

The Road to *Palazzo della Consulta*: Profiles and Careers of Italian Constitutional Judges

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Abstract

Constitutional Court judges are powerful yet understudied elites. Unlike other political elites that have been studied for over a century, their profiles and careers are a neglected field of analysis in European political science. This is surprising given the centrality of the question “who governs?” to an understanding of a political system. However, few studies have attempted to document systemic differences in the profiles and careers of apex court judges, so that this field of analysis is both under-researched and under-appreciated. Drawing on an original dataset, this article contributes to filling this gap by looking systematically at the profiles and careers of Constitutional Court judges in Italy from 1956 to 2021. The article first examines the characteristics of the selection of Constitutional Court judges according to Italian constitutional jurisdiction. Second, it explores the socio-demographic background of Italian constitutional judges. Third, it investigates their political and/or technical experience prior to their period in office. The last section concludes the analysis and opens the way to further research, emphasizing the need for comparative analysis in this issue.

1. Introduction: an under-researched field of analysis

Constitutional Court judges are powerful yet understudied elites. Unlike other political elites that have been studied for over a century, their profiles and careers are a neglected field of analysis in European political science. This is surprising given the centrality of the question “who governs?” to an understanding of a sociopolitical system (Dahl 1961; Schmidhauser 1982; Müller-Rommel et al. 2022). However, few studies have attempted to document systemic differences in the profiles and careers of apex court judges, so that this field of analysis is both under-researched and under-appreciated (Russell 2012; Russell and Malleson 2006; Tiede, forthcoming). The relevance and the salience of such a study have to do with at least three reasons.

First, given the scarce extant literature, there is a lack of integration – and extension – of this stream of research to studies of elites in other branches of government. As Tate (1975: 109) observes, “if judges are admitted to be political elites, then their backgrounds should be intrinsically as interesting as those of other political decision-makers: executives, legislators, or bureaucrats. Further, like information on the background traits of these other political elites, judicial background and career characteristics may provide information about the values and the distribution of political influence of a society and ‘gauge’ for the measurement of social and political change”.

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Second, over the last few decades, most political regimes share an increasing political significance of judicial institutions in the political arena (Tate and Vallinder 1995; Guarneri and Pederzoli 2020; Hirschl, forthcoming). This is particularly true of Constitutional and Supreme Courts, which have become a privileged seat of policy-making, intervening “in legislative processes, establishing limits on law-making behavior, reconfiguring policy-making environments, even drafting the precise term of legislation” (Stone Sweet 2000: 1). Therefore, courts have increasingly developed the capacity to influence political activity, to the point of becoming the main defenders of democracy over the last few years (Musella and Rullo 2023a). However, while the apex courts have taken on increasingly visible and recognizable political connotations worldwide, we know little about the judges sitting at the helm of contemporary judicialized politics and who quite literally rule (on) different political regimes (Parau 2018).

Third, the study of the profiles and careers of constitutional judges can lead to a broader assessment and understanding of the changing dynamics of their pre-career experience, and what judicial skills and expertise will be present in apex courts (Bobek 2015). At the same time, to understand the development of constitutional justice and the exercise of a mechanism of checks and balances of the political branches of a given liberal democracy, the values and the socio-demographic background against which constitutional jurisprudence will be assessed and interpreted have to be taken into account (Guarneri and Piana 2011: 141; Pederzoli 2020). These elements have also been interpreted as the main components of the “judicial diversity” of the apex courts (Gee and Rackley 2018), which “enhances a court’s legitimacy, builds public confidence in the court, remedies past inequalities, and improves the quality of decision-making of the court by bringing a diversity of perspectives to its opinions” (Chandrachud 2020: 219; Escobar-Lemmon et al. 2021).

Drawing on an original dataset (see Appendix), this article systematically examines the profiles and careers of the judges of the Italian Constitutional Court, one of the most powerful courts in contemporary Europe (Pócza, forthcoming). Consistent with the judicialization of politics in many other political regimes, Italy’s Constitutional Court has emerged as a *de facto* lawmaker (Musella and Rullo, 2021; 2023b), which has led to a growing recognition of its political power. Such a systematic analysis echoes the tradition of comparative studies on constitutional judicial elites (Tate 1975), which found fertile ground in the US and in Latin American countries (Atkins 1989; Epstein et al. 2003; Alleman and Mazzone 2009; Barton 2012; Da Ros 2012; Iniguez 2020; Aguiar Aguilar 2023), in the International Court (Mackenzie et al. 2010; Føllesdal 2023), and to a less extent in Europe (Jäckle 2016; Chalmers 2015; Madsen 2014). In Italy, beyond the studies of Breton and Fraschini (2003) and Fiorino et al. (2012) which came from the political economy field, it was the study of Pederzoli (2008) that started political science-oriented research on constitutional judicial elites, thus stimulating further analysis on the members selected for this influential and visible Italian political institution.

More in detail, three research questions will be addressed to provide insights on how empirical analysis of the constitutional judges’ profiles and careers can be applied:

- 1) How “diverse” is the Italian Constitutional Court?
- 2) Do judges’ pre-careers involve a high degree of involvement in political or technical positions?

- 3) Are there differences between the judges' careers concerning the selecting body (Parliament, President of the Republic, and High Courts)?

