Constitutional Reform in Italy: Past and Present

Learning Democracy from the History of Constitutional Reforms

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Abstract

This article shows how the history of constitutional reforms in Italy helps its people to learn constitutional democracy. This history is first of all a history of the amendment rules that suffered derogations and have not been changed. Two stories must be told: a story of the reforms that have been approved and a story of the unsuccessful reform proceedings. Both stories offer good and bad experiences. The increasing relevance of constitutional referendums shows that the people need better practices in a spirit of deliberative democracy. For the future of the Italian Constitution, a moderate optimism is still appropriate.

I. *Quo Vadis* Italy?

The hopes and fears for the future of Italy in a European Union shocked by Brexit and increasing global disorder have been affected by the failure of the constitutional reform in 2016. What can the people learn from themselves? If they want to know to where they are moving, they could have a look at from where they are coming. Normally history never repeats itself – it offers weaker comparative arguments than strong narratives and not all people enjoy a good and a common memory. Nevertheless, the reasoning about constitutional history, a mixed species of legal, political and social history, could improve the peoples' legal and political cultures.

Constitutional reforms, amendments and/or revisions, are more or less extensive and intensive formal changes to the text of a written constitution that are guided by amendment rules and decided by political actors and lawmakers, including political parties and constitutional judges. Over the last decades they have gained more popular participation. Their history helps to focus specific needs of rule of law and democracy and is often used for promotion or prevention of claims for further constitutional reforms. The narratives of constitutional reform tell a lot about the ideas and the forces that move and justify them, about the cultures of idealism and realism, and about the conflicts

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and consensus in a given constitutional order.[1]

On the one hand, idealists could believe that republican constitutions are not eternal and therefore '*semper reformandae*', that constitutional reforms can be a tool for saving ourselves in a Baron von Münchhausen's way, that constitutional revisionism avoids constitutional revolutions and is necessary for progress and development, that reform ideas should be dependent upon the path of constitutionalism, that constitutions cannot be left to informal changes through political practice or judicial interpretation, that reforms are needed in order to formalize or to correct informal constitutional change, that they need more time and consensus than other reforms, and so on. On the other hand, realists could hold that procedure matters for the content and for the success of the reform, that any constitutional machinery at work is difficult to change through 'technical engineering', that a 'veil of ignorance' is possible only when a new Constitution is under way, that the inability of political decision-makers in a given constitutional system cannot be ended through a political decision that changes the system itself, that we are not living in times of new constitutional compacts, that wishing to change all, one does not change anything, and wishing to change nothing risks changing everything, and so on.[2]

If one looks at the Italian constitutional history, the history of amendments is first of all a history of the implementation of the amendment rules (Part II). Furthermore, there are at least two stories that can be told: one of the reforms that have been approved (Part III) and one of the unsuccessful reform proceedings (Part IV). Special attention shall be drawn to the constitutional referendums (Part V).

II. Constitutional Amendment Rules

The starting point of analysis is two articles of the Italian Constitution that have been officially translated into English as rules on 'amendments of the

[1] Italian narratives refer to the more traditional term of 'institutional reforms'. The most detailed reconstruction of this republican reform discourse is offered by C. Fusaro, 'Per una storia delle riforme istituzionali' *Rivista trimestrale di diritto pubblico*, 431-555 (2015). For external observers J. Luther, 'Conflict and Consent in the Constitutional Order of Italy: Lessons for (and from) Thailand?', in H. Glaser ed, *Norms, Interests and Values* (Baden-Baden: Nomos, 2015), 23-54; Id, 'Realism and Idealism in the Italian Constitutional Culture', in M. Adams and A. Meuwese eds, *Constitutionalism and Rule of Law – Bridging Idealism and Realism* (Cambridge: Cambridge University Press, 2017).

[2] See X. Contiades and A. Fotiadou, 'Models of Constitutional Change', in X. Contiades ed, *Engineering Constitutional Change* (London: Routledge, 2013), 417-468; R. Dixon, 'Constitutional Amendment Rules: A Comparative Perspective', in Id and T. Ginsburg eds, *Comparative Constitutional Law* (London: Elgar, 2011), 96-125. For the so-called paradoxes of constitutional reform in Italy G. Zagrebelsky, 'I paradossi della riforma costituzionale' (2004), in Id, *Intorno alla legge* (Torino: Einaudi, 2009), 240-266.

