co-opted among the party elite—all people whose names would have “national resonance” (Mortati, 2015, p. 16). Furthermore, the elites would be tasked

with educating the masses and translating their spontaneous preferences into fully developed political strategies. The party is thus an “indispensable means to form the political conscious of the citizens, to guarantee its orderly expression, and to allow the constant and aware influence of public opinion onto the state’s political orientation” (Mortati, 2015, p. 6). This educative role would be strengthened by the constitutional requirement of internal democracy. This would empower the elites with instruments to control the means of participation by the party’s membership. By regulating participation through rules and procedures, the party elite would be able to “redirect (the electors) to a style of political action internal to the schemes proper of the democratic regime” (Mortati, 2015, p. 8). Equally, the party elite would be in charge of meeting the requirement set by article 47: this entailed managing the budget, overseeing internal practices of direct democracy, and relating with the Constitutional Court, which would be the institution enforcing article 47. Last, Mortati was keen to argue that parliamentary deliberation would not be undermined by the presence of organized mass parties: by contrast, the old parliamentary model of free deliberation would be maintained, even though modified. In their legislative role, deputies would not be simple mandataries of their party members. Rather, they would elaborate upon the inputs received from the party and transform them into law. To go back to Mortati’s distinction between the formal and the material constitution, the party elite would manage the process through which the spontaneous will of the intermediate community—the normative material element—is articulated into a *fine politico*, and eventually translated into a formal legal text. Elites are thus the point of connection between the material and the formal aspects of the constitution.

At the same time, party elites would be pointless without the actual democratic involvement of the masses. This is where Mortati’s amendment to article 47 becomes relevant again. While the requirement of internal democracy certainly gave the elites instruments to control party membership, it was also meant to establish avenues for popular participation to the life of the party. As Mortati argued in the Assembly, “it is indeed through the parties that citizens become able to organically express their will” (2015, p. 27). This expression of will takes place through a variety of instrument of intraparty democracy.

The first and most important is the recourse to party primaries to choose candidates. Although, as discussed above, the candidates are all trained by the party management, it is the membership that chooses who, among the trained candidates, will run for the party and in which position in the closed electoral list. This procedure would force candidates to campaign among their party’s basis, get to know its membership and learn how to incorporate its requests into the party’s electoral program. The result is that the party, differently from the 19th century, would “achieve more concreteness in its action, and more adherence to actual specific problems in its program” (Mortati, 2015, p. 8). Similarly, Mortati’s intraparty democracy required publicity of the party’s budget. The idea behind the proposal was to avoid the prevarication of lobbies over party members. In a similar vein, Mortati’s project included the internal subdivision of the party into groups: each group would be the representative of different interests and would develop its own political agenda for the party. These groups could be organized around political interests or along socioeconomic and cultural differences. Each group would have a voice in party meetings. This arrangement would give all members of the party the opportunity to contribute in shaping its agenda and prevent the monopolization of the latter by the wealthiest or better educated members of the party. In addition, it would facilitate the participation of members from the lower classes. Last, Mortati was adamant to stress the importance of institutionalizing forms of interaction between the party and other associations including unions, religious associations, or charities. This interaction would offer party members alternative channels through which to influence the life of the party, and would give the party a better sense of the will of its membership. To sum up, measures of internal democracy were meant to channel the inherent normativity of the material constitution into the life of the party and, through it, into national politics. It should thus be clear why Mortati assigned so much importance to intraparty democracy: by making elites and masses coexist, it would give the party all the means necessary to extrapolate normativity from the material elements of society and inject it into the formal constitution.

Mortati’s amendment to article 47 was an attempt to clarify some of the questions raised by the original draft of the article, especially regarding the sense and implications of the “democratic method.” Although ultimately outvoted by the assembly, Mortati’s proposal polarized the discussion around whether the internal life of the party should be object

of legal regulation and consequent control. Being neatly defined, the question forced the deputies to debate whether the party should mainly be run by a parliamentary elite, which would control the party's internal life, or should rather be the direct expression of popular sovereignty, unmediated and unregulated.

4 | ARTICLE 47

Most of the debates on article 47 took place in the first days of March and in the last days of May 1947. During this period, the deputies discussed the original draft of article 47 as well as Mortati's amendment.¹⁶ While all deputies agreed that parties should compete democratically on the political arena, they disagreed on the implications of making democracy a requirement for the internal life of the party.

