

## «From a Merely Political to a Social Democracy». Wolfgang Abendroth, Palmiro Togliatti and the Constitutional Anti-Fascism in Post-War Italy and West Germany

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*This contribution offers a comparative reading of Italian communist leader Palmiro Togliatti's and German Marxist political scientist Wolfgang Abendroth's seminal texts on constitutional anti-fascism and their recommendations for societal transformation based on the post-war (West) German respective the Italian constitution as a means of safeguarding and deepening democracy. The contribution further seeks to illuminate how the currently resurgent doctrine of totalitarianism in the alleged name of "democracy" lends a liberal attire to a philo-fascist core.*

*Wolfgang Abendroth; Anti-Fascism; Basic Law; Lelio Basso; Constitution; Democracy; Historical Revisionism; Giorgia Meloni; Palmiro Togliatti; Totalitarianism; Transformation.*

### 1. *Constitutions as battlegrounds between forces of renewal and forces of conservatism*<sup>1</sup>

Striving for self-exculpation in the wake of the horrors of fascism, a large amount of post-war (West) German conservative political literature took a spin on the classical notion that modern mass democracy allegedly leads to totalitarianism. The origin of this notion pre-dates this phase of self-absolution and had found an early prominent proponent in political philosopher Jacob TALMON, whose work on *Totalitarian Democracy* (1919) traced totalitarianism back to the political and philosophical thought of Jean-Jacques Rousseau and back to the history of the French Revolution. Talmon found a worthy successor in conservative intellectuals such as Wilhelm Röpke, not a former Nazi, but an influential neo-liberal figurehead and architect of the West German social market economy (CIAMPINI 2018). Thus equipped, right-wing authors painted Nazism in this vein as the consequence of egalitarian democratism, rather

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than a result of the authoritarian usurpation they themselves had helped to pursue. One prominent author in this tradition of thought was legal scholar Ernst Forsthoff. While the student of Nazi crown jurist Carl Schmitt had enthusiastically praised the fascist “total state” in 1933, FORSTHOFF (1954) identified a new totalitarianism – this time as a threat – after World War II. According to his take, the new danger was to be found in the welfare state the German *Grundgesetz* or Basic Law prescribes for the constitutional order of the Federal Republic. This is not merely of historical interest: The model of a “state of order” (*Ordnungsstaat*), important for policy orientations within Germany’s contemporaneous right-wing populist party AfD, relies heavily on Forsthoff’s critique of the democratic welfare state (KISOUDIS 2017, pp. 61-76).

A legal scholar with a different point of view, also influential in constitutional matters after World War II, was Wolfgang Abendroth. He became Forsthoff’s main adversary in a controversial debate that developed in the 1950s on how to interpret the constitution in this regard. Having fought against the total state as a partisan in Nazi-occupied Greece *in praxi*, after the war the political scientist Abendroth *in theoria* advocated a democratic welfare state, which he envisioned as a barrier against the threat of a new fascist totalitarianism. He argued for a democracy which, in a Rousseauian vein, should entail a tendency toward an «identity of the ruled and the rulers» (ABENDROTH 1954, p. 38).<sup>2</sup> According to ABENDROTH (1967a, pp. 109-110), the Weimar Republic had perished in the early 1930s because its democracy had failed to expand from a formal democracy to a democracy in qualitative terms, that is «from a merely political to a social democracy» (ABENDROTH 1954, p. 36), with the latter including concepts such as industrial democracy (ABENDROTH 1964). In other (still ABENDROTH’S) words: «Germany owes the 1933 victory of the most inhumane form of the totalitarian state that ever existed to the inner contradictions within the liberal-capitalist economic order shot through with monopolies» (1954, pp. 37-38). Accordingly, Abendroth was a fierce critic of every measure that led the social reality in the Federal Republic further away from the obligation defined in its constitution. ABENDROTH (1967d, p. 13) was especially critical of the

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<sup>2</sup> All non-English sources are translated by the author, except where stated otherwise.

“Emergency Acts”, worked out with the aid of former Nazi officials, that sought to prepare what the «Bonn “establishment”» (*ibid.*, p. 19) called a “case of emergency”. It was these intellectual architects of this state of emergency who, in the 1960s, added a new sentence to the Basic Law in Article 20 (4). This sentence calls for the fight against *anyone* aiming to damage or eliminate the fundamental democratic and liberal order.<sup>3</sup> Its wording supersedes the traditional republican right of the people to resist unlawful reign.<sup>4</sup> It could be used against the West German left that was already under the sword of Damocles, with the banning of the Communist Party (KPD) in 1956 as an ostensibly anti-totalitarian measure, likewise criticized by ABENDROTH (1967b).

An interpretation of the history of the decline and destruction of liberal democracy and the advent of fascism similar to Abendroth’s was put forward for the Italian case by another legal scholar: Palmiro TOGLIATTI (1976). As successor to Antonio Gramsci in the leadership of the most important political force of resistance against the Mussolini regime and the German occupation, the Communist Party (PCI), he was involved not only in interpreting but also in drafting Italian’s post-war constitution, the *costituzione*, in the years from 1946 to 1948. In doing so, Togliatti was able to insert into the constitutional framework a programmatic orientation for a societal remodelling of Italy that could mark a fundamental break with the old order, defining this aspect as the constitution’s «uniqueness» (cited in AGOSTI 2008, p. 187). Though not directly inspired by *Ercoli* – as Togliatti was also known in communist circles –, ABENDROTH (1979b) was ready to acknowledge Togliatti’s important contribution to socialist and democratic theory and to the practice of state and law in the shape of the republican constitution in Italy and its measures to uproot the societal causes of fascism. Conversely, *L’Unità*, Togliatti’s party’s newspaper, identified Abendroth as one of the main

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<sup>3</sup> Article 20 (4) reads: «All Germans shall have the right to resist any person seeking to abolish this constitutional order if no other remedy is available». The translations of the German constitution quoted here follow the version provided by the FEDERAL MINISTRY OF JUSTICE (2020).