Constitution'.[3] The Italian word '*revisione*' is closer to 'revision', but means in the common language just a political 'review' of the law similar to a check-up of a car, not a fundamental change of type.[4]

This definition could have further normative implications. First of all the word explains the rule requiring a second vote after an interval of three months for further reasoning, review and hearings on the legitimacy and the impact of the reform. This rule can be combined with a more general principle of *in procedendo*, including for example a duty to make a good inquiry on the state of the Constitution and to hear the voices of legal and political science, the so called '*costituzionalisti*', as well as a duty of full disclosure of all relevant facts to the public. As Georg Hegel stated against Napoleon:

> 'A Constitution is not a mere artefact, but the work of centuries. It is the idea and the consciousness of what is reasonable, in so far as it is developed in a people'.[5]

The founding fathers created the Constitutional Court and the new amendment procedure as 'guarantees' of the constitutions on the premise that it would be better to pass from the flexible statute of the monarchy to a 'rigid' Constitution that could be developed, but not easily overthrown by a new dictatorship. The amendment mechanism was coherent with the genealogy of the Constitution that was approved by a multiparty majority of eighty point nine per cent (four hundred and fifty-eight of five hundred and sixty-six). The people designed a limited sovereignty over the Constitution when electing their representatives in the Constituent Assembly and voting simultaneously – with a small majority – against monarchy. The elected Constituent Assembly transformed the people's commitment to republicanism into an unamendable fundamental principle. The amendment mechanism based on a double vote with absolute majority in the bicameral Parliament, combined with a constitutional referendum that can be avoided only if there is a high

[3] Art 138: 'Laws amending the Constitution and other constitutional laws shall be adopted by each House after two successive debates at intervals of not less than three months, and shall be approved by an absolute majority of the members of each House in the second voting. Said laws are submitted to a popular referendum when, within three months of their publication, such request is made by one-fifth of the members of a House or five hundred thousand voters or five Regional Councils. The law submitted to referendum shall not be promulgated if not approved by a majority of valid votes. A referendum shall not be held if the law has been approved in the second voting by each of the Houses by a majority of two-thirds of the members'.

Art 139: 'The form of Republic shall not be a matter for constitutional amendment'.

[4] R. Albert, 'Amending Constitutional Amendment Rules' 13(3) *International Journal of Constitutional Law*, 667 (2015): 'Whereas an amendment alters the constitution harmoniously with its spirit and structure, a revision departs from its presuppositions and is inconsistent with its framework, thereby disrupting the continuity of the legal order'.

[5] G.W.F. Hegel, *Grundlinien der Philosophie des Rechts* (1821) (Frankfurt: Suhrkamp, 1976), § 247.

consensus, guaranteed by a threshold of two thirds, was suggested by the international lawyer Tommaso Perassi as an alternative to the Belgian model of necessary parliament dissolution between the first and the second vote.

The work of the Constituent Assembly was not entirely completed when the Constitution entered into force in 1948. The last chapters of the second part of the Constitution contained clauses that demanded separate 'constitutional laws' for the Statutes of Regions with special autonomy (Art 116) and for the 'conditions, the forms, the terms for proposing judgement on constitutional legitimacy, and the guarantees of the independence of the constitutional judges' (Art 137). The Constituent Assembly adopted the first 'constitutional laws' but could not deliver a complete 'constitutional legislation'. What Piero Calamandrei compared to the 'unfinished symphony' of Franz Schubert included also the amendment mechanism. Only in 1970 did the lawmakers decide to provide legislative rules for the constitutional referendum, which was used rarely in the beginning (five percent of all constitutions in 1950) but is a more frequent feature in constitutions today (ca forty percent in 2010).[6]

