

Norberto Bobbio

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Abstract

Norberto Bobbio was the leading Italian legal and political philosopher of the second half of the twentieth century. His life and work were conditioned by the vicissitudes of Italian democracy both before and after the Second World War. The experience of Fascism, the ideological divisions of the Cold War, and the transformation of Italian society during the 1960s and 70s, which he described so evocatively in his Ideological

Profile Of Italy in the Twentieth Century (1969a, 1995a), *prompted and enriched his passionate defence of the constitutional 'rules of the game' against those who denied their relevance or would overturn them for reasons of pragmatic convenience.*

Biography

Norberto Bobbio was born in 1909 into an affluent, professional upper-middleclass Turin family. He attended the local university, where he took degrees in both Jurisprudence and Philosophy. His main influence was as a legal and political philosopher. He brought to both a keen civic as well as intellectual engagement, while never sacrificing academic rigour or independence. His academic significance in both fields lay in combining conceptual analysis with a positivist orientation that focused attention on the institutional sources and embodiment of law, on the one hand, and the social and procedural preconditions of democratic politics, on the other. As a public intellectual, he was a life long proponent of social democracy. He played a key role in seeking to move the Italian Communist Party (PCI) towards a principled rather than purely pragmatic acceptance of the norms and forms of liberal democracy and in the promotion of a centre Left capable of taking on the centre Right coalition that ruled Italy for much of the post war period. He was also a prominent campaigner for nuclear disarmament and a pioneer in the field of international political thought.

Bobbio taught jurisprudence first at the University of Camerino, then at Sienna and was appointed to a Chair at Padua in 1940. In 1948 he replaced his teacher Gioele Solari as Professor of Legal Philosophy in Turin, a post he held until 1972. He then took the chair in the newly created Faculty of Political Science in Turin, where he remained until the then statutory age of retirement of 75 in 1984. He was a member of

the Accademia dei Lincei, a Corresponding Fellow of the British Academy from 1966 and longtime editor (together with the philosopher Nicola Abbagnano) of the *Rivista di Filosofia*. Bobbio received, among other awards and honours, the Balzan Prize in 1994 (for Law and Political Science: government and democracy) and diplomas *honoris causa* from the Universities of Paris (Nanterre), Madrid (Complutense), Bologna, Chambéry, Madrid (Carlos III), Sassari, Camerino, Madrid (Autónoma), and Buenos Aires.

Bobbio played an important intellectual role within Italian political life, and commented regularly on Italian politics for the Turin daily *La Stampa*. In 1942 he joined the then illegal radical liberal party, the Partito d'Azione ("Party of Action"), and was briefly imprisoned in 1943 and 1944. He ran unsuccessfully in the 1946 Constituent Assembly of Italy elections. Throughout the 1950s, 60s and 70s he was a powerful advocate of liberal democratic values against both the Marxists in the PCI and the New Left and extremist groups outside it, while also condemning the corrupt electoral practices of successive governments to exclude the first and their often illiberal measures to tackle the second. The year of his retirement, Bobbio was nominated by President Sandro Pertini to one of the five life Senatorships, and sat in the upper house as an independent socialist. In 1992 he came close to being elected President as a compromise candidate. However, he confessed to finding decision making difficult – his talent was always for spotting problems rather than solutions - and he was relieved the bid failed. He died as he had lived his life, with great dignity – instructing his doctors not to intervene when taken into hospital just after Christmas 2003. He died on 9 January 2004, his status marked by the Italian President's immediate departure for Turin to be among the first mourners.

Major Works and Publications

Bobbio grew up in Turin in a well off bourgeois family. He has characterised his parents sympathies as ‘filo-fascist’, regarding Fascism as a necessary evil to guard against the supposedly greater danger posed by Bolshevism – a threat that seemed all too present following the occupation of the Turin Fiat works in 1921–2 by the *Ordine Nuovo* group gathered around the Marxist theorist and future leader of the Communist Party of Italy, Antonio Gramsci (Bobbio 2002: 15–16). At school and university, however, he became acquainted with many of the leading lights of the largely antifascist Turin intelligentsia. These included the novelists Cesare Pavese and Carlo Levi, his future publisher Giulio Einaudi, the critic Leone Ginsburg and the radical politician Vittorio Foa – these two last being particularly close friends at the time.