<sup>4</sup> As Friedrich ENGELS (2004, p. 457) put it: No «party in any country [would] go so far as to forfeit the right to resist illegality» from the rulers’ side.

people of the «true movement of the left» in the Cold War Federal Republic (cfr. BOFFA 1962).

Keeping in mind that the history of a constitution is always the history of its lack of implementation (SCHMINCK 1973, p. 21), a parallel reading of Togliatti's and Abendroth's seminal texts on constitutional anti-fascism and their recommendations for societal transformation on the basis of the German respective Italian constitution is helpful for inspiring contemporary discussions among democratic forces in both countries (and potentially beyond) in the face of the hegemony of an “anti-totalitarian” politics of history sanctioned by the European Parliament. Construing constitutions as battlegrounds between the forces of renewal and progress and the forces of conservatism and reaction (TOGLIATTI 1956b, p. 192), this paper offers a critical textual analysis with a consideration of societal history (LOSURDO 2016, p. 5). It further seeks to illuminate how the doctrine of totalitarianism (cfr. LOSURDO 2004) lends a liberal attire to a philo-fascist core, offering a narrative in which – against all historical evidence – the sole specimen of the totalitarian genus, in the end, is socialism (OPITZ 1974, p. 547).

## 2. *Wolfgang Abendroth and the anti-fascist, social imperatives of the (West) German Basic Law*

Wolfgang Abendroth (1906-1985 – see PETER 2019 for biographical details) wrote extensively on constitutional questions. A lawyer by profession, Abendroth had joined the German labour movement in the late 1920s and was active within communist groups. Abendroth completed his PhD thesis in international law in the mid-1930s, only to find his manuscript immediately confiscated by the Nazi secret police. He fought Nazism at many European fronts, from resisting the regime within the *Reich* to joining the Greek People's Liberation Army as a partisan in 1944 in order to combat German and Italian occupation. After World War II, his academic career initially began in East Germany, where he worked at the universities of Halle, Leipzig and Jena. However, Abendroth, like other Marxist intellectuals such as Ernst Bloch, Werner Hofmann, Leo Kofler and Hans Mayer, left the Soviet occupation zone during the late-

Stalinist period of the late 1940s and early 1950s, heading West. He eventually settled at the University of Marburg, where he proved influential on the emerging political science of the Federal Republic. A card-carrying social-democrat between 1946 and 1961, he acted within the ranks of the party against its turn to the right and its abandonment of Marxism and socialist goals. In addition to his main monograph on the political problems of the (West) German Basic Law, first published in 1966 and updated several times (ABENDROTH 1976), and his aforementioned debate with Forsthoff (ABENDROTH 1967a), Abendroth intervened in debates on constitutional changes, especially with regard to the above-mentioned Emergency Acts (ABENDROTH, DIETRICH 1969) and other re-significations and reformulations of the spirit and letter of the constitution. In order to thwart such changes, he called for a broad unity front to defend the Basic Law (ABENDROTH 1978).

Abendroth's student Reinhard OPITZ (1999a, p. 341) designated four main influences on the genesis of the Basic Law from the setup of the Parliamentary Council drafting the constitution in 1948 until its adoption in 1949: 1.) the US-American, British and French occupation authorities; 2.) the dominant social-liberal political tradition of the Weimar Republic; 3.) the motive of anti-fascism; and 4.) the political left with its socialist aspirations. This was true even though the Parliamentary Council was not instated by a popular vote but rather set up by a decree of the Western Allies. Its 65 members were selected by the parliaments of the West German *Länder* (federal states), the latter in turn later forming the Federal Republic. The Parliamentary Council was dominated by bourgeois parties and only two communists managed to be included in the body. Opitz further identified the forces who from the onset worked to undermine the Basic Law – and he found these forces not among allegedly “extremist” or “totalitarian” forces of the left. According to OPITZ (*ibid.*, p. 349), these forces even managed to sabotage the Basic Law long before its adoption, with German industrialists starting this undertaking

«almost a whole year before the promulgation of the Basic Law, namely on 20<sup>th</sup> June 1948. This consisted in the coup, arranged only with the Americans, of having Ludwig Erhard announce the free economy and de facto the [...] model of the social market economy with the currency reform, to the utter amazement of the English and the French. One year before the enactment of the Basic Law,

its long-term counterpoint had already been set. Soon afterwards, the ordo-liberals openly [...] demanded that the economic order, introduced in 1948 without any parliamentary legitimation and not even by decree of the occupation authorities [...], should have become part of the constitution immediately and that the Basic Law should have been adapted to it. Under the political conditions of the time, however, this did not happen».

Thus, the permanent contradiction between the social reality of what would become the Federal Republic and the spirit and letter of what would become the Basic Law was brought to life. But what would make the economic rulers of the recently defeated Germany and their political advocates “see red” with regard to the constitution?<sup>5</sup> Abendroth’s writings offer conclusive answers. Out of Abendroth’s numerous works on the topic, the focus here will be on two of his contributions published in a decidedly political context of special interest: In 1974, a group of former resistance fighters against Nazism<sup>6</sup> staged a public colloquium in Bonn, the capital of the Federal Republic at the time, in order to commemorate the 25<sup>th</sup> anniversary of the adoption of the Basic Law in West Germany. ABENDROTH (1974) contributed to this with a lucid and concise speech on the «anti-fascist and social imperative» of the constitution. He (1975) revisited this issue one year later at a congress of the Union of Persecutees of the Nazi Regime (VVN) in Offenbach that, 30 years after the liberation, sought to formulate a contemporary anti-fascist policy. Although the two texts were disseminated at the time by the Union in their *Antifaschistische Arbeitshefte* and the latter text has been re-

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<sup>5</sup> It is worth noting that West Germany’s communists did not sign the Basic Law at the time of its adoption lamenting the lack of a «real guarantee of democratic basic rights and liberties in economic and societal life» and the fact that its adoption settled the country’s division, however promising to defend its nonetheless existing democratic and social provisions even against the original signatories of the *Grundgesetz* (REIMANN 1968, p. 7).