During the Cold War, the constitutional programme of further legislation and the changes in the Italian State and society were delayed and left to the next generation. The next generation started dreaming major constitutional reforms in a new European context, but the political parties could not stabilize themselves and come to agreements. After 1989, when the people obtained through referendum a move towards a more majoritarian electoral system (1993), the absolute majority threshold for parliamentary deliberation no longer constrained the search for a broad consensus on constitutional reform and proposals were made to get more rigidity or more flexibility for the amendment procedure. The new political parties founded after 1989 agreed on new *ad hoc* procedures in order to promote bipartisan constitutional reform with a mandatory referendum derogating from Art 138 of the Constitution. A revision of the myth that the constitutional compact was a result of '*Resistenza*' and of a second national '*Risorgimento*' and a so-called 'transition' to a 'second' or 'third' Republic with a great constitutional reform was prospected.[7]

If we look only at the history of the amendment clauses, one could conclude that Italy could need at the least a reform of Art 138 of the Constitution, but the discussion on this topic was, paradoxically, the best way for losing time and avoiding any real substantial revision.

III. Passed Constitutional Amendments

[6] J. Blount, 'Participation in Constitutional Design', in T. Ginzburg and R. Dixon eds, *Comparative Constitutional Law* n 2 above, 38. For UK S. Tierney, *Constitutional Referendums* (Oxford: Oxford University Press, 2012), 301.

[7] P. Scoppola, *La costituzione contesa* (Torino: Einaudi, 1998).

The constitutional history of Italy is usually divided into different periods. In the first two legislatures of the 1950s, the Constitution was 'frozen' and only the rules of the Constitutional Court were integrated through a second single constitutional law (legge costituzionale 11 March 1953 no 1). The first real reform in 1958 extended until 1963 the already expired time limit for the territorial reform of the Regions listed in Art 131 of the Constitution. In 1963, the new small Region of Molise was created (legge costituzionale 27 December 1963 no 3), a decision that is today strongly criticised by supporters of a territorial reform that could pool together Regions. The special procedure providing for territorial reforms of Regions through constitutional legislation (Art 132, para 1, Constitution) has never been used and needs to be simplified. The first reforms justified the further delay of the promised regionalism and established a lamentable practice not to name all the constitutional laws that change the meaning of the constitutional articles and could be integrated in the text 'Law amending the Constitution'.

In 1961, another Constitutional Law (legge costituzionale 9 March 1961 no 1) derogated from the rules governing the composition of the Senate and assigned three senators to Trieste and other municipalities situated in the special Region Friuli-Venezia Giulia established in 1963 (legge costituzionale 31 January 1963 no 1). The final design of the regional geography was linked to a significant reform of bicameralism (legge costituzionale 9 February 1963 no 2). Amending Arts 56, 57 and 60 of the Constitution, the design of constituencies of both chambers was simplified and their duration rendered symmetrical. This was the end of the attempts of the Senate to find a better composition of itself, a search started in 1948, and it was the beginning of the so-called symmetrical bicameralism, ironically defined also as 'perfect'. The reform was preceded by simultaneous dissolutions of both chambers and followed by the reform of the standing orders of 1970 and the practice not to differentiate by objective criteria the choice by which a chamber should start new legislative proceedings.[8] The later proposals and efforts to move to a functional differentiation of both chambers were aiming at a 'counter-reform' that implied a negative evaluation of this reform of 1963.

Other significant reform experiences were made in 1967. For the purpose of an adaptation of the Criminal Code to the genocide convention (ratified in 1952), a Constitutional Law (legge costituzionale 21 June 1967 no 1) exempted genocide from the prohibitions to extradite for political crimes (Arts 10, para 4, and 26, para 2, Constitution). Another reform reduced the term of office of constitutional judges, and prohibited their re-eligibility and prolongment

[8] J. Luther, 'Il contributo di Leopoldo Elia al bicameralismo' *Rassegna parlamentare*, 1047-1075, 1055 (2009). On the nostalgia for corporative or 'institutional' representation P. Aimo, *Bicameralismo e regioni* (Milano: Comunità, 1977), 187-210. For the division of labour ideas of the seventies P. Barile and C. Macchitella, *I nodi della Costituzione* (Torino: Einaudi, 1979), 17.