The article is structured as follows. First, it examines the characteristics of the selection of the Italian Constitutional Court judges according to the constitutional jurisdiction. It investigates the methods of appointment and tenure, presenting the *de jure* limits to the judicial recruitment pool and the procedure to be followed to “staff the Court”. Second, it explores the judicial diversity of the Italian Constitutional Court, investigating the socio-demographic background of the Italian constitutional judges (gender, age at investiture, and geographical origin). Third, the pre-career of judges is analyzed by looking at both the formal qualification provided by the Constitution (judges, professors, lawyers), and at the previous political and/or technical experience of the judges sitting on the bench from 1956 to 2021. The last section concludes and presents an agenda for further research, emphasizing the need for comparative analysis and highlighting how this study provides an effective vantage point for observing the processes of political change in contemporary political regimes.

2. “Staffing the Court”: The Italian constitutional jurisdiction

After fascism, the Constituent Assembly introduced the Constitutional Court in the post-war Constitution of 1948. The new institutional framework introduced the Court as an institutional referee to secure intergovernmental relations and protect a coherent and evolving interpretation of the Constitution. The Court was conceived according to the Kelsenian model of judicial review, i.e., a special tribunal outside the regular judiciary (Stone Sweet 2000). Articles 134 and 90 of the Constitution govern the powers of the Court. The former defines the jurisdiction of the Court in deciding the constitutionality of laws and legal acts with the force of law, which means having the force of law and resolving conflicts between various parts of government. The latter refers to its role in monitoring the political arena by trying accusations against ministers – until 1989 – and the President of the Republic. In addition, the Court rules on the admissibility of abrogative popular referendums according to law 87/1953. The Court shares with other Kelsenian courts “the secrecy of decisions” because dissenting opinions are prohibited, and the rulings always appear to be a unanimous decision of the whole Court. Its decisions are not subject to appeal. Constitutional judges have to elect (by absolute majority) from among themselves the President of the Constitutional Court for a three-year term of office. The President (the fifth institutional figure in the Italian order of precedence) manages the agenda and chairs the Annual Conference on the Constitutional Court’s work.

The selection of the Court is ruled by article 135 of the Constitution, which originally provided for a Court of 15 judges with a single twelve-year mandate. The original term of office was in force until 1967 when Constitutional Law 2/1967 reduced it to a nine-year mandate. This period is in line with other European countries, such as France, Spain, and Portugal, and is still longer than that of any other mandate/institutional positions provided for in the Italian Constitution. For instance, the President of the Republic is elected for seven years (Art. 85), while ordinary members of Parliament are elected for five years (Art. 60). Moreover, this tenure suggests the attempt of the Italian founding

fathers to keep the Court at a “distance from the run-of-the-mill majoritarian electoral politics” (Kumm 2019: 285). Regarding the judicial recruitment pool (i.e., who can become a constitutional judge), Italian constitutional judges are chosen from among law professors, judges (including retired ones), and lawyers with at least 20 years of practice. Therefore, there is a rather detailed profile, thus providing for educational, professional, and experiential requirements which would make constitutional judges very similar to one another on many social features and very dissimilar to the mass population. There are no other selection criteria limiting the pool of candidates, such as lower age limits (such as in Austria), and which instead apply to Senators (40 years), Deputies (25 years), and President of the Republic (50 years). Thus, the Constitution emphasizes the centrality of the legal expertise and education of potential constitutional judges. This element is in line with the evolution of other Civil Law countries where “since the Napoleonic reforms, the subordination of the judge to the law is not only a value embedded in the political and legal culture of these systems, but also becomes an organizational principle of the judicial apparatus” (Pederzoli 2008: 22). At the same time, the Constitution and other laws define a list of incompatibilities: constitutional judges may not simultaneously be Members of Parliament or of a regional council, may not participate in other duties and activities (both public and private), and may not be members of political parties or involved in political activities. At the end of their term of office, they receive the title of “judge emeritus” and preserve some privileges such as a secretary, an office, and – for one year – one official state car (Pasquino 2016: 107). However, there is no provision for incompatibilities after the end of the judicial term.

Second, another point of great concern relates to the “how” of becoming a Constitutional judge, i.e. the procedure to be followed to appoint a new judge. Although “staffing the Court” was a subject of intense and complex political debate between the main political parties,¹ the Italian founding fathers recognized that the classical powers of a democratic state had to be equally represented in the composition of the Court. In line with the “division of power doctrine” that has shaped Continental Europe (Nicolini and Bagni 2021), the power to select constitutional judges is shared between different institutions, which equally appoint a portion of the constitutional bench, thus realizing a “mixed model”.²

¹ As Volcansek (2010: 294) points out “the Christian Democrat party in Italy may initially have desired a strong Constitutional Court as an insurance policy to protect the constitutional bargain when facing uncertain electoral prospects, but when in power it attempted to stall implementation of the court and later to dilute its influence. The PCI and PSI may have opposed judicial review on ideological grounds, but later became its champion, probably seeing the court as an insurance policy to check DC dominance”. In addition, further delays are caused by the parties’ difficulties in reaching an agreement on the election of the five judges elected by the Parliament in a joint session, which required a debate of more than two years (October 3, 1953 - November 8, 1955).