<sup>6</sup> This group included *inter alia* the former social-democratic member of the German federal parliament (*Bundestag*) Arno Behrisch, the famous metalworker trade union leader Willi Bleicher, prominent publicist and critic of the West German economic and political rulers Bernt Engelmann, catholic priest and religious socialist Joseph Rossaint, communist philosopher Josef Schleiﬀstein and Abendroth himself.

published in excerpts recently (ABENDROTH 2019), their potential impulses with regard to constitutional anti-fascism are severely overlooked today and thus are to be saved from oblivion.

While ABENDROTH (1974, p. 16) lamented that the adoption of the Basic Law in 1949 meant the provisional end of Germany's state unity, he (*ibid.*, p. 17) nevertheless attributed to the Basic Law a positive normative achievement, namely the catalogue of legal and political rights enshrined therein. Even if historical developments widened the gap between the social reality of the Federal Republic and the words of its constitution, the formal legal validity of the catalogue of fundamental rights proved particularly significant for possible political mobilisation in his view. From an anti-fascist perspective, ABENDROTH (*ibid.*, p. 18) considered the permanent fundamental decision against fascism and militarism in Article 139, in combination with the eternal validity of Article 1 and the original version of Article 20 to be of special significance: Article 1 defines the inviolability of human dignity<sup>7</sup> and Article 20 defines the Federal Republic as a social and democratic constitutional state.<sup>8</sup> The aforementioned eternal validity was secured by Article 79 (3).<sup>9</sup>

For ABENDROTH (1975, p. 39), Article 139 remained valid without any ifs and buts - despite objections against its validity coming mostly

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<sup>7</sup> Article 1 reads: «(1) Human dignity shall be inviolable. To respect and protect it shall be the duty of all state authority. (2) The German people therefore acknowledge inviolable and inalienable human rights as the basis of every community, of peace and of justice in the world. (3) The following basic rights shall bind the legislature, the executive and the judiciary as directly applicable law».

<sup>8</sup> The original version of Article 20 reads: «(1) The Federal Republic of Germany is a democratic and social federal state. (2) All state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies. (3) The legislature shall be bound by the constitutional order, the executive and the judiciary by law and justice».

<sup>9</sup> Article 79 (3) reads: «Amendments to this Basic Law affecting the division of the Federation into Länder, their participation in principle in the legislative process, or the principles laid down in Articles 1 and 20 shall be inadmissible».

from the political right (*ibid.*, p. 49).<sup>10</sup> Its fundamental character is directed not only against the historical regime as it was in power in Germany between 1933 and 1945 and against the faded organisations that supported it. Abendroth regarded Article 139 as directed against every possible concrete form in which fascism might reappear. By adopting the Allies' edicts for the liberation of Germany from Nazism and militarism, the article transformed victors' justice, as a juridical expression of the ideas guiding the Anti-Hitler coalition, into German law (*ibid.*, p. 40). These ideas included the arrest of the political and economic leaders of the Nazi regime as well as the banning of Nazi organisations and institutions and called for the repeal of restrictions on freedom of thought (*ibid.*, p. 41). The realisation of these ideas was interrupted with the beginning of the Cold War and by the reintegration of former Nazi officials into the state apparatuses of the Federal Republic, as well as by the doctrine of totalitarianism (*ibid.*, p. 42). Article 139 is antithetical to this doctrine, which equates fascist and anti-fascist forces (*ibid.*, p. 50). Viewing the article as a superior norm in contradiction to the reality of the polity formally based on the Basic Law (*ibid.*, p. 45), ABENDROTH (*ibid.*, p. 43) interpreted the article as an important call to anti-fascist and democratic forces to defend the Basic Law. This should also apply to and include political groups such as the communists who at the time of the adoption of the constitution had harboured even more far-reaching ideas than those ultimately fixed in the Basic Law (*ibid.*, p. 46). Finally, any call to revise the Basic Law, under power relations less favourable to the forces of renewal and progress, would foster an intensification of authoritarian tendencies (*ibid.*, p. 44).

Furthermore, ABENDROTH (1974, p. 18) emphasised that the Basic Law potentially legitimised a fundamentally different setup of the economic order and societal formation, thus potentially opening the path, when taken by a popular majority, to a peaceful social transformation toward a post-capitalist society (*ibid.*, p. 21). And according to Abendroth (*ibid.*, p. 18), it was only in this transformation that the world of norms laid down in the Basic Law would be fulfilled and secured.

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<sup>10</sup> Article 139 reads: «The legal provisions enacted for the “Liberation of the German People from National Socialism and Militarism” shall not be affected by the provisions of this Basic Law».



Thus, Abendroth emphasised the possibility of socialising the means of production according to Article 15.<sup>11</sup> He cited the definition of the social function of property that sets a limit to the power of disposal over private property in Article 14 (*ibid.*, p. 19).<sup>12</sup> This, too, is a historical lesson since the fascists' ascent to power had been flanked by influential sections of the economic rulers. Thus, the Basic Law contains an irrevocable minimum of social and democratic requirements that are worth defending and demand their realisation.