(*prorogatio*). The Court lost in power and gained in legitimacy, but became vulnerable to obstructionism in the procedures of parliamentary election of new judges.[9]

These first experiences of repairs and adaptations of the constitutional machinery in the 1960s ended when the French model of presidentialism found its first supporters in Italy and President Antonio Segni proposed without any success to abolish the rule providing for the re-eligibility of the President of the Republic. Arturo Jemolo concluded that 'radical amendments aren't feasible' and that

> 'except for moments of crisis that we hope to avoid (…) for most of the most relevant inconveniences that happen today, ordinary laws could be sufficient'.[10]

This sort of '*conventio ad non revisionandum*' adopted in the 1970s during shorter legislatures was shared even by the leftist forces that were still fighting for the implementation of the constitutional programme of innovation of State and society.[11]

The history of amendments restarted only in 1988 when the reform debates in Parliament were followed by the appointment of the first 'Minister for Institutional Reforms', Antonio Maccanico; after the assassination of the reform counsellor Roberto Ruffilli by the left-wing paramilitary organization Red Brigades; and by a fundamental decision of the Constitutional Court claiming its power to exercise constitutional review on constitutional legislation.[12] The first reform tried to strengthen the rule of law and saved the Constitutional Court from being overloaded with proceedings for crimes of ministers (legge costituzionale 16 January 1989 no 1). A second reform in 1989 created a new form of referendum on the 'constitutional treaty' of the European Union that was held simultaneously with the elections to European Parliament and found a clear majority in support of a 'yes' to the following guideline questioned:

[9] G. D'Orazio, 'Commento alla proposta di legge costituzionale per la modificazione dell'art. 135 Cost.' *Giurisprudenza costituzionale*, 569-580 (1967).

[10] A.C. Jemolo, *La Costituzione: difetti, modifiche, integrazioni* (Roma: Accademia Nazionale dei Lincei, 1966), 10, 12: 'The Constitution has already been revised in some article of secondary relevance (and personally I have to deplore some innovation, for example the symmetrical duration of the legislature for the House of deputies and the Senate)'. At the end of the seventies, E. Cheli, *Costituzione e sviluppo delle istituzioni in Italia* (Bologna: Il Mulino, 1978), 90 defined the Constitution a 'frame that is still valid and of productive potentiality'.

[11] P. Pombeni, *La questione costituzionale in Italia* (Bologna: Il Mulino, 2016), 323.

[12] Corte costituzionale 15 December 1988 no 1146, *Foro italiano*, I, 609 (1989). On Ruffilli cf M.S. Piretti, *Roberto Ruffilli: una vita per le riforme* (Bologna: Il Mulino, 2008). The Government De Mita prospected 'possible constitutional reforms'. The internal debate of the *Democrazia Cristiana* was now dominated by the proposal of a policy-making democracy by L. Elia, 'Per una democrazia di investitura e di indirizzo. Proposta per un riordino istituzionale possibile' (1988), in Id, *Costituzione, partiti, istituzioni* (Bologna: Il Mulino, 2009), 363-382.

> 'Do you hold that the European Communities should be transformed in an effective Union, conferring to the European Parliament the mandate to draft a European Constitution to be ratified directly at the competent organs of the member states of the Community?'

After the first electoral referendum in 1991, the constitutional reform decisively entered into the political agenda of the President of the Republic. A message from President Francesco Cossiga to the Parliament on 26 June 1991, which was not countersigned by Prime Minister Giulio Andreotti and criticized for not being in harmony with the Constitution itself, opened a debate on the amendment rules.[13] The President proposed as alternatives to the amendment procedure of Art 138 of the Constitution either the self-attribution of a constitution-making power to the Parliament, or the election of a new Constituent Assembly.

The next reform extended the presidential power to dissolve Parliament in order to allow elections when the terms of office of president and Parliament coincide (legge costituzionale 4 November 1991 no 1), just in time for the 'moral crisis' of political parties and Parliament that culminated in the so called *Tangentopoli* bribery scandal. Another reform act decided to transfer the power of amnesty and pardon to Parliament, requiring a two-thirds threshold that rendered them even more difficult to invoke than a constitutional amendment (legge costituzionale 6 March 1992 no 1). After another referendum that deeply changed the electoral system, a further constitutional reform changed the immunity rules for members of the Parliament, restricting the power of parliamentary authorisation to ordinary arrests and personal or home searches (legge costituzionale 29 October 1993 no 3). These reforms seem to have targeted a large popular consensus and tried to solve single problems, but they created many others and were not celebrated as a success.

