

The expansion of judicial independence in Italy (1948-1978)

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Abstract

During the first three decades of the Italian Republic (1948-1978), the Italian judiciary experienced substantial institutional changes which enhanced its independence within the political system. Drawing on the historical institutionalist perspective, the paper shows how these transformations were determined by initiatives which took place in different layers of the political. In a first stage (1948-1958), the judicial independence was ensured by political actors through initiatives from the top: the adoption of the Constitution, the enactment of various laws and the establishment of the Higher Council of the Judiciary in 1958. These changes profoundly influenced the identity of the judicial body and its perceptions about its own institutional role. However, these initiatives from the top were not only received, but also reinterpreted by the judicial actors. In a second stage (1958-1978), the Italian judiciary developed new extended interpretations of the principle of independence and began to call for reforms to dismantle the internal hierarchy of the judicial body. This intense ideological pressure from the bottom influenced the political debate and induced the legislator to pass a series of reforms which demolished the traditional system of judicial career. These processes provided the basis for a further expansion of the judicial power, which would later emerge clearly with the Italian political and institutional crisis of the early 1990s.

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