

The Paradoxes of Constitutional Reform

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I. Why is Constitutional Reform so Difficult to Reach?

In this article, I will discuss a number of the paradoxes that have arisen in the context of Italy's most recent attempt at constitutional reform. A famous paradox about constitutional reform, well-known in Italy through its use by Norberto Bobbio,¹ notes that *'The more a constitutional reform is necessary, the more it is difficult to gain it'*. This paradox has general value, and applies not only to Italian constitutional reform, but also to that of many other countries. Within Italy, it also applies to the reform of the electoral system.

Many general factors, apart from typically Italian political fragmentation, make constitutional reform even more difficult to reach. The first factor is the present weakness of national and state constitutionalism. National constitutions were enacted in order to limit and to regulate national power. Economic and financial globalization, however, as well as the international and supranational dimensions of power have prevailed with the exception of a few leading countries (such as China, the United States (US), and Germany) over national power. National constitutions cannot regulate such power because a portion of this power (of sovereignty, if you would use the ancient legal term) remains 'outside' of the state constitution (and out of the borders of each national state).

This fact does not necessarily represent a crisis of constitutionalism as a whole, which has an increasing supranational and international development, especially in the interrelation (not even dialogue...)² of domestic and international or supranational judges and courts. This important development regards only one of the two faces of constitutionalism according to Art 16 of French Declaration of 26 August 1789, the Human Rights face. The crisis affects only the other face of the constitutionalism, the face that French

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¹ See N. Bobbio, 'Il paradosso della riforma' *La Stampa*, 4 December 1987; see also G. Zagrebelsky, 'I paradossi della riforma istituzionale' *Politica del diritto*, 165 (1986).

² See G. Martinico and O. Pollicino, *The Interactions between Europe's Legal Systems* (London: Edgar, 2012), passim.

revolutionaries called ‘separations of powers’, ie the organization of the form of government and of the form of the state. From another point of view, we have many indications that the crisis of state constitutionalism is not temporary. We live an era of transformation and uncertainty, especially in Europe, and we do not know if a stricter union or a new strengthening of national states context awaits us.

The question then becomes whether an increasing number of political, economic and social problems due to interrelations and interdependence among states cannot currently be solved at the national state level, could they be solved by further reform of state constitutions? The parochial and populist political visions of nationalist movements and parties, spread throughout Europe, would say ‘yes’. However, I agree with Ingolf Pernice (when referring to the future of Europe) on his assessment that, when the political processes of each member State are not suitable to solve problems which are overflowing national boundaries, the only possible answer is to propose alternative, new forms of democracy and power at the European level.³

In short: if national constitutions are not able to give a democratic and competent answer to the people’s demands for work, welfare and security, that is not the fault of constitutionalism. Instead, we must begin to put in the political agenda the creation of a political power, at the European level which is capable of responding to these demands. The problem is not the weakness of constitutionalism;⁴ it is rather the weakness of the state dimension of present constitutionalism.

On the other hand the true constitutional reform of the last twenty years has already occurred without a formal reform of our Constitution. It consists of the consequences of the process of integration within the European Union and, above all, the undeniable progress of this process, which may be seen and described, in spite of its uncertain nature (we are dealing with constitutional law or international law?), as a ‘federalizing process’, as noted by Carl Friedrich.⁵

In this context, the progress of the process of European integration is of decisive, as well as disruptive, constitutional importance. Consequently, the discussion of the reform of the second part of the Italian Constitution, which

³ See I. Pernice, ‘Domestic Courts, Constitutional Constraints and European Democracy: What Solution for the Crisis?’, in M. Adams, F. Fabbrini and P. Larouche eds, *The Constitutionalization of Budgetary Constraints* (London: Hart, 2014), 297.

⁴ See G. Azzariti, *Il costituzionalismo moderno può sopravvivere?* (Roma-Bari: Laterza, 2013).

⁵ See C.J. Friedrich, *Governo costituzionale e democrazia* (Vicenza: Neri Pozza, 1950), 274. The notion of *federalizing process* was conceived by the author in the 1930s: see C.J. Friedrich, *Constitutional Government and Politics: Nature and Development* (New York: Harper & Brothers, 1937). For the application of the notion of *federalizing process* to European unification, see C.J. Friedrich, ‘Federal Constitutional Theory and Emergent Proposal’, in A.W. Macmahon ed, *Federalism. Mature and Emergent* (New York: Russell & Russell, 1962), 510.

has been underway since 1984, is much less important today.