In the meantime, another constitutional law had provided a new procedure for a constitutional reform in derogation from Art 138 (legge costituzionale 6 August 1993 no 1). The law established a (second) bicameral commission for constitutional reform charged with the task to draft an organic reform of the second part of the Constitution and of the electoral reforms rendered necessary by the referendum. The draft was to be approved first by Parliament and secondly by means of a mandatory referendum. When the electoral reform was approved on the basis of a proposal made by Sergio Mattarella, the President dissolved Parliament and the approved reform of the amendment procedure became obsolete. The same happened in 1997 with another constitutional law approved during the first Government of Romano Prodi (legge costituzionale 24 January 1997 no 1) when Silvio Berlusconi left the third bicameral commission and stopped the bargaining of reform in 1998. A

[13] P. Chessa and P. Savona, *La grande riforma mancata* (Soveria: Rubettino, 2014).

further attempt under the recent Government of Mr Enrico Letta did not produce any result.

These unsuccessful constitutional laws for *ad hoc* amendment procedures were followed by some small and medium-sized constitutional reforms that were preceded by administrative reforms. The enacted reforms aimed at promoting a new regionalism and to strengthen the protection of civil and political rights, trying to moderate new constitutional conflicts on federalism and on the powers of judiciary.

The first reform (legge costituzionale 22 November 1999 no 1) changed four articles of the chapter of the Constitution dedicated to territorial authorities, designed a new form of regional government, and provided for a new understanding of local autonomy. The reform legitimised the direct election of the President of the Region – introduced in 1995 through a law of the central State – simultaneously with the Regional Council on the basis of the principle *simul stabunt simul cadent*. It also allowed for autonomous regional electoral laws within the limits defined by State Law and provided for a new statute making procedures more similar to those of constitutional law-making. However, the new regional statutes did not succeed in inventing new regional forms of government and electoral reforms at regional level are still expected nowadays.

A second reform (legge costituzionale 23 November 1999 no 2) introduced into Art 111 of the Constitution new process rights clauses that specified the existing guarantees (Art 24), added a principle of 'due process' (*giusto processo*), and inserted some provisions inspired by the European Convention of Human Rights (Art 6) – especially the reasonable duration norm that has been frequently violated and censored by the Strasburg Court. This 'Europeanisation' of the constitutional texture was followed by a third reform (legge costituzionale 17 January 2000 no 1) – which was immediately corrected by a further law (legge costituzionale 23 January 2001 no 1) – that granted the right to vote to emigrated Italian citizens, (Art 48) establishing an overseas constituency for both chambers. These amendments too received bipartisan support and promised the solution for serious problems, but notwithstanding some modest progress their implementation is considered not conducive to a solution of the problems.

At the end of the legislature, when the bipartisan consensus was over, the majority government led by Giuliano Amato approved by a very thin majority of three votes a further constitutional reform that changed nine articles, repealed another five and provided for a complete revision of the Fifth Title of the second part of the Constitution that had already been partially agreed upon in the third bicameral commission. The centre-left coalition lost the elections but obtained a clear majority at the referendum (sixty-four point two per cent of the voters voted in favour with a low participation rate of thirty-

four point one per cent). The reform tried to bring regionalism closer to federalism and conceded to the Regions a general residual legislative competence and fewer restrictions on the shared competences (Art 117), the right to individually negotiate further forms of autonomy (Art 116), a principle of subsidiarity for administrative competences (Art 118), and more financial autonomy (Art 119). A representation of Regions in Parliament was envisioned, but not realised. Meanwhile the new Government delayed its implementation. The Constitutional Court mitigated the innovations through restrictive interpretations in favour of recentralisation, facing more and more conflicts between central and regional governments. Further corrections of this constitutional reform approved by Parliament failed in the referenda of 2004 and 2016.

