

The Constitutional Reform, between a Lost Opportunity and a Negative Outlook

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I. The Italian legal system is in urgent need of reform. This is a statement that is generally accepted among constitutional scholars as well as in the national and international political debate. A possible reform was rejected by a general referendum held in December 2016, with a majority of sixty percent of voters rejecting a comprehensive reform approved by the Parliament, after a law-making process that had started in 2014. Currently, Italy is still experiencing the turbulent consequences of the recent popular vote; as the example of the United Kingdom (UK) also shows, in our modern liberal democracies it is very difficult to achieve a coordination between direct democracy and representative democracy.

The weakness of the Italian constitutional framework was and is well known. Italy is a parliamentary regime characterized by two Chambers that are both elected by popular vote and that both take part in the law-making process. The Government is equally responsible to both Chambers, which on the whole share the same duties and functions, and which play the same role in the system. The position of the Government is traditionally weak and there are no means ensuring stability. The party system is characterized by a permanent fragility, resulting, among other factors, from the key role that was played, for a long time, by the Communist Party, until its fall.

Following the 2001 constitutional reform, the competencies of the Italian Regions – territorial entities created by the 1947 Constitution – have increased in a manner that was not viable for the operation of the institutions, as well as from an economic point of view.

The reasons for these weaknesses of the Constitutional system can be found in the attitudes of the main political parties in the Constituent Assembly operating in 1946-1947. After the Second World War, Europe was divided between the Western Allies and the Communist Soviet Union and the destiny of Italy was not yet determined. Against this backdrop, the Catholic party and the leftist parties (communists and socialists) had no reciprocal faith in one another's real democratic character, and both tried to build up a constitutional

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system in which the party or the parties that had won the political elections would never be able to annihilate the loser or the losers. This weak constitutional system worked after the Second World War, and its operation lasted until the fall of the Soviet Union and of the Communist regimes. During that period, the Christian Democratic Party was the pivot of any possible political alliance and was therefore able to guide the political evolution of the Italian system.

Since 1989, many attempts have been made to reform the Constitution. It would be difficult and it would take a very long time to describe in detail the various proposals, models, and procedures which have been tried. Among the proposed reforms, we should mention at least the other comprehensive reform that was approved in 2006 by a centre-right majority, but then rejected by a popular referendum.

II. The 2016 constitutional reform was proposed by the Government led by Matteo Renzi, after the ambiguous results of the 2013 general elections. The Democratic Party had the absolute majority of seats in the Chamber of Deputies, thanks to an electoral system granting three hundred forty seats to the leading party, but had no majority in the upper house (the Senate of the Republic). After months of attempts to build a majority based on the Democratic Party and on the Five Star Movement (a recently-founded populist party), and after attempts to elect a new President of the Republic, a Government was formed based on an alliance between the Democratic Party and the party of the former President of the Council of Ministers, Silvio Berlusconi. The President of the Republic currently in office, Giorgio Napolitano, was re-elected, notwithstanding the fact that constitutional practice stood against the re-election of the President of the Republic for a second mandate.

Both the re-election of President Napolitano and the appointment of the new Government were based on the parliamentary majority's commitment to engage in constitutional reforms. The weakness of the constitutional system could therefore be faced and solved, at last; meanwhile, a new electoral law was supposed to be adopted, in order to ensure a clear majority in Parliament and, as a result, a stronger and more solid Government.

III. In this context, there were two constitutional dilemmas: 1) could the constitutional reform be proposed by the Government? And 2) should a wide reform be discussed and approved within a single act or should it be divided in several acts, each of them concerning different subjects?

Regarding the first dilemma, in the Italian Constitution there is no formal prohibition on the Government proposing a constitutional bill, and the argument based on the work of the Constituent Assembly of 1946-47 does not seem to be conclusive. As a matter of fact, the main parties in the Assembly

did take part both in the Government and in the activities of the Assembly; therefore, the separation between the decision-making in the Assembly and the operation of the Government was the result of similar majorities in the two bodies. Even after the agreement between the centrist parties and the Marxist parties had ended, with the Socialists and Communists leaving the governing majority, the Government's impact on the work of the Constituent Assembly was rather limited. As a matter of fact, to avoid a backlash against the Assembly, the President of the Council of Ministers reduced his interventions in the debates on the drafting of the Constitution as much as possible. In the recent attempt to reform the Constitution, a political agreement on the constitutional reform was reached among the parties that constituted the parliamentary majority. Given this agreement, it did not make any sense, from a political point of view, to leave the Government out of the political debate concerning the reform.