So, acting and thinking in an exclusively national dimension of power, divorced from the global and supranational context, may *per se* be a useful cultural exercise, but it does not solve the problems of governability and representation typical of modern democracies. In other words, it is certainly useful and possible to discuss how to maintain and perhaps even update our Constitution, but it is illusory to think that this would solve our many political and institutional problems, since they can only be solved at a supranational level (not only for Italy), by tackling and dissolving the many ambiguities and doubts preventing a further qualitative leap to give impulse to the process of European integration.

It is therefore necessary to be aware of the purely State dimension of the sovereignty crisis: if at least fifty per cent of the important decisions for public policies arise from choices at European Union (EU) or higher level (World Bank, International Monetary Fund (IMF), World Trade Organization (WTO), the international financial market etc), and these choices are also the most important from the citizens' point of view, how to adjust the remaining decisions is important but not decisive.

It follows that there is no other path to constitutional reform that better incorporates the multilevel government perspective. It is, however, necessary to realise that sovereignty and power are not the same as when our Constitution was conceived and written: one cannot expect solutions to questions that cannot be decided at the State level by limited constitutional reform of the current document.

The second issue, which is responsible for the weakness of state constitutions, especially the Italian Constitution, is due to the large amount of sovereign debt. At the end of 2016, this amounted to over two thousand two hundred seventeen billion Euros in Italy, double the size of the sovereign debt of France. It costs to Italians about seventy billion every year (sixty six and a half billion in 2016) in interest payments in the international financial market, and the interest rate, in spite of the policy of the so-called Quantitative Easing from the European Central Bank, is very high compared to German bonds (the so-called 'spread').

This debt (or better: its amount) means the freezing of any keynesian or neo-keynesian policy aimed at supporting development, research, facilities, the modernization of institutions and other such tasks, in short, all public policies that require public investment. In periods of economic stagnation, such as the present, debt is also mainly responsible for cuts in public welfare expenditures and it consequently represents a serious attack to social rights. These are the rights which, more than other rights, would instead need an increase in public expenditure in times of economic crisis.

The amount of sovereign debt tells us that the responsible of our present

difficulties is not the Euro, Europe, Germany's policy, or the Treaties on Euro's stability mechanism, or the so-called Fiscal Compact and the consequent introduction, with the constitutional reform in 2012, of the so-called golden rule in Arts 81 and 119 of the Constitution. The blame belongs on the silent and inexpressible alliance between Italian political elites and electors in order not to face a long term policy of privations and sacrifice necessary to seriously reduce the debt in favour of the future generations.

II. Is any Part of our Constitution Obsolete?

We have more than a suspicion that the constitutional reform, and the Constitution itself, cannot solve the main economic, social and political problems of Italian society. This suspicion does not prevent us from asking another question about the constitutional reform: is there some constitutional part or rule not up to date, which is obsolete and not able to face the challenges of the present times?

The answer to this question is very difficult, because, in my opinion, the main obsolescence of our Constitution lies in its First Part, and particularly in that devoted to 'Economic Rights and Duties' of the citizens, and depends on the increasing process of economic integration due to the EU⁶ and in many respects is not consistent with the model of economy and political economy enforced by EU Treaties, especially from the Single Market Act onwards.⁷ On the other hand, many 'new human rights', such as the rights of the so-called fourth and fifth generations,⁸ do not have constitutional recognition and this lack of constitutional (and often legislative) recognition makes very difficult for judges – not only for the Constitutional Court – to adjudicate claims for one of the new rights, especially when the claimed right involves ethic and religious controversies. I'm referring to lesbian, gay, transgender, bisexual, queer (LGTBQ) rights, internet rights, bioethics rights, and in general to the new rights produced by technology and biotechnology. It is true that the classification and the listing of these new human rights are an impossible and perhaps inappropriate task;⁹ but the lack of constitutional recognition deprives judges of certain parameters for their decisions. These decisions thus appear even more case-by-case based, and founded on the occasional balancing of liberties and interests of some people, and cannot be easily repeated and

⁶ This is particularly true of the so-called 'economic constitution', ie the rules on 'Economic rights and duties', from Art 35 to Art 47.