The politicians learned from the 2001 constitutional referendum that bigger reforms are possible even with a non-bipartisan consensus, but the following Governments did not end the search for a bipartisan consensus, at least for small reforms that protected single rights and that were required by international human rights policies. The first reform in 2001 (legge costituzionale 23 October 2002 no 1) provided that the final provision no XIII, which prohibited ex-kings and their consorts and male descendants to access the Italian territory, 'ceased to be applicable'. The second reform rendered mandatory 'specific measures to promote equal opportunities between women and men' in the access to public offices and elective positions (Art 51). The third reform rendered irreversible the abolition of death penalty (Art 27).

Furthermore, the Government led by Mario Monti formed under undeclared conditions of financial emergency adopted a constitutional law (legge costituzionale 20 April 2012 no 1) entitled 'introduction of the principle of balanced budget in the Constitution'. It amended four articles and added a new provision, not formally included either in the main text or in the final provisions of the Constitution. The reform established a weak balanced budget rule,[14] strengthened the central powers, and invoked the rights of future generations and the responsibility of the public administration for ensuring the sustainability of the public debt. Being suspected to be a reform made under the dictate of financial markets, its implementation could be not strict and, in any case, was not sufficient for achieving the objective of sustainability.[15]

[14] Art 81, para 2: 'No recourse shall be made to borrowing except for the purpose of taking account of the effects of the economic cycle or, subject to authorisation by the two Houses approved by an absolute majority vote of their Members, in exceptional circumstances'. A 'concomitant adoption of amortisation plans' is prescribed only for the borrowing allowed to territorial entities.

[15] P. Bilancia, 'La nuova governance dell'Eurozona e i "riflessi" sugli ordinamenti nazionali' (5 December 2012) *federalismi.it*, 1-21 (2012); G. Boggero and P. Annicchino, 'Who Will Ever Kick Us Out?: Italy, the Balanced Budget Rule and the Implementation of the Fiscal Compact' *European Public Law*, 247-261 (2014).

This tale of realised constitutional reforms could be concluded by asserting that small reforms are always possible and can be more easily supported by bipartisan agreements. The medium-sized reforms of bicameralism in 1963, regionalism in 1999 and 2001, and balanced budgets in 2012 were more controversial and less successful, but the country learned to decide about constitutional referendums pushed by thin governing majorities. The Italian Constitution has been less frequently reformed than the French and German ones, but one should always bear in mind that this Constitution was made by much larger consensus for a much more divided country.

There are some myths influencing constitutional reforms in Italy that should be discredited in the light of reform experiences. First of all is the political myth that the catalogue of rights and duties of the first part of the Constitution and also the part on fundamental principles do not need reform and can be left to informal legislative or judicial changes. The reforms that have been enacted teach us that the developments of human rights can be reflected in the constitutional text: that the discrimination against women as having an 'essential role in the family' (Art 37) is still rooted in Italian society, that human dignity required extradition in cases of genocide and required prohibition of the death penalty, and that political rights need to be universalised and justice rights be protected even against judges. These reforms have been possible on a bipartisan basis. They have a high symbolic value for the capacities of integration and cooperation of the country.

Another myth was invented by a famous comedian and Oscar winner, Roberto Benigni. The title of a television show in 2012 depicted the Italian Constitution as the 'most beautiful in the world'. The beauty of the country is of course reflected in its constitutional code, a special kind of civil literature of a high aesthetic value.[16] The Italian Constitution is not short and obscure as Napoleon would have preferred, but a sufficiently long text[17] enlightened by a founding myth that is still at work – the common spirit of *Resistenza* – and by rich interpretative traditions. But constitutional reforms have not been facelifts and the revision practice has not been assisted by the guardians of the Italian language in the *Academia della Crusca*. The constitutional laws produced amendments left out of the corpus of the Constitution. Their multiplication created a disorder of texts instead of a well maintained book of constitutional sources of law. Even the duty to revise and coordinate the 'preceding constitutional laws' (sixteenth final provision) has not yet been carried out.

Another legend that must be rejected is that the electoral referendum and reforms framed a 'second' (or third) Republic.[18] There is no doubt that the

[16] Cf M. Ainis and V. Sgarbi, *La Costituzione e la Bellezza* (Milano: La nave di Teseo, 2016).

[17] Originally nine thousand and three hundred, today ten thousand and six hundred words.