² Across countries, Constitutional and Supreme court judges vary in the mechanisms by which they are chosen. The mixed model is the most used worldwide. According to Tiede (2022: 25), “about 52 per cent of high courts worldwide use a form of this selection method, which allows different selector to fill some of the seats of the Court”. The “success” of this institutional design has been underlined also by the Venice Commission, a leading authority on constitutional law, which suggests that because constitutional courts have been entrusted with the power of ruling on fundamental separation of powers issues “it may well be appropriate to ensure in their composition a balanced consideration of each of these authorities or organs”. As alternatives to this model, we find the “collaborative model” where cooperation between the executive and the legislative branches; and the “parliamentary model” where Parliaments hold the power of the judges’ appointment.

Specifically, five members are appointed by the President of the Republic, five members by three Higher courts (three by the Court of Cassation, one by the Council of State, and one by the Court of Auditors),³ and five members are elected by the two houses of Parliament. Constitutional Law 2/1967 modified the quorum for the election of five parliamentarians judges who until then were to be elected with a 3/5 majority by both chambers of the Parliament assembled together. Since 1967 the five members have been elected by the two houses of Parliament by a two-thirds majority in a joint session or a three-fifths majority after the third ballot. If a judge ceases to hold office before the end of his term of office, because of death, resignation, or removal from office, his replacement is appointed for nine years by the same body that originally appointed him/her. Thus, “the Court’s jurisprudence may change over time, but always subject to fundamental underlying continuities” (Nardini 2006: 20).

Table 1. Body selecting constitutional judges in Italy (1956-2021)

| | N | % |
|---------------------------|------------|-------------|
| High Courts | 40 | 34.2% |
| Parliament | 37 | 31.6% |
| President of the Republic | 40 | 34.2% |
| Total | 117 | 100% |

Source: own elaboration from the dataset.

From 1956 to 2021, 117 individuals sat in the *Palazzo della Consulta* (with a value of 1.72 appointments per year),⁴ showing a composition that *formally* suggests a substantial balance between the political component with technical-legal expertise, thanks to an effective balance between the three branches (Figure 1).⁵ Nevertheless, there is a discrepancy between the number of different judicial appointments. This can be understood in the light of the various delays in the election of parliamentary constitutional judges. In fact, while parliamentary appointments have long been part of a larger system of patronage that supported the Italian *particracy* during the First Republic (1948-1993) (Pederzoli 2018), the issue became an arena of potential conflict – and delay – between the governing parties and the opposition during the so-called Italian Second Republic (1993-today). It is worth noting that the average number of days for the election of parliamentary judges from 1993 to 2021 was 340, while in the previous 28 years the average was 121 days. There is also an increase in the number of scrutinies, which went from an average of 2 to more than 11 in the most recent phase. Therefore, in an era of personalized politics (Musella 2022), difficulties in reaching agreements have led to conspicuous delays, often forcing the Court to work with a reduced Council. For example, in

³ As in other Civil law countries, ordinary judges are career judges. They enter the Judiciary after law school, and after taking a public exam. They are provided with life tenure and are promoted largely based on seniority, and their career is governed by a special body, that is the High Council of the Judiciary (*Consiglio Superiore della Magistratura*). See Di Federico (2006).

⁴ This is a term used to refer to the Constitutional Court, taken from the name of the Court’s official residence at the “Palazzo della Consulta” in Piazza del Quirinale in Rome.

⁵ The 40 members elected by three senior courts are distributed thus: 7 (6 %) Council of State, 9 (7.7%) Court of Auditors, and 24 (20.5%) Court of Cassation.

1997 the election of Annibale Marini took 603 days, in 2008 the election of Giuseppe Frigo took 536 days, in 2015 Augusto Barbera and Giuliano Prosperetti took 536 and 317 days respectively. Finally, the election of Giuseppe Antonini in 2018 reached the peak over the last twenty years, taking 620 days.

In terms of duration, the majority of judges complete their mandate. On average, they have been in office for 8.6 years. Shorter tenures are mainly due to health problems or death, as in the case of Giuseppe Capograssi, who died on the same day as the Court's first ruling on 23 April 1956, or Giuseppe Lampis, who died a month later (30 May). In other cases, they resigned because of their appointment to other positions (as in the case of Sergio Mattarella, who became President of the Republic after 39 months as a judge) or because of public conflicts between the judges and other political institutions or within the Council itself (Bonini 1996).

3. Judicial diversity at the Italian Constitutional Court

In Italy, no seats are reserved for gender or geographic representativeness, and the formal rules do not impose an age limit. A look at the judicial diversity of the Italian Constitutional Court can highlight if there is an equitable geographic representation, a fair representation for female and male judges, and the age of appointment of the constitutional judges. On the one hand, a Court that fairly reflects the different geographic, gender, and age components of society may signal that it is “open to all” (Chandrachud 2020). On the other hand, these elements can provide valuable information on the “informal constitution” and on whether judicial diversity was considered for judicial appointments to the Constitutional Court between 1956 and 2021.