⁷ See S. Cassese, *La nuova costituzione economica*, in S. Cassese ed, *La nuova costituzione economica* (Roma-Bari: Laterza, 3rded, 2015), 319-330.

⁸ See S. Rodotà, *Diritti e libertà nella storia d'Italia. Conquiste e conflitti 1861 – 2011* (Roma: Donzelli, 2011) and Id, *Repertorio di fine secolo* (Roma-Bari: Laterza, 2nded, 1999).

⁹ Unfavourable to this listing, even in the International Charters of Human Rights, is S. Rodotà, 'Tra diritto e società' *Rivista critica di diritto privato*, 176 (2000).

reproduced, even in similar cases.

In both the above mentioned cases, discussions about the opportunity of the constitutional reform are purely hypothetical because the reform of any aspect of the First Part of the Italian Constitution was never on the ground of political debate, in any constitutional reform's attempts since the 1980s. They probably will never be dealt with in the future.

The change of European economy and political economy towards a 'social' model, more consistent with the First Part of the Italian Constitution, is certainly possible (and perhaps desirable), but it depends on a decision assumed by all member states of the Union. On the other hand, if the reform of the First Part of the Constitution is in general a political taboo, the incorporation of new human rights is particularly affected by the paradox of constitutional reform, requiring a general consensus in the content of the new constitutional principles ruling these rights which is impossible to reach in such themes, since they are subject to ethic or religious or ideological (or the three together) disputes and discussions.

Accordingly, we must pay attention to the Second Part of the Italian Constitution (Organization of the Republic), which since 1984 was the subject of an intense debate about its reform until the referendum held on 4 December 2016. Actually, most of the various projects, especially those which aimed to reform the form of government (that of 1999 and that of 2006), above all responded to temporary and occasional pretensions of some political party and/or political leader. But two topics, always included in the various proposals of the reform, correspond to and fulfil the real need to updating some parts of our Constitution that do not correspond to the evolution of the relations between institutions and society. These are the dilemma of the composition and role of the second chamber, the *Senato*, and the framework of State-Regions relations, especially relating to the range of the legislative and administrative tasks of Regions. In short: the measure of regionalism/federalism.

In spite of the negative results of the constitutional referendum over the proposed reforms, these two constitutional topics require particular attention. For the political parties to deny the urgency and the necessity of a constitutional reform aimed at the modernization and rationalization¹⁰ of the political representation and the assurance of more flexibility to State-Regions

¹⁰ The word 'rationalisation', often used to express the ultimate *ratio* of certain proposed constitutional reforms and to describe the evolution of parliamentarism, dates back to a twentieth century French scholar, Boris Mirkin-Guetzevitch. In his works illustrating constitutional solutions that emerged in the constitutions after World War I, he coined it to represent the introduction of constitutional rules to ensure political stability (eg those regulating the vote of confidence in the Government, see Art 94 of the Constitution, or the German-style no confidence of Art 67 of the German Constitution) and a new framework of federal relations: see B. Mirkin-Guetzevitch, *Les nouvelles tendances du droit constitutionnel* (Paris: LGDJ, 2nd ed, 1936).

relations would be a serious mistake. We are dealing with some measures that could make the Italian legal order more efficient for the citizens and more reliable in the eyes of its European partners, and especially for foreign investors. On the other hand, the degree of consciousness about the content of the constitutional reform subject to the confirmative referendum on 4 December was indeed very low: only a small number of electors knew the terms of the modification of the Constitution and the effects expected with the new text. Indeed, the referendum was, for the greater part of the voters, a real political 'plebiscite', for/against the President Matteo Renzi. With the Renzi's Government resignation as the direct effect of the prevailing of the 'no' to the reform, the Government was dismissed. However, the two above mentioned political and constitutional problems remain unsolved.