In relation to the second dilemma, the main argument against a single act was that in the Italian Constitution no difference exists between partial and total revision, for there is only one process to follow in order to reform the Constitution. Theoretically speaking, it was argued that the process regulated in Art 138 was designed only for partial reforms, and not for reforms aiming to amend a wide range of constitutional provisions. Nevertheless, under the letter of the Constitution there is nothing that supports this point of view. With the benefit of hindsight, one could admit that if several bills had been proposed and then approved by the Parliament, probably the various referenda on each constitutional law would have led to a more positive outcome. The voters could have agreed on some but not all of the proposed reforms, and at least some of them would have been adopted. However, it is fair to say that several bills would have encountered enormous difficulties during the law-making process at the Parliamentary stage, so that a final adoption would have been harder to achieve, if not completely prevented.

IV. The constitutional reform adopted by the Parliament and eventually rejected in the referendum was based on the following elements:

- two Chambers with members elected on different grounds and with different functions; only the Chamber of Deputies would have been directly elected by the people in general elections, whereas the members of the Senate would have been chosen as representatives of regional and local authorities;
- the Government would have been responsible only to the Chamber of Deputies;
- the law-making process would have been changed according to the different functions that the two Chambers would have exercised;
- a special procedure would have been provided in order to regulate the approval of Government's bills;

- the legislative powers of the Regions would have been modified, so as to introduce a clearer distinction between State and Regions' responsibilities;
- the Provinces (local authorities intermediate between Regions and Municipalities) and the National Council of Labour and Economy would have been abolished;
- some partial measures aiming at reducing the costs borne by taxpayers for politics and institutions would have been adopted.

The constitutional bill was approved by the majority of the members in both Chambers of the Parliament but did not reach the threshold of two thirds of the members. In such cases, Art 138 of the Constitution allows a parliamentary minority, five hundred thousand voters, or five Regional legislatures to request that a popular referendum be held on the bill adopted by the Parliament.

To complete the scene, the electoral law, which is regulated by an ordinary act (and not by the Constitution), was approved, under which a majority of seats was allotted to the party that reached, in the first round of the elections, forty percent of the valid votes or the majority of votes in the second round, in which a run-off would take place between the first two parties in the first round.

V. The constitutional reform was severely criticized. According to some constitutional legal scholars, the text was very imprecise, failed to embrace a holistic approach, and suffered many technical imperfections. The criticisms made against the text were probably excessive, because any legislative text – and even more so, any constitutional text – is necessarily the result of difficult compromises that must be reached by decision-makers. Seeing things from a political point of view, the Government led by Mr Renzi was not able to secure the support of Mr Berlusconi's party and the left side of the Democratic Party. This shortcoming, together with a difficult economic situation, led an important part of Italian society to vote against the Government. The result was a quite unexpected rejection of the constitutional reform approved by the Parliament.

VI. The rejection had significant political consequences. The President of the Council of Ministers, Mr Renzi, resigned; the Democratic Party faced a crisis; a new Government was appointed and passed a vote of confidence in both Chambers of Parliament; a quite messy debate began concerning the new electoral law, in particular when the Constitutional Court declared the unconstitutionality of the electoral law in force; it was (and it is) impossible to foresee when new general elections will be held, for it is not clear whether they will be organized in 2017 or in 2018. The risk of a victory of populist forces must be taken seriously. And the party system seems weaker and weaker and also unable to reform itself in any way.

The outcome of the referendum has also had a negative impact on the future of constitutional reform in Italy. After two referenda rejected reforms adopted by the Parliament (in 2006 and in 2016), both seeking to establish a difference between the two Chambers regarding the selection of their members and their powers, it will be very difficult to take action on Italian bicameralism again, and after the rejection of two reforms focusing on giving a more rational framework to the powers of Regions, any reform pursuing the same goal will have little chance of being adopted. Any provisions aimed at strengthening the Government will face severe critiques concerning supposed attempts to establish an authoritarian regime.

In light of all these difficulties, the question to ask is whether Italy is going to become, again, the Great Sick Man of Europe. Or, maybe, the question should be even more pessimistic: Will Italy's sickness play an active part in the sunset of Europe?