Bobbio never met the two best-known martyrs of Turin’s antifascist movement – Gramsci and the ‘revolutionary liberal’ Pietro Gobetti, though he became Director of the Centre dedicated to the latter’s memory and his own papers have now been housed there along with Gobetti’s. However, some of his teachers and friends had been involved with them and contributed to their journals (Bobbio 2002: 17–21). Despite associating with certain key opponents of the regime, a number of whom were imprisoned, he largely kept his head down. Indeed, there was something of a furore when in 1992 the Italian weekly *Panorama* published a somewhat grovelling letter he had written to Mussolini in 1935. Earlier that year Bobbio had been arrested and detained for seven days on suspicion of antifascist activities and sympathies. The resulting record had led to his exclusion from the promotion process for a permanent professorship. The letter gave examples of his devotion to the Fascist cause in an

attempt to get a police caution removed – something later achieved when a family friend within the Fascist hierarchy also intervened on his behalf. Bobbio confessed the letter had brought him face to face ‘with another self who I thought I had defeated forever’ (Bobbio 2002:31). His defenders, though, among them the surviving friends he had apparently disavowed, pointed out that the letter had been written at the height of Fascism’s power simply to keep his job. It had revealed not only that Bobbio clearly was not considered a dutiful Fascist, but also the debasement the authorities imposed on all their subjects.

In his *Autobiography* (1997), Bobbio described this first half of his life as belonging to his prehistory. Yet one can see Bobbio’s own deep commitment to democracy and the rule of law as flowing from this humiliating experience. Far from detracting from his opposition to authoritarianism in all its forms, the incident – that encapsulates life under a dictatorship – makes it all the more comprehensible and profound. The fall of Mussolini on 8 September 1943 catapulted him along with so many others of his generation from a state of total exclusion from political life into active involvement with it. Bobbio had been close to the ‘liberal socialist’ circle of intellectuals since the late 1930s. This group became part of the Party of Action, the main non-communist resistance movement. Bobbio played a minor role, but did engage in some clandestine activity against the German occupation and was briefly imprisoned from 1943–4.

Although intellectually influential, the *azionisti* lacked a popular base. A candidate in the 1946 elections for the Constituent Assembly, he was not elected and returned to academic life. However, the party’s slogan ‘Justice and Liberty’ captures the central theme of much of Bobbio’s subsequent work – how to unite the liberties beloved of liberals with the socialist demand for social and economic justice. It was his

commitment to these twin ideals that was to give him such an influential place within Italian political life, rendering him the perfect critical interlocutor between the Communist Party, on the one hand, and the various governmental parties gathered around the Christian Democrats, on the other.

Bobbio 's first book, *The Phenomenological Turn in Social and Legal Philosophy* of 1934, was followed in 1938 by a monograph on *The Use of Analogy in Legal Logic* and in 1944 by a critical study of existentialism, *The Philosophy of Decadence* – the first of his books to be translated into English (Bobbio 1948a). Over this period Bobbio gradually dissociated himself from the broadly idealist approach to philosophy then dominant in Italian universities. He was friendly with the philosopher of science, Ludovico Geymonat – also based at Turin, and together with him helped establish the interdisciplinary Centre for Methodological Studies. Bobbio now set himself the task of elaborating a general theory of the practice and validity of law, breaking with the attempts of most contemporary Italian philosophers to offer a speculative philosophy of the idea and morality of law. In elaborating his version of legal positivism, he drew on the writings of Hans Kelsen, whose work he had come across as early as 1932. This research ultimately bore fruit in a number of books based on his Turin lectures, of which the most important are *A Theory of Judicial Norms* (1958) and *A Theory of the Legal Order* (1960) – both still in print – and studies of Locke, Kant and legal positivism. Between 1955 and 1970, he also published three collections of his most important essays. These writings had a similar place in Italian academic legal circles as the work of H.L.A. Hart in British universities, and both men held each other in high esteem.