III. The *Senato* and Its Transformation: Are We Going to Modify Its Composition, Its Functions or Both?

The transformation of the *Senato* into a 'federal' chamber and the modification of its legislative and political role, through the abandonment of the 'perfect or paritarian bicameralism' introduced by the Founding Fathers in 1947, is a general problem, well known in all countries who did not choose monocameralism – only a few in Europe.¹¹ We are currently facing the different sides of the question: the transformation of the *Senato* into a 'federal' chamber (such as the US Senate or the German and Austrian *Bundesrat*) concerns the composition and the election (if an election is needed) of the chamber. The end of the 'paritarian bicameralism', which concerns the functions (legislative, political etc) that the Constitution entrusts to each chamber, is a different issue. In the last proposal, that of Renzi's Government, the two issues were joined together. This link is not necessary and each measure may work separately; thus, it is better to deal with them separately, and then face their possible inconsistency and overlapping.

Many years ago, I was in favour of the reform of the senate which aimed at its transformation into a 'federal' chamber, apart from the method of election or nomination of its members.¹² My main reasons for believing this were two: first, the opportunity to strengthen the political role of the Regions and their influence over the national political process and policy making process. In order to reach this goal, maintaining the 'paritarian bicameralism' (or the most part of it) was essential.

¹¹ For a full review of second chambers, not only with federal composition, see J. Luther, P. Passaglia and R. Tarchi eds, *A World of Second Chambers. Handbook for Constitutional Studies on Bicameralism* (Milano: Giuffrè, 2006).

¹² See P. Carrozza, *La Cour d'Arbitrage belge come corte costituzionale* (Padova: Cedam, 1985), passim.

Second, the *Senato* created by Constituent Assembly in 1947, as a compromise among different views on people's representation, was a patchwork:

a) the *Senato* has the same functions of the *Camera* (paritarian bicameralism). It is interesting to observe that the constitutional reforms proposed since 1984 were aimed at both modifying the composition of the *Senato* and transforming it into a regional chamber, as well as modifying its functions in the sense of the selection of the law subject to bicameral vote, or removing from the *Senato* the vote of confidence to the Government, or both reforms joined together, mixed in various ways;

b) originally the *Senato* was elected for six years (one more than the *Camera*). This rule was never applied and since 1953 the *Senato* was dissolved together with the *Camera*. In 1963 the Constitution was modified so that the Senate's mandate also lasted for five years (Legge costituzionale 27 December 1963 no 3, Art 3);

c) in the election of the *Senato* the voters must be twenty-five years old and only those who are forty years old are eligible as senators (the electorate is very different with respect to that of the *Camera*). This electorate and the number of elected members (three hundred and fifteen, half of the *Camera*) make it very difficult for political parties to obtain at the *Senato* the same proportion of seats reached in the election of the *Camera* (in the last four legislatures, the Government had not a sure majority in the *Senato*). The Constitutional Court, reviewing legge 6 May 2015 no 52 (new electoral law for the *Camera*), at para 15.2 of the judgement no 35 of 2017 noted that '(...) if the Constitution does not impose to the legislator the duty to vote the same electoral law for the two chambers of Parliament, nevertheless it requires, in order not to damage the correct functioning of parliamentary form of government, that the two electoral laws, even differing one from the other, to not obstruct the formation of homogeneous majorities in the two chambers as the effect of the elections'; but if the representation in the two chambers needs to be homogeneous (ie the same), the utility of the second chamber is even less evident;

d) according to Art 57 of the Constitution the *Senato* '(...) is elected on a regional basis', but the same Constituent Assembly, when in 1948 voted the first electoral laws, denied this prescription in the composition of the chamber. The reason for this failure of electoral laws to fully implement the principle of regional representation in the Senate's composition, is simple and can be found in history: the Regions were only implemented in 1970 and were initially politically weak. In short, how can there be political representation of the Regions or an electoral mechanism that implements the parenthesis of Art 57 referring to the Regions if there are no Regions? Of course, the Regions were then instituted (1970-1971), but the political-institutional framework was completely different from the one known to members of the Constituent

Assembly. After the end of the 1980s, the electoral question was posed in terms quite different from those postulated by the members: the end of the unwritten constitutional convention on proportional representation and the repeated attempts to introduce a majority-type electoral system for the sake of stability and political transparency. For such electoral systems, regional representation became secondary.

This patchwork is very complex and there is no way to reduce it to a synthesis coherent with all these premises. Accordingly, for many years, Italian scholars have told us that the *Senato* was a useless double of the *Camera*.¹³ Due to the variety of the reforms of the Senate which have been proposed, and to the consequent uncertainty about its utility and role, the most pressing question is which reform could make the second chamber useful to improve the efficiency of our institutions?