Arguments in favor of intraparty democracy came mainly from the benches of the Christian Democracy, with some support gathered also from a few Liberal and Socialist deputies. For all them, shared legal standards of intraparty democracy appeared like a welcome corrective to the shortcomings of mass politics. Their argument was based on three main points. To start, democracy within the party would have fulfilled the deliberative function traditionally assigned to parliament. On a somewhat nostalgic note, Christian Democrat Calamandrei argued that parliament was no longer the place where decisions could be taken after free deliberation, as it used to be the case in the liberal 19th century state.¹⁷ This was due to the advent of mass parties on the parliamentary scene, in that deputies preferred following their party rather than deliberating about the common good. To prove his point, Calamandrei addressed his colleagues as follows: "I know perfectly well that, even admitting that I could convince you with my arguments, these would be worthless to you, as they do not correspond to the instruction of your parties ... Hence, I ask: what is the point of wasting time trying to talk and listen, when the people here assembled have already decided about all the points on the agenda? This is the consequence of the existence of political parties, of which we cannot conclude whether they are good or bad, but they exist, and this is our reality" (ACd, p. 1753). From this sombre consideration, Calamandrei deduced the need to make intraparty decision-making democratic. Because parliament was no longer a suitable arena for deliberation, it was necessary for at least intraparty deliberation to be democratic. In other words, Calamandrei defended intraparty democracy as an attempt to reproduce, in smaller scale, what was lost of 19th century parliamentarism: free and unbiased deliberation about the collective interest.

The second line of argument derived from the first, but with a technocratic twist. Although provisions regulating intraparty democracy would improve the quality of deliberation within parties, they would also give the state and its bureaucratic elite instruments to control their internal life. Indeed, a corollary of Mortati's amendment was that the Constitutional Court would regularly scrutinize parties' compliance with the democratic requirements. A group of "experts" would thus have the power to intervene in the internal life of the party, steering and influencing its decision-making process. This idea was clearly supported by Calamandrei, but was also shared by other deputies, who saw in the Constitutional Court a neutral actor capable of keeping the internal life of the party in check.¹⁸ Not only the socialist deputy Carlo Ruggiero endorsed it, but also the liberal Tommaso Corsini. Both deputies justified their position defending the impartiality and neutrality of the Constitutional Court. The latter would only act according to objective legal criteria, and no political considerations would make their way through the decision-making process. This was guaranteed by the technocratic—as opposed to political—nature of the Court. On top of that, the control of the Court would protect the newly established Republic from the risk of degenerating into autocracy. As Tupini argued on March 5, the degeneration of the parliamentary state in the '20s and '30s was due to the fact that parties did not do their job properly, but had been captured by group interests (ACc, p. 1758). Similarly, Ruggiero suggested that, if left only to the influence of the masses, parties risked adopting antidemocratic stances, as "new generations do not understand certain ways of doing democracy, because they are not used to them; older generations, on the other hand, are out of practice with democracy and sometimes do not understand it either" (ACe, p. 4115).¹⁹ Consequently, it was in the national interest that the Constitutional Court could check on parties and their working, to make sure that the lessons of recent history had been learnt.

Directly related to the above, is the third argument deployed by supporters of intraparty democracy. They maintained that the latter was necessary precisely because the masses were not to be trusted politically. Far from endorsing intraparty democracy as an instrument of popular direct participation, they saw it as an opportunity to master the vast membership of postwar political parties. Their support for article 47 was thus motivated less by a genuine interest in popular participation than by their widespread scepticism toward the involvement of the masses into politics. As Ruggiero made clear “the Italian people has not yet learnt, in its intimate spirituality, the concept of liberty. This is because we have lived through a long and serious dictatorship” (ACe, p. 4115). The only way to deal with the democratic incompetence of the Italian masses was to school them about politics. In Tupini’s words, “we believe that democracy will be successful in Italy only insofar as popular education will be realized, and demagoguery contained” (ACC, p. 1758). The best way for this to happen was to empower party elites, by giving them formal tools to educate the masses about the rules and values of democracy. And what better tool than making the party itself a democratic entity, where the people could be socialized into democratic practices and find ways to channel their spontaneous political intuitions into articulated electoral programs, under the watchful eye of their leaders?