Bobbio's legal studies fed into his political writings. Influenced again by Kelsen, he adopted a procedural view of democracy as consisting of certain minimal 'rules of the game', such as regular elections, free competition between parties, equal votes and majority rule. His theory of politics was additionally enriched by a strong realist current deriving partly from Hobbes, and partly from the Italian pioneers of political science, such as Gaetano Mosca and Vilfredo Pareto (collected as 1969b, 1972), whose reputation Bobbio did much to resurrect. Bobbio had produced the first Italian edition of Hobbes' *De cive* (1948b), earning the plaudits of the German scholar Carl Schmitt, who he had briefly met in Berlin in 1937. Bobbio later dedicated numerous studies to the English philosopher, a collection of which were published in 1989 and appeared in English a couple of years later (Bobbio 1989b, 1993a). He drew on Hobbes to modify what he now saw as unsatisfactory elements of his earlier Kelsenism. Bobbio regarded Kelsen as caught uncomfortably between a purely formal account of law, on the one hand, and a substantive position grounded in what he called the 'basic norm' underlying all law, on the other. The missing dimension was the institutional context of law-making and its relationship to the exercise of power. Unlike earlier legal positivists, such as John Austin, Bobbio did not thereby equate law with the commands of the sovereign. His point was rather that law and rights were best conceived as an historical achievement belonging to a particular form of constitutional and democratic state.

Bobbio's shift from a pure theory of law to a concern with its political embodiment was marked by his moving to the newly created chair in Politics at Turin in 1972. The essays from this period were later collected as *The Future of Democracy: A Defence of the Rules of the Game* (1984, 1987a), perhaps the most original of his books, *State,*

Government and Society (1985, and published in English as *Democracy and Dictatorship* as 1989d), and *The Age of Rights* (1990, 1996a). Bobbio's linking of the rule of law and rights to the distribution of power produced by liberal democracy informs his contributions to the political debates of the period. His prime concerns from the 1950s onwards were to enter into dialogue with the Communist Party and build a social democratic opposition in Italy. Indeed, the latter could only be achieved if the Communists, the largest grouping on the left in Italy, could be weaned away from the Soviet Union and converted to liberalism. It is no accident that he published the first (and for some years the only) Italian study of Karl Popper's *The Open Society and its Enemies* as early as 1946, in a journal appropriately entitled *Il Ponte* (The Bridge). Bobbio was a founding member of the European Society of Culture, which had this critical dialogue as a goal. His first book of political essays, *Politics and Culture* (1955), consisted largely of a debate with the Marxist philosopher Galvano della Volpe over whether socialist legality could be based on anything other than traditional liberal rights – a discussion that ultimately prompted the intervention of Palmiro Togliatti, the leader of the Italian Communist Party (PCI).

This theme resurfaced in Bobbio's next major foray into politics in the 1970s. The spur this time came from the 'historic compromise' between the PCI and the Christian Democrats, whereby the PCI, which had a strong foothold in local government and was the main opposition party, was given access to positions in the state whilst being denied participation in central government. PCI leaders were worried that terrorist violence, some of it certainly promoted by the security services, might be used as an excuse for a right-wing coup should they appear to be too strong – a fear reinforced by the fate of Allende in Chile. They sought to make themselves non-threatening to

the status quo, therefore, whilst strengthening their position within the Italian political system – a tactic they associated with Gramsci. Bobbio's interventions were to challenge the coherence of this Euro-communist strategy of a 'third' way between liberalism and Soviet communism. In a series of essays he criticised Marxism for lacking a theory of the state or democracy, and implicitly urged the PCI to become a social democratic party. These were published as *Which Socialism?* in 1976 with an English edition in 1987b. It should be emphasised, however, that Bobbio was as harsh a critic of the corruption of Italian politics and of the role of the non-communist Socialist Party under Bettino Craxi in upholding that system and taking it to new depths. It was entirely in keeping with his stance that his first article following the collapse of the former Soviet bloc should not be a piece of liberal triumphalism but a reminder that the cause of social justice that had inspired communism remained as pressing as ever, and that liberals could not afford to ignore it (1989e,f). He later reiterated this thesis in his long essay *Left and Right* (1995b, with an English edition published as 1996b), which entered the Italian bestseller lists, in which he argued that the search for a reconciliation between the claims of liberty and equality still provided the key issue of modern politics and the main dividing line between political parties.

The other political issue associated with Bobbio was the peace movement. This too bears a direct relation to his academic work. His view of the political character of law led him to recognise the need for a political theory of international relations. In a series of pathbreaking essays, he explored the possibility for global forms of democracy to give meaning to international law. He was a passionate critic of nuclear weapons, which he saw as making war intrinsically unjust, and a member of the Bertrand Russell foundation. His writings on this issue were collected in the volumes

The Problem of War and the Roads to Peace (1979) and *The Absent Third* (1989a), He was not a pacifist, though many of his supporters were surprised when he supported the Gulf War – a position he defended in his book *A Just War?* (1991).