The main arguments in favour and against to the transformation of the *Senato* into a regional or federal chamber came from political scientists, not from constitutionalists.

The American idea of the Senate as a federal chamber lies in the theory of the so-called political safeguards of federalism, due in its original conception to Henry Wechsler.¹⁴ Under this theory, the more effectively the states are represented by the Senate and can take part in federal decision-making, the less useful it is for them to resort to the resolution of conflicts before the Supreme Court, which is provided for in the United States constitution. After Wechsler, another American political scientist, Jesse Choper, attempted to demonstrate this hypothesis, by illustrating various relatively unsophisticated ways in which the Constitution of the United States enables states to participate in federal decision-making, such as in the election of the president, and thus influence of the federal executive, or influence legislative power and judicial power through the Senate.¹⁵

Since the post-World War II period, there has been a drastic reduction in cases before the Supreme Court between the federal and state government on issues of federalism. This experience does not seem to work in Europe,

¹³ For the debate until the end of seventies see G. Floridia, 'Il dibattito sulle istituzioni (1948-1975)' *Diritto e società*, 261-330 (1978); for the critique to our bicameralism see E. Cheli, 'Bicameralismo' *Digesto delle discipline pubblicistiche* (Torino: UTET, 1987), 323; A. Barbera, 'Oltre il bicameralismo' *Democrazia e diritto*, 47 (1981); L. Elia, 'Il dibattito sul bicameralismo' *Nuova Antologia*, I, 71 (1990); L. Paladin, 'Tipologia e fondamenti giustificativi del bicameralismo. Il caso italiano' *Quaderni costituzionali*, 234 (1984); L. Carlassare, 'Un bicameralismo discutibile', in L. Violante ed, *Il Parlamento (Storia d'Italia, Annali 17)*, (Torino: Einaudi, 2001), 349; S. Bonfiglio, *Il Senato in Italia. Riforma del bicameralismo e modelli di rappresentanza* (Roma-Bari: Laterza, 2007).

¹⁴ See H. Wechsler, 'The Political Safeguards of Federalism: The Role of the States in the Composition and Selection of the National Government', in A.W. Macmahon ed, *Federalism: Mature and Emergent* n 5 above, 97.

¹⁵ See J.H. Choper, *Judicial Review and the National Political Process* (Chicago: Chicago University Press, 1980).

however, presumably because it is not easy to reproduce. Even if the introduction of the federal chamber did not cause a reduction of legal conflicts before the respective Constitutional Courts, and any effective decrease in constitutional litigation on the subject of federal relations was not achieved, the experience of the federal composition of the chambers in countries such as Germany and Belgium is generally considered a useful instrument for the better efficiency and effectiveness of the political process.

On the other hand, many political scientists think that, in today's Europe, the representation of Regions implemented with the second chamber of regional composition is going to reproduce the disposition of interparty relationships characterising the other chamber of purely political representation. These sceptics argue that, in Europe, political systems do not want strong regional autonomy. In his well-known essay on political parties in Europe,¹⁶ Klaus Von Beyme called political parties 'agents of centralisation' in order to underline that the political systems of the main European countries have no interest in weakening political (and institutional) centralism, which guarantees their survival. Strong regional autonomy, and its strictly regional representation, would weaken centralism and undermine the workings of the political system, apart from the case of countries in which the voters are divided, on a territorial basis, by religious and linguistic cleavages. A federal chamber may work at his best only in such conditions, not by reproducing the classical right/left political cleavage.¹⁷

Indeed, many political scientists sustain that in classical federalism (US, Canada, Australia etc) parliamentary groups and majorities are determined on the basis of political party rather than region, even in the federal chamber.¹⁸ This often occurs in the highly rationalised German *Bundesrat*, whose members are not elected.

Between supporters of the theory of the so-called political safeguards of federalism and political scientists sceptical of the real differentiation between political and regional representation, it is difficult, if not impossible, to understand who is right.

However, we may on some starting points for the elaboration of the content of the reform of our *Senato*:

a) classical forms of federalism in the countries in which federal or

¹⁶ See K. Von Beyme, *I partiti nelle democrazie occidentali* (Bologna: Zanichelli, 1987).