To sum up, most Christian Democrats, together with a few liberals and socialists, defended the provision of the democratic method in article 47 in general, and Mortati’s amendment in particular, because of a mix of reasons. Some were in line with those offered by Mortati in support of his amendment, others were not. Mortati was certainly willing to impose formal checks on the internal life of the parties, but was not nostalgic of liberal parliamentarism and was not afraid of popular involvement in politics. By contrast, he believed it to be necessary to guarantee correspondence between the formal and the material aspects of the constitution. Yet it is interesting that all the arguments offered in support of his amendment could be described as elitist and democratic at the same time. Party democracy was presented as a substitute for what was lost of the old elitist model of parliamentarism, but it also included the masses in the decision-making process. At the same time, the controlling function of the Constitutional Court was meant to be a technocratic check on the will of the membership, while also protecting it against demagoguery. Last, intraparty democracy was conceived to give the elite means to tame the basis of their parties, but with the long-term goal of educating it politically. It thus follows that party regulation appealed precisely because of its ambiguity. On the one hand, it seemed consistent with the newly affirmed commitment to democracy, as it embraced democratic practices and expanded them beyond the mere electoral process. On the other hand, it also tamed the effects of the democratic involvement of the masses by channeling their action through strictly regulated procedures, which empowered the elites—be them the party elite or state officials.

The potentially elitist dimension of intraparty democracy did not pass unnoticed to the radical benches of the Assembly, where deputies of the Communist party, a few Socialists, and Christian Democrats opposed the proposed regulatory measures. They first put forward their arguments in March 1947, in opposition to the first draft of article 47, and then expanded on them in May, once Mortati made his amendment public. Their argumentative strategy developed along three interconnected axes. To start, Communist deputy Renzo Laconi gave a long speech in which he accused supporters of intraparty democracy of betraying a highly elitist vision of the party and of democracy. The conceptual core of his argument was that proponents of intraparty regulations either had a wrong understanding of democracy, or were maliciously trying to undermine the new regime. According to Laconi, the main goal of democratic regimes “is not just to guarantee the liberty of the few, but to realize those ideas and principles that have penetrated the conscious of the many, that have become the essence of large popular movements, and obtained the votes and consent of the majority of the nation” (ACC, p. 1789). In Laconi’s view, democracy is thus primarily concerned with realizing the will of the people. And the Communist Party committed to making it possible in the simplest and most straightforward way (Accra, p. 1789). By contrast, supporters of Mortati’s amendment responded to a completely different logic. In his words, their project clearly showed traces of “an age-old tendency that is connected to a doctrine of ancient and noble origins: the tendency to limit, correct, and counterbalance the agency of the people. This is a tendency that reveals distrust in the people and in its representative organs, it is a tendency to limit, restrain, and disperse the action of democratic instances, so as to prevent democracy from becoming efficient and decisive in the life of the country. It is thus aimed at depriving the democratic state of the capacity to translate the will of the people into action” (ACC,

p. 1785). As these words make clear, Laconi accused his opponents of fearing the people and, in line with 19th century liberalism, embracing the theory of the separation of power to constrain, limit, and counterbalance popular power. This was evident in that the Assembly decided, among other things, in favor of bicameralism, of the Constitutional Court and of the decentralization of power at regional level. It also reflected in the plan to make intraparty democratic practices part of the constitution. This, Laconi argued, boiled down to yet another mechanism to control the people's power. By regulating the party, he claimed, the constitution would necessarily introduce checks and balances within its internal life. To the communist deputies' mind, the internal requirements of Mortati's amendment, although formally democratic, were perfectly in line with 19th century elitism and amounted to means of constraining the actual expression of the will of the people and, with it, of democracy itself.