3.1. Gender diversity

A look at gender shows that being a constitutional judge is a male job: data show that only seven women (6%) broke “the judicial glass ceiling” (Escobar Lemmon et al. 2021). The Italian case is unusual among its European counterparts and suggests that women have only recently entered the Constitutional Court, which was an all-male bench until the mid-nineties.⁶ The first woman to be appointed to the Court in 1996 – that is 40 years after the Court began operating – Fernanda Contri, represented a historical landmark, breaking the traditional exclusion of women from the Court. Moreover, beyond its symbolic value, the selection of the first female judge was a “necessary first step in the process of a broad approach to diversity on the bench” (Arrington et al. 2021: 865). We observe an increase in the proportion of women on the bench over the last few years. This has been stimulated by the fact that gender parity is becoming an increasingly hot topic in Italy. Indeed, following Fernanda Contri's appointment to the Court, six other women have been appointed in subsequent years (Maria Rita Saulle in 2005, Marta Cartabia in 2011, Daria De Pretis and Silvana Sciarra in 2014, Emanuela Navarretta and Maria Rosaria San Giorgio in 2020). It should be noted that five of the seven female judges were appointed by different Presidents of the Republic, while it was only in 2014 and 2020 that

⁶ For instance, the first woman was appointed to the Federal Constitutional Court in Germany in 1951, to the *Tribunal Constitucional* in Spain in 1980, to the *Conseil Constitutionnel* in France in 1992, to the *Hoge Raad* in Netherlands in 1967.

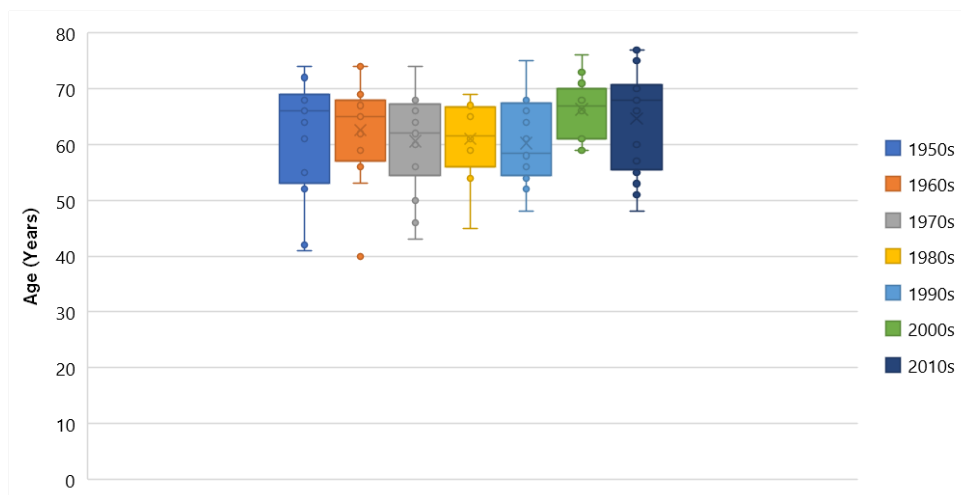
the Parliament and the Court of Cassation respectively elected a female constitutional judge for the first time. Thus, in 2020, the *Consulta* had a record number of four women judges, which had never been the case in more than 60 years of its history. In the same year, the appointment of the first female justice, Marta Cartabia, as President of the Court was also a significant event.

This trend confirms previous comparative studies which underlined that women's overall proportions in the High Courts of developed democracies have increased considerably. At the same time, it is in line with the increasing numbers of women in the Italian magistracy where, as of 2022, more than 50% of magistrates are female, but also in the executive and legislative branches (Pansardi and Pinto 2020). From the 13th legislature (1996-2001) to the 18th (2018-2022) the number of women in the Chamber of Deputies rose from 11.13% to 35.71% and in the Senate from 8% to 34.69%. Moreover, Giorgia Meloni became the first female President of the Council of Ministers in Italy in 2022.

3.2. Age of appointment

Another relevant element relates to the age at which constitutional judges take up their positions. Although there is no maximum or minimum age limit for appointing judges to the Italian Constitutional Court, judges are selected from a limited pool of highly educated and experienced legal professionals. It is therefore not surprising that the average age at investiture is 63 years, with more than half of the judges in the 60-69 age group. There are differences between the three selection bodies: judges appointed by the three High Courts show an average age of 66 years, while those from the other two branches are around 60 years old, with more than 40% of presidential and parliamentary appointees tending to come to office in their 40s and 50s.

Figure 1. Age at time of investiture (1956-2021)



Source: own elaboration from the dataset.

If this is the general picture, significant variations in the level of seniority emerge with the passing of time. Looking at these data in a diachronic way, it can be observed that the Court as a whole is getting 'older' over time (Figure 1). While there has long been a clear tendency towards appointing people to the Court at an earlier age, the general

increase in the average age of the judges has become more visible over the last twenty years. For all judges appointed between 1980 and 1999, the average age at which they first became a constitutional judge was 60.5; for judges appointed between 2000 to 2021 the average increased to 65.5 years.

It is noteworthy that this trend particularly interests Parliament, which has usually appointed the youngest member of the bench for over 40 years. Indeed, while the 25 judges appointed up to 1999 had an average age of 57.4 years, the most recent choices have favored more experienced profiles leading to an average age of 66.8 years. The appointments of Augusto Antonio Barbera and Franco Modugno (on the Court since 2015), being the oldest members ever appointed to the bench at 77 years, make this point rather nicely.

This data is not in line with other branches of government, particularly given that Italy has recently reached one of the lowest average ages of MPs in Western Europe (in 2018: 45 years) (Verzichelli et al. 2022), and that the age of cabinet ministers has also decreased in recent years (Musella et al. 2022). At the same time, it suggests a more static view of constitutional jurisprudence, as older judges are not successfully “hybridized” with new, younger colleagues, which can potentially bring fresh social perspectives to the Court.