An esteemed political commentator, who wrote regularly for the Turin based daily *La Stampa*, he kept aloof from a direct involvement in party politics and refused invitations to stand as a senator. He had a healthy disdain for academic politics and, apart from a stint as Dean from 1973–6, kept clear from positions of power and deplored the way so many Italian professors built up extensive patronage networks to secure posts for their pupils. He took his teaching duties extremely seriously, and sympathised with that element of the 1960s student movement (of which his eldest son was one of the leaders) that complained about the large numbers of Italian academics who engaged in extra-curricular activities to the detriment of their university responsibilities. Unbelievably prolific, many of his books had their origins in his lectures and he put on new courses for almost every session. He was deeply disappointed by the failure of the centre-left to establish its hold on Italian politics and became an outspoken critic of Berlusconi, lamenting in a book length interview on *The Idea of the Republic* (Bobbio & Viroli 2001, 2003) how the second republic appeared to lack any of the idealism of the first. Significantly, in a series of essays *In Praise of Meekness* (1994, 2000), he turned his attentions to the non-political virtues and the issue of how to respond to evil in a corrupt world. His last works included a subtle study of the meaning of old age in contemporary societies, *De senectute* (1996c, 2001).

The Paradoxes and Broken Promises of Democracy

As the foregoing shows, Bobbio was a prolific author who wrote on a wide range of topics in legal and political philosophy. He was not a systematic thinker, tending to react to the views of others and the events of the day. His *forte* was to ask pertinent questions rather than offering answers. Nevertheless, a core concern runs through his writings: namely, the desire to link liberalism, socialism and democracy and to show how each entailed the other. He firmly believed there could be no democracy without both liberal rights and social justice, yet he also contended that these were grounded in their turn in a democratic division of power in which citizens were treated as political equals. In common with the Italian political tradition more generally (Bellamy 2014), his idealism was grounded in and constrained, and occasionally subverted, by realist considerations concerning the nature and limits of politics. For example, he saw rights as a historic and political achievement rather than as universal principles that lie outside or provide the pre-conditions for politics.

As a result, tensions always exist in Bobbio's thought between the various ideals he espouses and their realisation, with the mutually entailing notions of liberalism, socialism and democracy being both each presupposed by and in potential conflict with the others. A good example of this feature of Bobbio's thinking is his famous account of the 'paradoxes' and 'broken promises' of democracy. Bobbio advocates a minimal definition of democracy that consists of the following basic 'rules of the game':

1. That all citizens who have reached the age of majority, regardless of sex, race, creed or economic condition, possess political rights and can vote on collective issues or elect someone to do so for them.
2. That everyone's vote has equal weight, counting for only one.

3. That all citizens can vote according to their own freely arrived at opinion, that is in a free competition between rival political groups which vie with each other to aggregate demands and transform them into collective decisions.
4. That they have a free choice in the sense of having real alternatives to pick from.
5. That they are bound by the majority decision (whether relative, absolute or qualified).
6. That no majority decision can limit the rights of the minority to become in their turn, and on an equal basis, the majority (Bobbio 1987b: 66).

Bobbio gives three reasons for preferring democratic government to other forms. The first, or ethical defence, derives from Rousseau's formula that liberty consists in obeying laws we have prescribed to ourselves – a condition most nearly approximated by democracy. The second, political justification, regards it as the best available protection against the abuse of power, since it shares sovereignty among the people as a whole. Finally, from a utilitarian standpoint, democracy is preferable to autocracy on the grounds that the people are the best interpreters of their own collective interests. This point, as Bobbio notes, is the most debatable, since the collective interest is not identical with the sum of individual interests. However, provided one assumes that everyone has agreed to co-operate to find a mutually beneficial solution, and that each person has a better than even chance of being right, then (as Condorcet proved) the majority will be more often right than a single voter in the long run (Barry 1967: 112-26).