The second argument against the democratic method directly derived from the previous one. Laconi argued that his colleagues' main mistake was their fear of the people's power. This resulted in the misplaced assumption that sovereignty, instead of being firmly situated in the popular will, could be ascribed to abstract entities. He reminded his colleagues, "Sovereignty does not belong to us, nor to this assembly, but only to the people who are outside the Assembly, and of which we are the genuine and legitimate representatives. Hence, it is in the people, and in the parties through which it organizes itself, that resides the substance of political power" (ACc, p. 1789). In very much the same way, Christian Democrat Fiorentino Sullo argued that Parliament was no longer what it used to be in the 19th century, and hence, also current understandings of sovereignty had to change. This change required a shift in mentality vis à vis the role of the party. The traditional 19th century model, with its emphasis on parliamentary groups, was no longer suitable for mass politics: "it cannot be maintained—claimed Sullo—that parliamentary groups today represent the totality of the country's political life; at best, they represent only an arm of the party" (ACf, p. 4081). And article 47, with its emphasis on regulating the life and functions of the party, shifted the attention upwards toward the parliamentary elite. The result was that it overlooked the actual reality of modern mass parties: far from having a merely ancillary role for the parliamentary group, they were the fora where the country's political life was shaped. But for this to happen, his communist colleagues claimed, the party should not be regulated, as any rule defines, limits and constrains the actions of the party, preventing it from expanding its functions and truly reflecting the will of the popular sovereign. A clear point in case was offered by the communist leader Palmiro Togliatti, who argued that the democratic requirement introduced by article 47, and then clarified by Mortati, was an attempt to reduce politics to parliamentary politics, thus, limiting the domain and extension of popular sovereignty. He explained himself with an example: if the democratic method is a formal requirement, then an anarchic party would automatically be excluded from political competition, both because it would probably not comply with the requirements of intraparty democracy and because its goal would clearly not be democratic. Yet, Togliatti maintained, this was fundamentally antidemocratic. The decision of excluding one party from the political arena should not derive from legal regulations. On the contrary, it is only through open contestation and competition that an anarchic party should be defeated. Admitting otherwise would imply admitting that the law is above the will of the people, and that the latter is acceptable only when producing certain results. It thus follows that, according to the communist leader, the very idea of regulating the internal as well as the external life of the party was fundamentally antidemocratic, in that it subtracted from the people matters of decision via legal regulation. It substituted state sovereignty for popular sovereignty.

This criticism led to the last argument deployed by opponents of Mortati's amendment. This had to do with the role the article would assign to allegedly neutral "experts" in politics. According to Mortati's project, the Constitutional Court would be given the power to control the internal life of the party. That, Laconi maintained, reflected "a tendency to present the judge, the technocrat, the proprietor of the law's interpretative criteria as the arbiter between powers, as the person in charge of deciding about their conflicts, as the most suitable interpreter of the will of the law-maker, empowered to correct the law-maker itself" (ACc, p. 1788). This provision was harshly criticized by radicals in the Assembly as, once more, seriously antidemocratic. Even more so, it was taken to prove that behind the apparently laudable commitment to intraparty democracy lied two equally worrying projects. On the one hand, outsourcing political decisions to judges and technical experts was yet another attempt to strip the people of their decision-making power. On the other hand, introducing expert control over the life of the party was a way of serving the interests of the

majority. As Laconi, Giolitti, and Codignola emphasized, constitutional judges and experts are not neutral actors: they have all obtained their position thanks to political affiliations and these guide their actions as judges (ACf, p. 4098; ACg, p. 4165). Whether purposefully or not, they will end up serving the interests of majority parties when interpreting the law. As such, the interference of the Constitutional Court in the life of the party was antidemocratic. As communist deputy Arturo Colombi suggested, only the people should be in charge of controlling the parties: “through elections and all other expressions of democratic life, the country already judges the parties, their programs and their actions: this is the best and most democratic way of controlling parties, and this is the only actual type of control, that democratically exercised by people” (ACe, p. 4123). The communists’ argument against Mortati’s proposal thus amounted to the following claim: people, and not experts or constitutional regulations, should be the protagonists of party politics and, as such, it is to the people, and not to constitutional judges, that parties should be accountable.

The main difference separating supporters and opponents of Mortati’s proposal was the role they assigned to the people. Most Christian Democrats endorsed intraparty democracy because they distrusted the people and because it opened space for elite control over the masses. By contrast, deputies on the left opposed intraparty democracy in the name of popular sovereignty, which, in their view, entailed unmediated popular participation to party politics. This reveals a deep irony: far from being a way of expanding popular participation, intraparty democracy was considered a means to constrain it and, as such, it was supported by those who favored elite control and opposed by those who endorsed popular power. After several days of debate, the divergence between supporters and opponents of Mortati’s amendment was such that no common ground could be found. Christian Democrats did not succeed at convincing enough deputies to vote for Mortati’s amendment, and Communists did not even try to put forward an alternative version of article 47. The result was that Mortati, having counted the votes, withdrew his amendment and the Assembly ended up voting article 47 in its original form. This, being vague and underdefined, gave rise to a whole new series of problems in the years to come.