3.3. Geographic diversity

An analysis of the geographical origin/territorial dimension is another background factor used by political scientists working on judicial diversity in the apex courts (Skiple et al. 2022). This point is of particular interest for Italian constitutional justice, which is called upon to guarantee the balance of power between the central State and Regions, resolve conflicts arising between different levels of government, and preserve the cohesion of the Italian State (Amato and Bassanini 1972). The theme of territorial diversity on the bench (re)appeared powerfully in the 1990s, occupying the center of the Lega Nord’s reform programs, according to which devolution and a regionalized constitutional court represent an inseparable pair of reforms in an approach to federalism. The Northern League’s (LN) criticism focused on the appointment mechanisms, thus presenting a project for the “regionalization of the Constitutional court” during the third Berlusconi government in 2001, later formalized in the Bossi-Speroni draft of July 2001. More recently we may recall the potential interventions planned by the Renzi-Boschi constitutional bill on the territorial representation of the Court. These plans have never been realized.

Table 2. Geographic diversity of Italian constitutional judges

| | N | % |
|--------------|------------|-------------|
| North | 23 | 19.7% |
| Center | 29 | 24.8% |
| South | 65 | 55.6% |
| Total | 117 | 100% |

Source: own elaboration from the dataset.

The data reveal that there is no equitable geographical distribution of the plurality of the Italian regions in the birthplace origins of judges. Despite being one of the most populated and wealthiest parts of Italy, northern regions are largely underrepresented in terms of the percentage of Constitutional Court judges. Table 2 shows that most of the Italian constitutional judges come from southern Italy (55.6%). This is particularly true for the constitutional judges elected by the High Courts (77%) and by Parliament (52%). The overrepresentation of this part of the country has been visible since the first judgment in 1956 when 67% of the judges were born in southern regions. Quite symbolically, these data are similar to the percentage relating to the Italian Presidents of the Republic: six out of twelve were born in southern regions. A closer look at the geographical origin reveals that 32 judges were born in Campania, followed by Lazio and Sicily, with 16 and 14 judges respectively. Only two regions, Veneto and the Aosta Valley have not produced any constitutional judges during the 60 years under analysis.

Although these results do not underline a stable link with the territory of origin (Pederzoli 2008), the birthplace of judges can provide valuable information on their educational path as it often correlates with the university they have attended.

4. The pre-career experiences of Italian Constitutional judges

4.1. Professional background

The constitutional requirement of belonging to the magistracy, having a high-level academic qualification, or long professional experience in the legal sector, provides a limited judicial recruitment pool. Table 3 highlights that there is considerable variability in the professional background of constitutional judges and deep differences in their distribution, with half of the judges having been law professors, followed by judges, and, to a lesser extent, lawyers.

While the presence of lawyers appointed to the Court is becoming increasingly rare, reaching its lowest point (5%) in the decade 2010-2021, the academization of the Court has become commonplace, especially since the 1990s, when professors took on an increasing “weight on the map of power” in Italy (Simone 1998: 642). Almost 60% of the law professors have been appointed by the Presidents of the Republic, with the last three Presidents (Ciampi, Napolitano, Mattarella) appointing exclusively people from the academic world. The strong presence of mature jurists with long and prestigious academic careers, mainly in constitutional law (14.5%) and penal law (6%), has been particularly evident in recent years, reaching 67% of the judges currently in office. Moreover, although there is no formal obstacle to the appointment of professors or lawyers for the High Court’s quota, “their votes have always flowed only to members of their respective bodies”, so that “the Court has always been able to count on a stable component of at least five ordinary and administrative judges, elected by their peers, according to the proportions provided for by the Constitution” (Pederzoli 2020: 5).

Table 3. Professional background of Italian constitutional judges

| | N | % |
|--------------|------------|-------------|
| Professor | 58 | 49.6% |
| Lawyer | 13 | 11.1% |
| Judge | 46 | 39.3% |
| Total | 117 | 100% |

Source: own elaboration from the dataset.

Therefore, the absence of permeability of the recruitment process highlights that constitutional judges elected by the three High Courts are drawn from professional groups exclusively inside the judiciary itself, often as the result of a compromise between the different judicial associations and their political strength and the division of power within them (Guarnieri 2003). However, it is not only judicial experience that counts for appointment to the Supreme Court. It is also the length of service on the respective High Courts (Court of Cassation, Council of State, Court of Auditors) compared to the other judges on that court. In short, judges from the three Higher Courts are not considered for appointment to the Constitutional Court, until a certain level of seniority has been reached in their respective Court.

These data, however, do not reflect the real, more complex socio-professional backgrounds of many of the constitutional judges and the wide range of their professional experience. If all the potential constitutional judges' candidates pass certain common thresholds, it becomes difficult to judge their professional background only. As Bobek (2015: 18-19) points out "it makes little difference if one of the university professors competing for judicial office has published 15 books and the other only 12, if all of them are quality publications. Thus, once a certain 'minimal threshold' has been passed by all of the candidates, other considerations will inevitably come into play". For these reasons, it is worth looking empirically at their pre-appointment experience, stressing in the next subsection their political and technical pre-career experiences.