In the mid-1960s Wolfgang ABENDROTH (1966, p. 373) referred to Western European communists who had stated their conviction «that over-all planning within the framework of a parliamentary democratic constitution» could be a useful means for «constitutional governments to safeguard themselves against overthrow by authoritarian or fascistic dictatorship». With this, he not only pinned down the connection between constitutional consequences from historical lessons and the struggle against new perils to democracy. When formulating these words, he probably also had recently deceased Italian politician Palmiro Togliatti in mind as an example for this type of democratic communism.<sup>13</sup>

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<sup>11</sup> Article 15 reads: «Land, natural resources and means of production may, for the purpose of nationalisation, be transferred to public ownership or other forms of public enterprise by a law that determines the nature and extent of compensation».

<sup>12</sup> Article 14 reads: «(1) Property and the right of inheritance shall be guaranteed. Their content and limits shall be defined by the laws. (2) Property entails obligations. Its use shall also serve the public good. (3) Expropriation shall only be permissible for the public good. It may only be ordered by or pursuant to a law that determines the nature and extent of compensation. Such compensation shall be determined by establishing an equitable balance between the public interest and the interests of those affected. In case of dispute concerning the amount of compensation, recourse may be had to the ordinary courts».

<sup>13</sup> His student Frank DEPPE (2006, p. 126) asserts that Abendroth had, amongst other aspects, the discussions in the process of drafting the Italian constitution in mind when conceptualising his own view on constitutional questions.

### 3. Palmiro Togliatti and societal transformations in line with the Italian Constitution

It is not surprising that ABENDROTH (1967c, p. 449) recommended Italian Marxist impulses to a West German left in need for inspiration theory-wise. Not only was post-war Italy site of impressive class struggles and home to the largest communist movement in the capitalist Western part of the global North. The forces of the left (combining communists and socialists alike and including Christian leftists as well), had emerged stronger than ever after the anti-fascist resistance and after they had reached their main goal of liberation in the spring of 1945. Moreover, they were able to leave their recognisable mark on the country's republican constitution. While Camilla Ravera guided the PCI during the years of fascism in the underground on the Italian peninsula, leading the communists in exile since Gramsci's incarceration in the mid-1920s was Palmiro Togliatti (1893-1964 – see AGOSTI 2008 for biographical details). Active within the Italian labour movement since the 1910s, Togliatti and Gramsci met each other at the University of Turin, where Togliatti pursued studies in law, while Gramsci studied philology. The two friends were inspired by the Russian Revolution of 1917 and played an important role in the formation of the PCI. After a long exile with stays in Moscow and republican Spain, Togliatti returned to Italy in 1944 on the eve of liberation and was instrumental in forging the political unity of the forces fighting Mussolini and Hitler within the National Liberation Committee.

It is important to note that unlike Abendroth, Togliatti was not merely an “interpreter” of the constitution but was personally involved in writing it, since he was a member of the constituent assembly, elected by popular vote, and served as minister of justice in the anti-fascist unity government that ruled Italy until communists and socialists were ousted from it under US-American pressure in 1947. However, «Togliatti's party had made an enduring imprint on the Republic, long outlasting its own direct involvement in government» (BRODER 2021, p. 218). While it is true that «[t]he greatest victory won by the working class and the people [...] is the present Constitution of the Republic» (TOGLIATTI 1956b, p. 189), «solemnly express[ing] the principles affirmed by the people in the Resistance and in the War of Liberation» (*ibid.*, p. 190), this is not to say

that the Italian constitution is solely the work of Marxists, which would belittle the contributions of Christian Democrats or Liberals. In TOGLIATTI'S (2022) view, the constitution also displays «many gaps and weak spots», resulting from the work of «conservative forces manag[ing] to introduce into the Constitution a number of points that retard progress towards fundamental changes». Nonetheless, when in 2009 then-prime minister Silvio Berlusconi, at the time head of the alliance of right-wing parties, called the constitution a «communist» and a «pro-Soviet document» (cited in THOMASSEN, FORLENZA 2016, p. 234), he revealed more about his own reactionary position than about the character of the constitution (cfr. CANFORA 2006, pp. 174-184) he tried to revile. While both documents, «thanks to agreement between parties of the left and Catholic parties», featured «[s]trong elements of social democracy» (*ibid.*, p. 176), the Italian constitution nevertheless reached further than the Basic Law.<sup>14</sup>

Long before the Italian constitution was adopted and while the war was still raging, Togliatti – explaining his party's policy in 1944 – projected a constituent assembly for a not-too-distant future. Speaking in the already liberated Naples, TOGLIATTI (1979a, pp. 58-59) not only outlined the course his party would pursue in the next decades but also designed the road of constitutional anti-fascism for his country:

«The aim that we are going to put forward to the Italian people will be that of creating, once the war is over, a democratic and progressive regime in Italy, and we shall call upon the workers, the peasants, the intellectuals, the younger generations to fight for this objective. We want Italy to be reconstructed, and reconstructed fast, in the interest of the people. [...] When, tomorrow, a national Constituent Assembly is convoked, we shall propose to the people that Italy should be made a democratic republic, with a Constitution that guarantees every Italian the whole range of freedoms: freedom of thought and speech; freedom of the press, the liberty to meet and associate freely; freedom of religion and worship; and the freedom for small and medium-sized concerns to develop without being crushed [...] by big monopoly capitalism. This means that we are by no

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<sup>14</sup> ABENDROTH (1974, p. 16) points out that in West Germany many constitutions of the *Länder*, that is the federated states which together form the Federal Republic, were promulgated years before the Basic Law and in spirit and letter remain much bolder as regards socialisation, workers' co-determination and the possibility of a democratised economic order.