The above arguments have a distinctly Rousseauvean tenor, and hence might seem to provide a prima facie case for preferring 'direct' forms of democracy to 'indirect' or

representative models. For the latter, as practised in most western countries, reduces the autonomy and sovereignty of the people by delegating large areas of decision making and encourages self-interested voting for different factional groups, rather than a disinterested adjudication on the common good. Indeed, Rousseau himself gave the most comprehensive account of why democracy as he understood it could not work without modification within modern societies:

How many conditions that are difficult to unite does [a democratic republic] presuppose! First, a very small state, where the people can readily be got together and where each citizen can with ease know all the rest: second, great simplicity of manners, to prevent business from multiplying and raising thorny problems [which empowers those ‘in a position to expedite affairs’]; next, a larger measure of equality in rank and fortune, without which equality of rights and authority cannot long subsist; last, little or no luxury – for luxury either comes of riches or makes them necessary; it corrupts at once rich and poor, the rich by possession and the poor by covetousness; it sells the country to softness and vanity, and takes away from the state all its citizens, to make them slaves one to another, and one and all to public opinion (Rousseau 1973: 217)

For Bobbio these discrepancies are indicative of the four main ‘paradoxes of democracy’ facing us today. The first paradox arises from our need for ever more democracy in conditions which are increasingly inimical to its functioning. The ‘iron law of oligarchy’ operates the larger the state becomes, so that direct democracy degenerates into the rubber-stamping of executive decisions. The second paradox derives from the growth not only in the size of the state, but of its functions as well.

This process leads to the development of bureaucratic structures in which power is organized hierarchically, descending from above, rather than democratically, ascending from below. Even worse, this phenomenon increases in step with the expansion of democracy itself, since the latter produces ever greater demands upon the state, which in turn requires ever newer mechanisms to satisfy them. The third paradox refers to the effects of technology on industrial societies, which means more and more decisions call for specialized knowledge to solve them, so that democracy is subverted by technocracy (quite the reverse of what Marx and Lenin supposed). The final paradox belongs to the contradiction between democracy and mass society. Although mass involvement potentially means more democracy, the pressures towards social conformity produced by the former undermine the sense of individual responsibility presupposed by the latter. For example, the growth of information technology potentially gives us greater access to the workings of government and could facilitate a more active and informed participation of citizens in making decisions previously left to politicians or administrators. However, it has also given the state, through the storage of private files and the use of the media, more persuasive and subtle ways of manipulating and spying on us (Bobbio 1987a, p. 72; Bobbio 1987b, pp. 96-97).

All of the above paradoxes reflect the double-edged nature of the processes at work in contemporary society. Summarizing these effects, Bobbio remarks how ‘state’ and ‘civil society’ have become increasingly intertwined. While the state has been ‘socialized’ through the influence of greater democratic control, this in turn has induced increasing intervention by the state in society:

These two processes are represented by the two aspects of citizenship, that of the citizen qua participant and that of the citizen qua state protected subject, which often conflict with each other within the same person. For through participation the active citizen calls for greater protection from the state and thereby reinforces the very state which he or she wishes to control (Bobbio 1985, pp. 41-2).

State and society are thus two separate but interdependent moments of the modern social and political system. 'Direct' democracy, in so far as it aspires to absorb state functions within society through schemes for self-administration through collective decision-making, falls victim to the dialectic of modern politics. Only representative democracy, albeit in modified form, can meet this challenge. Yet a representative system will always fall short of the radical expectations of democracy and is itself subject to all four paradoxes, being an elite and, via its association with parties, bureaucratic system, that is often itself overly dependent on technocrats in the state administration and business, and both an exploiter of and often at the mercy of the mass media. As such, democracy is destined to always 'break its promises'. It provides an ideal to which we are moved to aspire, but in reality always disappoints. Real democratic systems will always fail to deliver on the democratic ideal. Indeed, he came to regard Silvio Berlusconi and Italian democracy post 1989 more generally as the epitomising these paradoxes and broken promises of real democratic systems.

Conclusion

Norberto Bobbio was the model of the engaged intellectual. He was deeply involved in the politics and culture of his time yet saw his role as much as an analyst as an advocate. Bobbio's thought has been criticised as mired in contradictions, not least

due to his attempt to reconcile liberalism and socialism (e.g. Anderson 1988). Yet in many respects, his awareness of these tensions was a source of his distinctiveness and strength as a political theorist. He never looked for easy solutions or sought to sacrifice principle for a pragmatic advantage. Rather, he insisted that we should strive to uphold certain basic ideals, while being ever aware of the difficulties standing in the way of their realisation. He believed the good should not be sacrificed either for the sake of an elusive and unreachable best or for something worse than is achievable. His absence from contemporary debates is a major loss not only to political thought but also to Italian politics, where he served as his country's political conscience.

Liberalism, Socialism, Marxism, Democracy, Representative Democracy, Social Justice, Rule of Law, Legal Theory, Political Theory, Positivism

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