4.2. Political and technical pre-career

Throughout the history of the Italian Constitutional Court, almost 25% of the judges have held one or more political posts prior to their period in office. All these judges have been appointed by Parliament and the Presidents of the Republic. Almost 20 % of all judges were members of parliament, around 3% served as party heads, and more than 18% held posts as a member of the government. For instance, we may recall the case of Giuliano Amato, vice-president of the Council of Ministers from 1987 to 1989, then twice President of the Council of Ministers (1992-1993; 2000-2001), and consistently involved in various government positions; or we may recall the experiences of judges Contri, Flick, Gallo and Cassese who were ministers during the Ciampi and Prodi governments. Moreover, it is worth noting the case of Sergio Mattarella, MP since 1983, minister in three different governments, vice-president of the Council of Ministers in the first D'Alema government (1998-1999), and currently President of the Republic.

Nevertheless, the percentage of individuals appointed to the *Palazzo della Consulta* with previous political experience has fluctuated over time. The First Republic Court was

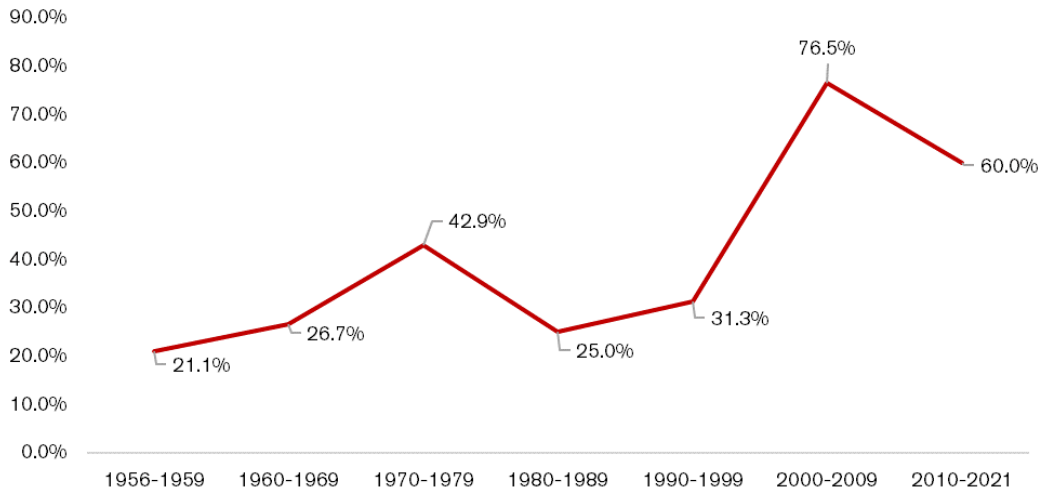
made up of experienced professionals in politics who had often held several mandates during their careers. The selection of constitutional judges was part of the *lottizzazione*, so parties attributed judicial posts – such as other public offices – to each coalition party and intraparty faction according to their parliamentary and intraparty strength. The general convention provided for two candidates chosen by the Christian Democratic Party (DC), one by the Communist Party (PCI), one by the Socialist Party (PSI), and one by the smaller parties. There have been formulas for the Presidents of the Republic as well. For instance, President Gronchi declared his personal “magic formula for appointment: one pre-fascist Liberal, one [politically] independent Catholic, one Christian Democratic representative, one technician with monarchist sympathies, and one republican jurist” (Bonini 1996: 95).

In such a scenario, the highest percentages were reached during the first years of the Italian Republic, when more than half of the first generation of constitutional judges participated in the events surrounding the construction of the Republic. They all represented eminent elder statesmen, reflecting the need to ensure the functioning of the newly born institution and to provide it with greater legitimacy in the years of the institutionalization of constitutional adjudication in the post-war period. In the following years, there was a gradual but clear decline in the percentage of appointees to the Court with previous political experience, reaching the lowest percentage in the last decade (15%).

This decline has been compensated for by the growth in the number of members with different professional backgrounds. Besides political experience, constitutional judges hold increasing technical experience as senior civil servants in the national bureaucracies (i.e., in national banks, ministries, and other governmental agencies). The most notable change reflects the period following the Tangentopoli scandal and the establishment of the so-called Second Italian Republic (1993-today) (Figure 2). The political instability opened by the judicial and media earthquake reshaped the context and the structures of power in which the Court – and its judges – was called to act. As the *cursus honorum* of constitutional judges, whereas the Court of the First Republic (1948-1993) can be noted for its small number of former senior civil servants, with most of these individuals recruited from the top of the Italian judicial hierarchy (Escarras 1990: 172-173), this composition is reversed for the most recent political phase. The rise of former heads of the Cabinet of Ministers, heads of studies and legislation, members of independent authorities, and technical advisors to ministries or other governmental bodies became commonplace.

Between 1993 and 2021, the percentage increased to 60%, peaking at 76.5 % of the appointments made between 2000-2010. It is noteworthy that this trend also involved the judges elected by Parliament, thus suggesting greater insulation of the Court from party-based politics, and the crisis of pervasiveness of the role of the parties in the processes of judicial appointment. Only two of the fifteen judges in office in 2020 have had previous political experience, while half of them held relevant positions in the Italian bureaucracy, such as head of the legislative office, or special advisors to parties and government on specific policy areas, such as Luca Antonini (fiscal federalism) and Francesco Viganò (statute-barred criminality).

Figure 2. Percentage of constitutional judges with technical experience as senior civil servant in the national bureaucracies by decades



Source: own elaboration from the dataset.