means proposing a regime based on the existence or the domination of one sole party. In a democratic Italy, and progressive Italy, there must and will be different parties that correspond to the currents reflecting different interests and ideas that exist among the population of Italy; we shall propose, however, that these parties, or at least those among them that are based on the people and have a democratic and national programme, should maintain their unity to confront any attempt at the rebirth of fascism. We do not want to outlaw from the nation either the democrats or the liberals, but the fascists. The democratic and progressive regime that we are proposing, and in whose construction we want to and shall collaborate in all forms, will have to be a strong regime which will defend itself with all weapons at its disposal against any attempt at the rebirth of fascism and reaction, against any attempt to suppress popular liberties and tread them underfoot. This new democracy will have to put any and every residue of fascism beyond the law, and will further have to take measures to eradicate the roots from which fascism sprang in the past, and from which it could be reborn in the future. For this reason, we shall propose that, after the war, the Constituent Assembly of Italy should decide upon a far-reaching agrarian reform, which will create a new situation in the countryside in favour of the small and medium peasant, destroying any relics of feudalism, giving the land and the means to cultivate it to the peasants who are today deprived of them, and which will not let the big landowner and the speculator oppress the agricultural workers and the rural strata, using their economic position to dominate political life and drive the country along a reactionary path. The [...] groups, who are responsible for the installation of the fascist regime in Italy and who are the direct authors of today's national catastrophe, will have to be hit hard and put in a position where they can do no harm».

And indeed, underscoring the success of this orientation, apart from the fundamental rights in Part I – Title I of the constitution, defining civil relations, we find corresponding constitutional commandments especially in Part I – Title III under the heading *Economic Rights and Duties*: Article 43 opens the way to socialisations.<sup>15</sup> In Article 41, a potentially

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<sup>15</sup> Article 43 reads: «For the purposes of the common good, the law may establish that an enterprise or a category thereof be, through a pre-emptive decision or compulsory purchase authority with provision of compensation, reserved to the Government, a public agency, a workers' or users' association, provided that such enterprise operates in the field of essential public services, energy sources or monopolies and are of general public interest». The translations of the Italian

anti-monopolist economy and the possibilities of democratic planning are outlined.<sup>16</sup> If implemented, this would have certainly meant the end of the reign of those in charge of the economic commando heights, who had pledged allegiance to Mussolini during the two decades of fascist rule. While this, in its explicit wording certainly extends the range of ideas captured in the German constitution, we find a definition of the social function of property that is very similar to the one of the Basic Law in Article 42 of the Italian constitution.<sup>17</sup> Furthermore, taking a lesson from the fact that big landowners and agrarian capitalists had armed fascist squads in the early 1920s, the constitution aims at a profound land reform in article 44.<sup>18</sup> Workers' co-determination in enterprises is recognised in Article 46.<sup>19</sup> In Article 45, the constitution promotes

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constitution quoted here follow the version provided by the SENATO DELLA REPUBBLICA (2007).

<sup>16</sup> Article 41 reads: «Private economic enterprise is free. It may not be carried out against the common good or in such a manner that could damage safety, liberty and human dignity. The law shall provide for appropriate programmes and controls so that public and private-sector economic activity may be oriented and co-ordinated for social purposes».

<sup>17</sup> Article 42 reads: «Property is public or private. Economic assets may belong to the State, to public bodies or to private persons. Private property is recognised and guaranteed by the law, which prescribes the ways it is acquired, enjoyed and its limitations so as to ensure its social function and make it accessible to all. In the cases provided for by the law and with provisions for compensation, private property may be expropriated for reasons of general interest. The law establishes the regulations and limits of legitimate and testamentary inheritance and the rights of the State in matters of inheritance».

<sup>18</sup> Article 44 reads: «For the purpose of ensuring the rational use of land and equitable social relationships, the law imposes obligations and constraints on private ownership of land; it sets limitations to the size of property according to the region and the agricultural area; encourages and imposes land reclamation, the conversion of latifundia and the reorganisation of farm units; and assists small and medium-sized properties. The law makes provisions for mountain areas».

<sup>19</sup> Article 46 reads: «For the economic and social betterment of workers and in harmony with the needs of production, the Republic recognises the rights of workers to collaborate in the management of enterprises, in the ways and within the limits established by law».

cooperatives.<sup>20</sup> Article 3 echoes Franklin Delano Roosevelt's political thought with regard to the expansion of the liberal motif in order to achieve freedom from fear and freedom from want (SON 2020, pp. 133-134).<sup>21</sup> It calls for the removal of «obstacles of an economic or social nature which constrain the freedom and equality of citizens». A «richer vision of freedom» (LOSURDO 1994, p. 173) is what is aimed for.<sup>22</sup>

It was articles such as these to which TOGLIATTI (1977, p. 285) could refer to when he, long after the adoption of the constitution and as head of the largest opposition party in republican Italy, spoke of the success «in inserting into the Italian constitution the principle of carrying through profound social reforms: the guarantee of the right to work, agrarian reform, the nationalisation of the most important capitalist monopolies, etc.». According to TOGLIATTI (1956a, p. 32), speaking in the mid-1950s, the constitution bore the (yet to be realised) possibility of «a democracy of a new kind, different not only from what existed in Italy before Fascism, but different also from the capitalist democracies of a traditional type».

In hindsight, TOGLIATTI (1961a, p. 32) contextualised the constitution and its fate in the immediate post-war situation within Italian history since unification in the 1860s, calling it «an example, worthy of a political science essay, of how democratic principles are not implemented»:

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<sup>20</sup> Article 45 reads: «The Republic recognises the social function of co-operation of a mutually supportive, non-speculative nature. The law promotes and encourages cooperation through appropriate means and ensures its character and purposes through appropriate checks. The law safeguards and promotes the handicrafts».