5 | CONCLUSIONS

On December 20, 1947, the Constituent Assembly approved Italy’s republican constitution. In many ways, the text was welcomed by the public as an astounding achievement. Yet this enthusiasm tended to fade when the attention focused on the constitutional discipline of political parties. The constituent themselves often discussed article 49 (47, in the first draft) as one of the more disappointing aspects of their work. There was a widespread sense that the article failed its task: the reference to the democratic method was too vague to meaningfully regulate parties, and at the same time too evident to be ignored. In addition, it also failed from a historical perspective. As the first part of this article showed, political parties had traditionally been neglected by mainstream legal and political theory. Orlando and the formalist school considered the party irrelevant, as their model of liberal state only had space for parliamentary deliberation among an elite of notables. Then the party did become relevant, but only insofar as it was functional to the corporativist model of society endorsed by the Fascist state. The Constituent Assembly was thus seen by many as an opportunity to finally take seriously the party and, with it, the relationship that elites and masses should have in the modern democratic state. Yet, as Sections 2 and 4 of this article demonstrated, the debates within the Assembly did not succeed in offering any clear account of the status and role of the party, let alone of the relationship between masses and elites. By contrast, they ended up endorsing article 49 precisely because it was vague enough not to respond to any of these questions. This helped the constituents solve the impasse they found themselves in, but at the cost of postponing the problem to a later date. Indeed, soon after the entrance into force of the constitution, article 49 started being identified as the cause of many of the problems of Italian party politics. Had the party been constitutionally regulated, so the argument goes, much of what happened in postwar politics could have been prevented. Had parties’ budgets been made public, as per Mortati’s proposal, corruption would not have spread so widely. Had the Constitutional Court been given the power to control the party’s internal life, these would have behaved within the confines of the law. Had internal democracy been a requirement, parties would have put the interest of their membership on top of the agenda. This

discourse even made it to the 2016 referendum on the constitution organized by Renzi's government but, needless to say, it failed to convince. Yet in the aftermath of the referendum, commentators claimed that had Mortati been listened to more carefully, instead of his ideas being used as pretexts to either vilify or glorify the people, Italian party politics would have been more successful (Musella, 2015).

Whether these reflections have any explanatory or, indeed, normative value remains to be seen, and it is not for this article to discuss. However, what the story of this failure reveals is the difficulty of negotiating the role of the party as mediator between elites and masses in postwar politics. On the one hand, deputies were ambiguous about their goals. Liberals opposed constitutional recognition of the party in the hope of minimising its role, while also melancholically admitting that the 19th century parliamentary state had come to an end. Christian Democrats supported Mortati's proposal out of distrust for the people rather than because of a genuine commitment to intraparty democracy. Similarly, members of the Communist Party opposed it because all regulations were barriers to the people's will, but their party was highly hierarchical and, some would say, elitist. On the other hand, discussions of article 49 were about much more than intraparty democracy. They were debates about the relation between elites and masses, as well as the arena for political confrontation among the new mass parties. Much of what was at stake in these debates was being defined through the debates themselves. This is evident when considering the variety of ways in which some of the debates' key terms had been deployed. Depending on the context, deputies referred to the elites as 19th century notables, as party leaders, as its trained candidates, as state bureaucrats or as constitutional judges. Similarly, the term "people" was also variably used to identify the uneducated masses, the members of the intermediate communities, the sources of constitutional normativity, or the spontaneous membership of the party. An equal variety of meanings was also attached to the very idea of intraparty democracy: while Mortati tried to clarify its meaning, it was discussed as indicating a commitment to social normativity, but also as an antidote against the resurrection of fascism, an instrument to keep the Communist Party under control and to defend the protection of minority parties against the majority. The variety of ways in which these terms were used testifies of the extent to which their meaning and implications were still being negotiated during the debates. And the subsequent vicissitudes of article 49 suggest that this negotiation might not yet have come to an end, and that the relation between elites and masses in Italian politics is far from settled.

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NOTES

¹ Here I am mostly referring to a variety of recent publications in political theory such as Wolkenstein (2019a, b), Invernizzi Accetti, and Wolkenstein (2017), Ypi, and White (2016), and Bonotti (2017).

² For a more detailed historical overview of the relationship between Italian legal theory and the party see Gregorio (2008) but also A.V. "Tra parte e tutto: il partito e le sue radici", Special Section of *Nomos*, 2014.