These trends underline how, over time, the Italian constitutional judicial elite has established regular channels of access and recruitment into its ranks. While for a long time, previous political experience and a clear political profile characterized the pre-career of judges, technical experience seems to better enable them to accumulate resources and therefore to be identified as a potential candidate and get more chances to reach a judicial position. These channels often also serve to socialize constitutional judge-aspirants in a particular way (Cassese 2015). Although a relationship between pre-career and the understanding of political issues can only be assumed, the trend towards the preponderance of former senior civil servants could imply that constitutional judges are increasingly prepared to deal with the many and specialized issues brought before the Court. At the same time, it reflects a general challenge in the profile of constitutional judges, so that their professional career develops skills in an increasingly technical rather than a policy-oriented application – and interpretation – of statutes.

In such a scenario, the careers of the Constitutional Court judges suggest a general overlapping of the Italian elite and the increasing practice among them of crossing over (Secker 1995). More in detail, a political pre-career became a less relevant criterion for judicial selections during the Italian Second Republic. On the one hand, the search for an institutional legitimacy alternative to party legitimacy has increasingly relied on the authoritativeness and image of independence of more and more technical figures. This point explains the particular attention paid to this point in recent decades: in the face of a political class in a crisis of confidence and reputation, involved in a chronic democratic deficit and in the credibility and legitimacy of its actions, technical figures have increasingly been seen as more reliable and trustworthy actors to be appointed to the bench.

Lastly, it should be observed that having a technical or political pre-career does not affect the possibility to achieve the role of President within the Court, as the election usually falls to one of the most senior members.⁷ The President of the Court is the most

⁷ Of the 117 constitutional judges in office from 1956 to 2021, 38% achieved the role of President.

prominent political figure inside the decision-making process, and has come to be seen as the public face of the Court (c.f. Scheppele 2005). Indeed, he/she chairs the Annual Conference on the Constitutional Court's work and has the institutional power of moral suasion, advising parliaments and governments on specific policy areas or enacted laws. This prerogative has long been used during the Annual Conferences, which are the only public occasions when the President discusses the most important and critical decisions and issues of the year. More recently, along with the personalization of the presidency, which has been redefining its role in the public arena, there has been a widening of the channels of moral suasion. In addition to the increase in the number of interviews, a large number of posts, tweets and videos focus first and foremost on the President, fueling the scope and the echo of the Constitutional Court's voice in the political arena (Musella and Rullo 2023b).

The President of the Court manages the agenda, sits on all cases decided by the Court and, in the event of a tie, the President's vote is decisive because his or her vote carries more weight than that of the other Council members. In the same vein, the President chooses the Vice-President and the Judge-Rapporteur. The latter is in charge of writing the final opinion and could "orient" the discussion on the law under review. This is a critical responsibility, despite the fact that this final decision is always the responsibility of the entire Court and that concurring and dissenting opinions are not allowed.

While these characteristics suggest a strong presidential power and its influence on the overall functioning of the Court, other factors have to be highlighted such as the term they serve in office. While the three-year term of office would be formally renewable, throughout the history of the Italian Constitutional Court Presidents have rarely completed a full term. Even more rarely, they have been re-elected, as in the case of Gaspare Ambrosini, Leopoldo Elia, Francesco Saja. Therefore, the rise of the "fast-Presidencies" means it is not easy to identify the eras of the Italian Constitutional Court in terms of its Presidents, as is possible, for example, with the US Supreme Court, using the Warren Court, the Burger Court and the Rehnquist Court, or with the Hungarian Court with the Sólyom era (1990-1998).

Of the 44 presidents of the Court between 1956 and 2021, almost half were in office for a year or less, sometimes leaving only a few days before the end of their term in office. Specifically, the number of months (on average) decreases over time, with a clear difference between the first 30 years (1956-1986) of the Court and the following decades, reaching the lowest point (11.1 months) in the period 2010-2021. The prevailing practice has allowed the election of a President for fewer than 100 days, as in the case of judges Vincenzo Caianiello (44 days) and Mario Rosario Morelli (86 days). Marta Cartabia remained in office for 9 months.

According to some authors, this practice has to do with the status privileges (i.e. the title Emeritus President) granted to the presidents after their retirement, which can thus be distributed among a large number of judges (Cassese 2015: 228). According to another interpretation, this practice originates from the desire to preserve the cohesion of the ICC, thus avoiding an "individualism" that would jeopardize the principle of collegiality, and to grant an adequate turnover which exalts seniority within the Council (Barsotti et al. 2015; Cassese 2015). However, the need to reform the actual practice by making the three-year term mandatory for the potential President has also been stressed

(Cardone 2016). This would increase the possibility of putting the Court's work on a more stable footing.

Finally, looking at the body selecting the President it can be observed that over 70% of Presidents have been appointed by Parliament and the President of the Republic. These data reflect the taboo surrounding judges elected for the presidency by the High Courts, which characterized the Court until the end of the eighties. The first case is the election, in 1987, of the former President of the Court of Cassation, Francesco Saja. The Saja term opened the way of the presidency to other 11 former members of the High Courts, peaking at four during the decade 1990-1999 (Granata, Ruperto, Chieppa, Bile). The evolution of the composition of the Constitutional Court is then in line with the evolution of the political system *at large*, reflecting the changing geography of Italian powers and the progressive expansion of judicial power in Italy during those years.

5. Conclusion and perspectives

The study of the traits and life experiences of constitutional judges has usually attracted little interest in political science-oriented research. The importance of this study, therefore, lies as much in the empirical implications of the mechanism under study as it does in its normative implications. Focusing on the Italian case, this article highlighted that the analysis of the profiles and careers of constitutional judges makes way for identifying the main characteristics of those who make up Constitutional and Supreme courts in contemporary judicialized politics. Moreover, as Putnam pointed out (1976: 166), "changes in the composition of political elites provide a crucial diagnostic of the basic tides of history".