<sup>21</sup> Article 3 reads: «All citizens have equal social dignity and are equal before the law, without distinction of sex, race, language, religion, political opinion, personal and social conditions. It is the duty of the Republic to remove those obstacles of an economic or social nature which constrain the freedom and equality of citizens, thereby impeding the full development of the human person and the effective participation of all workers in the political, economic and social organisation of the country».

<sup>22</sup> Viewed in this light, Togliatti's self-characterisation as «a rebel in search of freedom» put forward in a private letter to Nilde Iotti (cfr. CANFORA 1998, p. 53) gains its deeper meaning.

«[A]lmost a century after the achievement of national unity, a great democratic revolution has taken place in Italy [...]. This democratic revolution is the Resistance. It undermined fascism and swept away the last traces of it, it fought and won a hard war of liberation, it laid the foundations for a new State. In the programme and spirit of the Resistance, which is to a great extent reflected in the provisions of our Constitution, the traditional evils [of the former Italian State] were overcome [...] which even in its best periods had remained within the limits of a conservatism not always enlightened, of a very weak democracy, of parliamentarism as a form of government of an oligarchy of privileged people. This democratic revolution has been interrupted at the very moment when it had to set itself [...] the task of constructive work, [of] reform[ing] [...] the economic structures and [...] strengthening of a new political ruling class, closely linked with the working people's masses and with new strata of progressive intellectuals» (TOGLIATTI 1960a: 43).

This means that «[t]he democracy that exists today in our country is still limited [...], besides being continually undermined by the government itself» (TOGLIATTI 1956b, p. 192). Given that the «Constitution states that Italy rejects war as mean[s] to settle international differences»<sup>23</sup> (TOGLIATTI 1959, p. 66) – and that the anti-fascist imperatives of the *Grundgesetz* likewise relate to its peace pledge<sup>24</sup> (ABENDROTH 1975, p. 50) –, it needs to be recalled that «[f]oreign policy is closely linked to [domestic] policy» (TOGLIATTI 1959, p. 66). Striving for a truly democratic society necessitates enhancing democracy in international relations (cfr. LOSURDO 2015, p. 220) – on the other hand, limited or blocked democracies will be prone to hinder the implementation of said democratic principle on a world-wide scale.

Of special interest with regard to the dealing with the fascist past is the Italian constitution's appendix. It includes transitional and final

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<sup>23</sup> Article 11 reads: «Italy rejects war as an instrument of aggression against the freedom of other peoples and as a means for the settlement of international disputes. Italy agrees, on conditions of equality with other States, to the limitations of sovereignty that may be necessary to a world order enduring peace and justice among the Nations. Italy promotes and encourages international organisations furthering such ends».

<sup>24</sup> Article 26 (1) reads: «Acts tending to and undertaken with intent to disturb the peaceful relations between nations, especially to prepare for a war of aggression, shall be unconstitutional. They shall be criminalised».

provisions, out of which Number XII outlaws the reorganisation of the fascist party.<sup>25</sup> In this light, after the successful prevention of the attempt to form a neo-fascist-supported Christian-democratic minority government on national level in summer 1960, TOGLIATTI (1960b, p. 14) could state that «the full implementation of the State system and reforms envisaged by the Constitution [...] means banning fascism from all spheres of political and civil life, from Parliament, local administrations, factories, schools and all official and officious propaganda channels». Despite the constitutional provisions, the climate of the Cold War made it possible for a neo-fascist party to be set up in Italy, establishing itself as a supposedly stable force and eventually even entering national government for the first time in the 1990s. This party, gathering intransigent fascists and seeking legitimacy as an assembly of professional anti-socialists, christened itself Italian Social Movement (MSI). Togliatti, however, rarely called the MSI by its self-selected name. Instead, he called it «the fascist party» (TOGLIATTI 1960c, p. 12), in clear reference to the aforementioned provision of the constitution and to the fact that in an Italy, where its constitution was effectively implemented, a party like the MSI would never have come to existence.<sup>26</sup> TOGLIATTI (2022) thought it «now well-nigh impossible to renew a fascist movement in the country along the lines of 1921-22» – however, bearing in mind that «unless the whole structure of the country is changed[,] the danger of fascism and reaction will remain ever present, and even imminent» (TOGLIATTI 1961b, pp. 81-82), it is important to acknowledge that «[r]eaction [...] is looking for other forms, is thinking of using the State apparatus in combination with terrorist and provocative groups to endanger our democratic gains and to hurl us backward» (TOGLIATTI 2022). Accordingly, TOGLIATTI (1962a, p. 19) was precise in naming the social problem that political democracies in antagonistic societies continue to face: «[O]ne must keep in mind that developed capitalism entails the existence of a strong and aggressive bourgeois class, such as that created at present by the expansion

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<sup>25</sup> Provision Number XII reads: «It shall be forbidden to reorganise, under any form whatsoever, the dissolved Fascist party».

<sup>26</sup> While the MSI was actually founded before the adoption of the constitution, many other far-right (often more or less overtly neo-fascist) groups have established themselves after 1948 in spite of this provision.



of monopoly capital. This bourgeois class is not prepared to give up complacently any of the economic and political positions that it now holds», thus impeding the peaceful transformation not only Abendroth aimed for.

Connected to both Abendroth and Togliatti was Italian socialist and former resistance fighter Lelio Basso. Basso, famous for his involvement in the Russell Tribunal on US-American war crimes in Vietnam and a jurist like Abendroth and Togliatti, had also worked on the Italian constitution – and at times disagreed with Togliatti. However, BASSO (1964, p. 161) stated that the translation of contraposing “democrats” against “totalitarians” into the allegedly corresponding alternative of anti-communists vs. pro-communists is false. At the same time, he (1957, p. 25) stressed that Italy after the war was indeed threatened by the risk of «totalitarian evolution». But he did not find the root for this within the camp of the political left. Likening a possible outcome of such an evolution to the political system of Salazar’s Portugal, he identified the driving force behind this development in the fact that the «great concentration of economic power prompts those exercising it to seek a similar concentration of political power, to control and direct the whole of national life». The constitution, especially in the Togliattian interpretation, offers a tool kit against this menace.