[18] The enumeration changes if one includes the experience of the '*Repubblica Sociale Italiana*', a transitionary Government established in Salò under the control of the German Government with a presidential form of government very similar to the Nazi regime. A 'second' Republic was

passage from the proportional to a more majoritarian electoral system was favoured by dreams of a new republicanism with electors directly enabled to change government, with new parties and a political class purified from corruption. The electoral reform changed the form of democracy: that is at least partially substantial constitutional law or, more precisely, a part of the Constitution that has been deliberately left flexible. The shift from a more 'consociational' to a more 'majoritarian' democracy and its deep impact on constitutional culture created needs and expectations for a new constitutional compact that could integrate the newborn or renewed political parties, bring about a new form of government, strengthen local autonomies, and offer better 'guarantees' against a tyranny of the majority. But the 'second Republic' was just a projection of an open-ended 'transition' that could never be declared closed. The 2001 reform realised just a partial transformation initiated by administrative reforms, but it did not build a new constitutional identity and the further attempts at a quasi-total reform of the framework of powers failed.

IV. Failed Constitutional Revisions

The history of the enacted small and medium-sized constitutional amendments has been tied up with another history of failed attempts of more or less elaborated 'organic' revisions. This second history of failures starts with the first project of a 'revision of the Fifth Title of the second part of the Constitution', the abolition of regionalism proposed in 1948 by the deputies of the post-fascist *Movimento Sociale Italiano* (MSI).[19] In the 1960s, the first ideals of presidentialism did not find a way from political parties and civil society to Parliament. In 1975, some deputies of the *Democrazia Cristiana* (DC) made the proposal to reduce the number of members of both chambers of Parliament.[20] The final steps for implementing regionalism, the first experiences of referendum, the common fight against terrorism, and the weakening of the so-called 'convention *ad excludendum*' that excluded communists from government consolidated the basic consensus, but a new common search for major constitutional reforms was launched. The direct election of the President of the Republic and a 'great reform' of the Constitution were proclaimed first by Giuliano Amato and Bettino Craxi, leaders of the *Partito Socialista Italiano* (PSI) in 1977 and 1979.

In the 1980s, the newly established law review '*Quaderni costituzionali*'

proposed by V.E. Sogno, *La seconda Repubblica* (Firenze: Sansoni, 1974). A 'new' Republic was envisaged by the *Unione democratica per una Nuova Repubblica* (1964) of Randolfo Pacciardi. A 'third' Republic was prospected by G. Miglio, *Una Costituzione per i prossimi trent'anni* (Roma: Laterza, 1990); C. Fusaro, n 1 above, 450.

[19] Atti della Camera (A.C.) I, 225 (Michelini et al).

[20] Atti della Camera (A.C.) VI, 4127 (Bianco et al).

(1981) promoted new scientific research for institutional reforms. The first editorial acknowledged an increasing demand for greater reforms, evolutionary dynamics in the practices of interpretation of the Constitution, and a need for more realism and attention to the history of institutions.[21] The so-called 'Group of Milan' directed by Gianfranco Miglio launched a research project 'Towards a new Constitution', suggesting a 'Better Republic for the Italians' that the people should dictate to a political class captured by 'partitocracy'.[22] Constitutional law and political science, supported by bridging philosophies, found a common focus on the institutional development of the 'future of democracy'.[23] The dialogue of 'technicians' encouraged politicians to promise bigger institutional reforms, but the outcome was more appetite than food. That was also the time of the first 'bicameral commission' presided over by the liberal constitution-maker Aldo Bozzi (1983). The final proposal of the commission (1985) was to change forty articles and add another four. There was a broad consensus for a new fundamental principle of protection of environment (Art 9), for new guarantees of the use of images, access to information (Art 21 ff), rights related to justice (Arts 24, 25, 27, 102), protection of disabled people (Art 32), protection of women in family and at work (Arts 29, 36, 37), access to an ombudsman (Art 98), new rules in order to strengthen democracy within political parties (Art 49), popular initiative for legislation and abrogative referendum (Arts 71, 75) and a differentiated bicameralism with both Chambers deciding only on laws on institutions of government, fundamental rights, and budget. The first Chamber would decide on all other legislation, the Senate on activities of control over government and both chambers assembled in one for the vote of confidence.