This article explores the profiles and careers of the constitutional judicial elite, leading to a broadened assessment and understanding of the challenges and the characteristics of powerful political actors operating in Italian politics. It observed a lack of judicial diversity at the Italian Constitutional Court, and the changing dynamics of pre-career experience, revealing the expertise and trajectories that have led individuals to *Palazzo della Consulta* throughout its history. Then, by taking together the main elements of the profiles and pre-careers of Italian constitutional judges, it provided systematic information on the constitutional judges in office from 1956 to 2021.

This stream of research can have a global range, with the study of the Italian case which can be of great interest for further analyses. Thus, it can stimulate European scholars trained in political science, opening an agenda for further research to analyze patterns and trends in greater depth.

First, it stimulates further reflections on the profiles and careers of constitutional judges from a comparative perspective. It offers a clear and systematic way of analyzing the career of constitutional judges, which can be extended to other political regimes, and may be an agenda for future cross-institutional and cross-national analysis. For instance, future studies could build regression models to determine whether the socio-demographic background or the pre-career of judges has an impact on how they decide cases. In this sense, building on Pederzoli (2008) and Musella and Rullo (2023b), a possible step forward would be to explore possible diachronic patterns of declarations of unconstitutionality and to test well-founded hypotheses on the relationship between the Italian Court's decisions and the characteristics of the judges, and to understand the

challenges of the role of the Constitutional Court with the evolution of the broader political system.

Second, exploring the post-career of constitutional judges can be fundamental to understanding whether the Constitutional Court is a dead end in terms of career or whether it can also be used as a stepping stone towards other prestigious positions.⁸ This theme opens up to a challenging stream of empirical research, looking at the career ambitions of judges, and how they can affect the integrity, independence, and transparency of judges' decisions while in office, also in light of the trend towards a greater number of judges with a post-career in politics or high-level state bureaucracy (Pederzoli 2020). Studying pre- and post-bench careers can highlight the reasons for the links between serving as a Constitutional Court judge and holding subsequent institutional positions.

Third, another promising avenue should better analyze the judicial appointment system, and its impact on judicial behavior as well as the consequences on the relationship between Constitutional and Supreme Courts and other political actors (Hanretty 2020). Further research will help to outline the effects of the institutional structures and the judicial behavior of judges. What are the implications of the Italian mixed selection method on their decision-making during constitutional review cases? Are judges' decisions more prone to striking down laws because of the body selecting them? Then, it would be interesting to explore how judges with different selectors have distinct voices when adjudicating constitutional questions as recently observed for the Chilean and Colombian Constitutional courts (Tiede 2022).

Fourth, further comparative analyses should better focus on the 'selectorate' of the constitutional judges, focusing on the politics of judicial selection. While the institutional design aims to insulate judges from political pressures, yet ensuring some form of accountability, the selection of constitutional judges marks one of the fields where parliaments, executives, and courts most visibly interact. With regard to the Italian case, to what extent was the Constitutional Court connected to the evolution of the Italian political system between the First and Second Republics? The selection of constitutional judges has for a long time been part of the *lottizzazione*, so that parties attributed judicial posts – such as other public offices – to each coalition party and intraparty faction according to their parliamentary and intraparty strength. What are the consequences of the end of the Italian partitocracy since the 1990s? And the impact of the presidentialization of politics? Does it affect changes in the political appointments to the Court due to the weakness of the party's consensual approach?

At this stage, the analysis of the composition and the challenges of the career of constitutional judges reveals fascinating dynamics which help to outline the ongoing transformations of the Italian political system. At the same time, further comparative analyses will increase our knowledge about the transformations of this powerful elite in the country and other political regimes.

⁸ We can recall, for instance, the case of Sergio Mattarella. Moreover, in the 2022 Presidential election, the names of Marta Cartabia, Sabino Cassese, and Giuliano Amato were prominent, with Cartabia being named as the "official" candidate of the Azione party by his leader.

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Appendix

The study of the profiles and careers of Constitutional Court judges is largely unexplored. This article discusses the long-term transformations of constitutional judicial elites in Italy, including information on the profiles and careers of the Italian constitutional judges since the early days of the Italian Republic. Drawing on a new dataset that collects detailed information on all the Italian constitutional judges (n=117) in office from 1956 to 2021, this article is one of the first attempts at identifying the profiles and careers of the Italian constitutional judicial elite. Around 20 indicators characterize each judge, related to socio-demographic properties (gender, age, region of birth, occupation), political and technical trajectories (types of mandates, career features, political and technical experience, type and longevity in the different positions held, and so on), which bodies appointed them (Parliament, President of the Republic, High Courts). These data derive from different sources: the Constitutional Court's official dataset (<https://dati.cortecostituzionale.it>) which contains publicly accessible information about constitutional judges (list of all constitutional judges with dates of swearing in, termination, and a short biographical note); the Chamber of Deputies or Senate when judges have held political positions; literature focusing on the Italian case such as Pederzoli (2020); Breton and Fraschini (2003); Fiorino et al. (2015); Panizza (2002). The information provided was cross-checked against other sources (institutional websites, Wikipedia, and the press).