³ For an overview of Orlando's work, see Gregorio (2017).

⁴ This approach, it should be noted, is not particularly original to Italian legal theory. Rather, one can see similar theories flourishing in Germany at around the same time.

⁵ Another version of this formalist approach was developed in the same years by Oreste Ranelletti (1868–1956), who saw in state administration the main source of legislation. Also in this case, no space is left for political parties: the state expresses its rationale and will through the production of administrative law, which is delegated to bureaucrats acting in the interest of the state machinery. These bureaucrats are experts in administrative law and able to act above and beyond partisan political considerations (Fioravanti, 1990; Gregorio, 2008).

⁶ For extensive analyses of the "jurists of the regime," see Fioravanti (1990), Lanchester (1990), Abbamonte (2011), and Gregorio (2008).

- ⁷ For Mortati's relationship to fascist legal theory, see Staff (1991, 1994), La Torre (2003), Della Cananea (2003). For Mortati's relationship to Crisafulli, see Frosini (2007). For a summary of the above, see Rubinelli (2019).
- ⁸ Mastrojanni had been elected among the ranks of the Fronte Liberale Democratico dell'Uomo Qualunque (Liberal Democratic Front of the Everyday Man), which was part of the Liberal group in the Assembly.
- ⁹ Nonetheless, they managed to obtain slightly more than 6% of the votes, which translated into 41 seats for, among others, Vittorio Emanuele Orlando, who will greatly contribute to the subsequent constituent debates on the role and constitutional status of the party.
- ¹⁰ Before Basso, also Mancini and Merlin proposed a similar article. Yet these were immediately put aside and discussions focused on Basso's proposal (ACb, p. 402).
- ¹¹ The new version read as follows: "all citizens have the right to freely organise themselves in political parties, and to concur with democratic method to the definition of the political life of the country."
- ¹² On Mortati's life and career, see Lanchester (1990, 1994). For an overview of Mortati's constitutional thought, see Rubinelli (2019).
- ¹³ Much of what follows is a reconstruction of Mortati's general theory of the constitution and the party. His constitutional thinking was mostly spelled out in the 1940 book *La costituzione in senso material* (1998), the sources of his work on the party are scattered around several texts and interventions. While the main ideas are already there in *La costituzione in senso materiale*, he further developed them in two texts published after June 1946 but that are believed to have been written during the works of the Constituent Assembly. These are "Concetto e funzione dei partiti politici" (2015), first published in 1949 and *La costituente. La teoria. La storia. Il problema italiano*, 1945. In what follows, I will draw from these three texts.
- ¹⁴ It is "a political idea, whose working entails a certain degree of political homogeneity, able to create a superior unity comprising the majority and the minority of the population and able to give shape to all the prerequisites necessary for the existence of a consistent and harmonious state will" (Mortati, 1998, p. 55).
- ¹⁵ Besides internal democracy, Mortati's amendment to article 47 also required adopting the democratic method in the party's external life. This too, as much as intraparty democracy, was meant to strike the right balance between popular direct participation and elite control over politics. While in the general formulation of article 47 external democracy mainly referred to the respect of party pluralism, Mortati had a more detailed plan in mind, which he developed in a series of parallel writings. To start, popular participation would have been facilitated by the regular recourse to referenda, which had the function of directly expressing the will of the people. In addition, Mortati insisted on having a system of proportional representation. This would not only make each single vote count, but also accurately reproduce the composition of society in groups and intermediate communities, thus, giving fair voice to all social forces. At the same time, however, Mortati assigned to the Constitutional Court the role of controlling the parties' respect of internal and external democracy, so introducing an element of technocratic control in the life of the party.
- ¹⁶ In what follows, I reconstruct the main arguments put forward in favour and against intraparty democracy. Because Mortati explicated his plans before formally submitting the amendment proposal, in some cases it is difficult to distinguish when responses were addressed to Mortati's plan or to the more general formulation of article 47. When it is clear, I say so. When it is not, I leave it unspecified.
- ¹⁷ A similar point was also made by Umberto Tupini on March, 5, 1947 (ACc, p. 1758).
- ¹⁸ A similar proposal entailed substituting the Constitutional Court with a parliamentary committee formed by equal representation of all parties. See a (ACe, p. 4111).
- ¹⁹ It should be noted that Ruggiero put forward an amendment proposal similar to Mortati's, to then withdraw it when Mortati publicised his own.

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