¹⁷ See A. Lijphart, *Le democrazie contemporanee* (Bologna: Il Mulino, 2001), 51-68. This author pointed out that the linguistic unification was decisive in the evolution of great contemporary democracies; the fact that the linguistic unification was reached before the extension of electorate and the arising of mass-parties determined a great *ratio* of homogeneity; for Arend Lijphart homogeneity consists of being at least eighty per cent of the population not divided by religious or linguistic cleavages.

¹⁸ For a complete survey see B. Baldi, *Stato e territorio. Federalismo e decentramento nelle democrazie contemporanee* (Roma-Bari: Laterza, 2003).

regional chambers of representation arose and developed do not have a parliamentary form of government (American, Canadian, Australian, Swiss, etc). Parliamentary forms of government not only suffer from the classical problem of how to represent the population and the Regions/States politically, but also from the decisive preliminary problem of concluding whether the chamber of representation of the Regions/States takes part in the political process of confidence between the Government and the majority in Parliament and hence in the main political circuit.

b) The second chamber, especially in a system of paritarian bicameralism, is regarded as a chamber that slows down decisional processes. It is true that the problem lies mainly in the paritarian character of bicameralism, but the problem remains. Whatever its composition, a second chamber with federal structure must first of all not slow down decisional processes, which is a factor of institutional inefficiency, due to the natural role of a second paritarian Chamber, which is to ensure and enlarge consensus through the slowdown of the decision.

c) The Italian debate on the transformation of the Senate into a chamber of regional representation began with the original proposal of a 'Chamber of Regions' which evolved into a 'chamber of Regions and local Governments'. In this respect, I limit myself to observing that no economically developed country (indeed, no country at all) has a strong State, strong Regions and strong local Governments. In the quasi-federal view that the Title V, and previously the so-called Bassanini reforms (1997-1999), seemed to take, it is logical to think of increasing integration between Regions and their respective systems of local government.

d) Last but not least, the principle of free mandate, included in almost all European Constitutions in tribute to the old principles of liberalism according to which members represent the nation and not their voters, suggests that members of a Chamber of Regions would represent their political party rather than their Region or voters.

e) Without going into the merits of the current value of the principle of free mandate (certainly not that attributed by Emmanuel Joseph Sieyès or Edmund Burke two centuries ago, thanks to the role of political parties), it is necessary to bear in mind that probably the main reason why the German *Bundesrat* works well is that it is not elective, but rather based on the principle of the so-called 'block vote', refusing the principle of free mandate.

On the other hand, if we exclude the federal or regional composition of the second chamber, my opinion is that a reform of the functions of the *Senato*, maintaining its 'political' composition, is neither useful nor opportune, and the risk of complicating the work of the institutions (instead of simplifying them) is very high. Every way of modifying the paritarian bicameralism would mean dividing functions in a non paritarian way between the two chambers.

The citizens, in a multilevel world, with at least four levels of government (EU, State, Region or members State, and municipalities), need institutional simplification, not complication. Accordingly, the instrument for the division of the functions of the two chambers, whatever is the way of the separation of functions (bicameral and monocameral laws, entrusting the whole function of control in the senate etc) risks becoming a source of political and legal conflicts which the voters do not necessarily understand.

We can also not say that the distinction of functions is necessary in order to improve the efficiency of the Parliament. Statistics show that the Italian perfect bicameralism is not less productive than the Parliaments of the most European countries in which only a few laws are approved by both chambers. The problem is not due to its technicalities (the so called *navette*, ie the ‘ping pong’ between the two chambers in order to find the consensus on a law):¹⁹ the problem is political. It is a question of simplification, transparency and comprehension, for the eyes of the voters, of the decisional process which democracy consist of.

Finally, my opinion is that the only possible reform of the Senate consists of its transformation in a federal or regional chamber. If this reform cannot be achieved or we think that it is not desirable or useful, the best way is to repeal the *Senato*. But here Norberto Bobbio’s paradox reaches its top: the senators would have to approve a reform that eliminates them, and thus reform mechanisms of immediate implementation are impossible or very difficult to achieve.