#### *4. Conclusion and prospects*

One of the most important driving forces behind the important anti-totalitarian motion approved by the European Parliament in autumn 2019 was the parliamentary group of the European Conservatives and Reformists (ECR). Lauding itself, the group proclaimed that the other members of parliament had «unite[d] behind [their] condemnation of communist, Nazi and other totalitarian regimes» (EUROPEAN CONSERVATIVES AND REFORMISTS 2019). The ECR comprises politicians from a big-tent right and assembles exponents of political parties like the Polish formerly governing ultra-conservative party, neo-liberal Flemish separatists or the far-right Sweden Democrats. In the past, the right-wing populist Danish People’s Party as well as the pre-Brexit British Tories

were part of this group. While the group, with its think-tank New Direction founded under the patronage of Margret Thatcher and temporarily vice-presided over by Hans-Olaf Henkel – a former leader of the German Industrialists' Association, co-founder of the AfD and long-time critic of the *Grundgesetz* (ROß 1998, pp. 21-24) –, poses as conservative, it prominently features political parties with neo-fascist ties in its ranks, which sheds a different light on the anti-totalitarian equation of socialism and Nazism that has become canonical historiography of the European Union with support of the ECR. ABENDROTH (1975, p. 50) was certainly right when stating that anyone equating fascists and communists is «objectively an enemy of the Basic Law» – or of any democratic constitution, for that matter.

Two political parties belonging to the ECR in the European parliament have to be mentioned here in particular: the Spanish far-right Vox Party and the “post-fascist” Fratelli d'Italia, heading the camp of the political right which it forms together with the right-wing populist Lega and with Forza Italia. It seems to pose no contradiction for the ECR to ostensibly repudiate totalitarianism, thus equating Soviet-style socialism and Nazism on the one hand, while the Vox Party, on the other hand, fights every attempt to establish a democratic remembrance for the Francoist dictatorship. The Vox Party instigates nostalgia for the regime that ruled Spain until the mid-1970s, *inter alia* protesting against the exhumation of Franco's body from the monumental Valley of the Fallen (XIDIAS 2021, pp. 18-20). It is important to bear in mind that the establishment of the regime was inextricably linked to the Nazis' support for the nationalist side in the Spanish Civil War in the 1930s, while the Spanish Republic received, albeit limited and conditional, support by the Soviet Union and the international communist movement (HEMBERGER 2016). The Spanish member party of the ECR Group obviously has no interest in the alleged equidistance to “red” or “brown” totalitarianism. The self-proclaimed anti-totalitarian right is obviously able to differentiate between the opposing “totalitarianisms” it claims to unanimously abhor – and allows sympathy for its right-wing specimen. The allegedly Janus-faced (GREGOR 2000) totalitarianism in this view seems to display at least one friendly face. Compatible with the neo-liberal doctrine of totalitarianism

(OPITZ 1999b, pp. 553-554) is the option of a «fascism with a smile», that, however, is a «cosmetic façade» (GROSS 1980, p. 3).

This smiling face is personified by the ECR's leading figure. The ECR's official political party on the European level is headed by Giorgia Meloni. Meloni is also the chairperson of Fratelli d'Italia, founded in 2012 as political heir to the Alleanza Nazionale that was formed in the mid-1990s as an immediate successor to the neo-fascist party MSI. In spite of regular uproar levelled at philo-fascist remarks of Fratelli exponents, the party – now in charge of the government with Meloni as its prime minister – is still generally viewed «not as a fascist threat to the Italian party system» (GRIMM 2016, p. 131). While it is true that the Fratelli-led cabinet offers not a new edition of fascism but rather another iteration of bonapartist experiments in the shape of a quasi-Gaullist presidentialism or semi-presidential prime-ministerialism (MELONI 2023), it is equally true that Meloni and her allies provide historical revisionism we have been accustomed to by the far right for decades which now bears the stamp of official government policy (AZZARÀ 2022).

In this vein, MELONI (2018), before her ascent to power, hailed Giorgio Almirante, long-time MSI leader and former official of the last incarnation of Mussolini's regime in Salò, as a «great patriot» and as «father of the Italian right», deserving praise in the form of having streets and public places named after him all over the country. When Togliatti worked for a democratic rebirth of Italy during World War II, Almirante served fascist totalitarianism and *inter alia* signed an order which legitimised summary executions of captured partisans by fascist troops (ROSENBAUM 1975, p. 31). Until the end of his life Almirante knew very well which side he had chosen in history and what this amounted to with regard to the Italian constitution. Calling for the need to establish a «new republic», ALMIRANTE (2017), shortly before his death in the late 1980s, stressed that «Fascism must be handed over by the elderly faithful as a message of the future to the brave and clean young people». He found that fascist history from his point of view looked good in comparison with the Italian constitution whose content he (correctly) attributed to the heritage of the National Liberation Committee. Shortly after Almirante's remarks, Meloni herself would join this group of «brave and clean young people», entering the MSI youth section in the early 1990s. Consequently,

Almirante defined his movement as a «global alternative to the system» and as a «historical and moral antithesis» to the «heirs of the National Liberation Committee». In materials for political training he authored as early as the 1960s, Almirante (MOVIMENTO SOCIALE ITALIANO s.d.: 14) asserted «that the rule of law does not exist; and that the democratic constitution is merely the cloak thrown over the shoulders of a party-dominated Italy».