IV. The Dilemma of the Italian Regional Decentralization

The vicissitude of the Italian Regions may be represented with a parable: from 1970-1971, when the Regions were established, until the 1990s, we may look at the ascendant arm of the parable. It wasn’t a simple achievement and was marked by three distinct transfers of powers from State to each Region (ie public servants, funds and equipment before belonging to State): by the first transfer (eleven decrees in 1971-72) Regions appeared no more than a big municipality; only with the second transfer (in 1977) were the Regions able to practice an important political role in the economic development and in the facilities (especially in the welfare: health and social aid) of their territories.

The peak was reached with the third transfer, from 1997 to 2001, with the so called ‘Bassanini reform’, from the name of the minister who achieved this result. The name of the reform, ‘Federalism without constitutional reform’ aptly explains the content of the reform, which was to introduce federalism in

¹⁹ During the XVII legislature the time for the approval of a law was, on average, one hundred and seventy-two days when the initiative is governmental, and four hundred and twenty days when the initiative is of the members of Parliament: at the top of European efficiency...

Italy with a new massive transfer of powers from the State to the Regions and the municipalities. In short, to have a 'light State', free from active administrative functions and capable of concentrating on the great political choices and in the relations with Europe. The constitutional reform in 2001 was the final episode of this process, the constitutional recognition of the new set up of the relations between State and Regions.

From 2002 onwards, we may look at the descending arm of the parable: at first with many rulings of the Constitutional Court that were not favourable to the Regions; then with the failure of the enforcement of the so called fiscal federalism (legge delega 5 May 2009 no 42); finally with the economic and financial crisis after 2010, which saw the introduction of a rigid stability mechanism in charge of Regions and municipalities. This mechanism did not apply to the State: in 2016 the current expenditure of the State increased by almost six per cent; that of Regions and local Governments decreased by almost three/four per cent.

This short essay is not the occasion for inquiring into the reasons of this crisis: many of these issues are due to the Regions themselves – especially for their inefficiency and incapability to governing health regional services. After 2007, ten Regions exceeded the expenditure budget for health services, all of them in the South of Italy (except Basilicata) and Piemonte and Liguria; and many faults are due to the national political class. Two aspects, among the many contained in the Renzi's Government rejected constitutional reform of 2016, deserve our attention for the future.

The first concerns the question of flexibility in the separation of jurisdictions between State and Regions. This flexibility may appear as a paradox, because the *ratio* of the enumeration of regional (or state) powers in the constitutional text, since the US Constitution, means 'separation'; however the economic and financial crisis, the uncertainties on the future of Europe, the crisis of political representation and legitimacy of our political parties, all of this recommend prudence and flexibility. If a reform of the constitution every three or four years in order to adjust the distribution of powers to the economic and social conjuncture is impossible, it is at least possible to conceive a model of this distribution capable of being adjusted when necessary. In order to realize such model, however, a regional chamber is necessary, in order to involve the Regions in legislative decisions about the degree and the funding of decentralization.

This is one of the most important reasons, in my opinion, for the establishing of a regional chamber that can represent the voice of Regions in the national political process, especially in the decisions about the measure of the decentralization and its flexible adjustment to the changeable conditions of our economy.

The second issue consists of an apparent technicality: one of the innovations

contained in the Title V proposed by Renzi's Government was the substitution, in the functions entrusted to national state legislation, of the term 'principles' with the term 'general rules'. It may seem as a side issue; but, on the contrary, it may be a very important fact if we think of the increasing social and economic gap that, in the descending arm of the parable of the Italian regionalization, is differentiating Italian Regions, especially the underdeveloped Regions of the south with respect to the Regions in the north. This gap is becoming a serious threat to the enforcement and effectiveness of social rights in many Regions: so that a general state legislation (which cannot be derogated or enforceable by the Regions), enacted with the task of establishing greater homogeneity and equality in the access to social rights may depend on the set up and the concrete functioning (or malfunctioning) of regional welfare programs, especially those rights concerning health and social aid. This may be an important result for the citizens of many Regions with an economic and social gap.

However, it seems to me that our ruling class is now devoted to other political questions, possibly very interesting for its future, but I do not know how much these are important for Italians, and I am afraid that constitutional reform does not represent a priority, for the above mentioned reasons, in the national political agenda.