When Almirante's companion and former MSI leader Pino Rauti passed away in 2012, Giorgia Meloni's obituary was unequivocal. She spoke of Rauti, who in his youth had volunteered for Mussolini's last military bid in the Republic of Salò, as an «absolute point of reference for the Italian right». She expressed her condolences and her «closeness to the Rauti family» and asserted that Rauti had shown that politics is the «heritage of ideas open to dialectical and intellectual confrontation» (MELONI 2012). Indeed, in his lifetime, Rauti was ready for «confrontation», having been involved in the founding of the Ordine Nuovo group, an organisation which proved instrumental for the emergence of right-wing terrorism from the 1960s onwards (FERRARESI 1996, pp. 52-63). While Meloni claims the programmatic keyword “sovereignty” for her party (MELONI 2019), her reference point Rauti stated that «democracy is a disease of the soul» and that he neither «believe[d] in elections» nor thought «that Parliament represents the nation». Paying tribute to the founding myth of Rome as well as to an activist and violent approach, he demanded: «We must be wolves and make ourselves known as such». (cited in RAPOPORT, WEINBERG 2001, p. 34) Referring to «principle» and «ideological reasons», he neglected «the equality of men» and «universal suffrage» (cited in PIETRANGELI 1975, 00:57:46-00:57:57). RAUTI (1952, p. 12) also approvingly quoted Mussolini's qualification of the fascist political system as totalitarian and expressed his admiration for Nazism (ROSSI 2003, pp. 163-164).

In 2019, in order to commemorate the 30<sup>th</sup> anniversary of the fall of the Berlin Wall as a symbol for the end of “red” totalitarianism, the aforementioned ECR think-tank New Direction was responsible for a multimedia exhibition with the title «Goodbye damned wall» that has since been shown in several Italian cities and towns. It comes as no surprise that the exhibition was praised by high-rank Fratelli d'Italia politicians

like Giorgia Meloni or Isabella Rauti, with the latter paying special tribute to her late father: A whole section of the exhibition is dedicated to the anti-communism of Pino Rauti and the MSI (CAMPITELLI 2019). The totalitarian fascist wolf, whose teeth are rather gnashing than displaying a smile, thus is official part of the ECR's canon of "anti-totalitarian" conservatism.

One of the heads of the West German New Right during the Cold War, Caspar VON SCHRENCK-NOTZING (1965, p. 289) held the view that anti-totalitarianism can either be further developed into anti-communism or that it can regress into anti-fascism. While the anti-totalitarianism of canonical EU historiography is anti-socialist per se, no anti-fascist "regress" must be feared at all as long as Abendrothian or Togliattian constitutional anti-fascism is marginalized. In order to tackle the problem that capitalism is prone to certain involutions toward totalitarianism (VRANICKI 1985, p. 77), many lessons from Abendroth and Togliatti can be learned by those willing to do so. Both in Germany and Italy the fulfilment of constitutional anti-fascist and social imperatives is more out of reach than ever. Neither in Germany nor in Italy is this mainly the fault of the political left defamed as "totalitarian" or deemed "unconstitutional". It remains as true today as it was more than half a century ago that «[a]ntifascism and the Resistance were not only negative positions against tyranny, and valid only [...] when such tyranny has to be defeated through civil war. Antifascism and the Resistance have had definite positive contents and significance: the new democratic and peaceful regime, the social and political renewal of the Country through bold reforms of the political and economic structures envisaged by the Constitution and the struggle for the unity of popular democratic forces to prevent any return to tyrannical regimes and to ensure a peaceful advance towards a new society» (TOGLIATTI 1960b, pp. 12-13). In a similar manner, we can read in Stefan HEYM'S (1998, p. 124) novel *Schwarzenberg* the Blochian sentence: «All constitutions [...] were utopian, at least the democratic ones».<sup>27</sup>

Amidst the current devastating state of the political left on the European continent, it seems to dawn on certain sections of said left that the

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<sup>27</sup> Cfr. LOSURDO (2024, p. 55) for a perspective on the sometimes thin line between utopianism and a concrete political project.

classical «idea of the anti-capitalist mass party of Togliattian matrix» has been unfairly vilified by alternative currents within the left. At the same time, the stratagems of these currents in the last quarter of a century have in turn proven to be not nearly half as successful as the political formation of yore that the subaltern classes had used to further their interests (cfr. FERRARI 2023) – a formation, obscured and maligned as “Stalinist” or “reformist” (or both at the same time).<sup>28</sup> It is time to put an end to the tendency of «intellectuals on the contemporary left [...] to extract the party from the aspirations and accomplishments it enabled» (DEAN 2019, p. 6). Even more so, the (irretrievable) historical experiences of «the most intelligent of parties» (SARTRE 1964) deserve, together with Abendroth’s constitutional lessons, to be unearthed again as heritage for a true renewal of the forces of social and democratic progress. The forces of regress have in turn understood very well; hence, a decade ago analysts of the J.P. MORGAN bank (2013, p. 13) demanded «meaningful political reform» in order to overcome the Italian constitution’s «shortcomings» they saw in «weak executives; [a] weak central state[...] relative to regions; constitutional protection of labor rights; [...] the right to protest if unwelcome changes are made to the political status quo» (*ibid.*, p. 12). As «weakness can become strength» (GRAMSCI 1977, p. 50), what the economic and political rulers view as a weakness might serve as a point of departure for the subaltern classes to gain new strength.

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<sup>28</sup> Cfr. LOSURDO (2024, pp. 225-226) for a critique of this view. Cfr. ABENDROTH (1971, pp. 244-258 and 1979a) and TOGLIATTI (1979b and 1962b) for their respective, insightful takes on the problems of Stalinism and reformism.

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