The divisions within the majority government and on the left, but also the scepticism on changes in the form of government prevailed. Nevertheless, very few remember that in 1990 the Senate approved a medium-sized reform of bicameralism that would have allowed the conclusion of a law-making procedure in one chamber if the other did not impose its veto (so-called 'principle of the cradle'), reserving to the Senate only initiatives on laws of interest for the Regions. The fundamental principle of internationality would have been amended with a specific clause requiring Italy to promote a political Union among the European Community (EC) Member States based on the principle of democracy and the safeguard of the rights of the human person.[24]

[21] 'Editoriale' *Quaderni costituzionali*, 3-6 (1981).

[22] G. Miglio, *Una Repubblica migliore per gli Italiani* (Milano: Giuffrè, 1983); Gruppo di Milano, *Verso una nuova Costituzione* (Milano: Giuffrè, 1983).

[23] N. Bobbio, *Il futuro della democrazia* (Torino: Einaudi, 1984). Cf the working group on institution studies in M. Fedele et al eds, *Mass media e sistema politico: atti del Convegno "La scienza politica in Italia: bilancio e prospettive"* (1984) (Milano: Franco Angeli, 1987). In 1984 was founded even a new Association of Italian Constitutionalists (AIC).

[24] Commissione parlamentare per le riforme costituzionali, 'Il progetto di revisione di

The same consensus could not be found in the next legislature, but was rather reversed in expectation of a 'constitutional revolution'.[25] A new bicameral commission presided over by Ciriaco De Mita and Nilde Iotti was created in 1992 and equipped with special powers through an *ad hoc* constitutional law in 1993 (legge costituzionale 6 August 1993 no 1). The task of the commission was to draft an organic reform of the entire second part of the Constitution, except for the section referring to the constitutional amendment rules. The commission divided itself into sub-committees and a) drafted guidelines for the electoral reform, b) envisioned a new 'form of State' based on a new system of legislative competences (in large part realised by the reform of 2001), c) agreed on a rationalised neo-parliamentarian form of government with the election of a Prime Minister and with a vote of constructive non-confidence by both chambers of Parliament assembled in one, restrictions on the number of Ministries and on the power to pass emergency law decrees, the right of minorities to obtain a commission of enquiry etc, but no significant changes to bicameralism, d) registered divisions on the reform of the so-called 'guarantees', especially the chapters of the Constitution referred to the judicial power and to the Constitutional Court.

In the next legislature, elected with the new majoritarian electoral system, the task of preparing a new constitutional reform was transferred to a committee of professors appointed by the Government (1994). The committee outlined alternative choices between a premiership based on direct popular election and a President elected by Parliament or a French-styled semi-presidential system, and between a Senate similar to the German *Bundesrat* or one elected by the regional, provincial, and local councils. For the purpose of preventing authoritarianism, the former member of the Constitutional Assembly Giuseppe Dossetti organized committees 'for a defence of the fundamental values of our Constitution'.[26]

alcune disposizioni della Costituzione approvato dalla Commissione Affari costituzionali della Camera nella X legislatura (A.C. 4887-A)', available at http://www.camera.it/parlam/bicam/rifcost/dossier/prec05.htm#(*) (last visited 20 March 2017).

[25] C. Fusaro, *La rivoluzione costituzionale* (Soveria Mannelli: Rubbettino, 1993); M. Segni, *La rivoluzione interrotta* (Milano: Rizzoli, 1994). For the origins of constitutional revisionism, *inter alia*, S. Messina, *La Grande Riforma* (Roma: Laterza, 1992); D. Fisichella, *Elezioni e democrazia* (Bologna: Il Mulino, 1994); E. Rotelli, *Riforme istituzionali e sistema politico* (Milano: Lavoro, 1983); Id, *Una democrazia per gli Italiani* (Milano: Anabasi, 1993).

[26] G. Dossetti, *I valori della Costituzione italiana* (Modena: Mucchi, 1995); G. Napolitano, *Dove va la Repubblica 1992-94. Una transizione incompiuta* (Milano: Rizzoli, 1994); G. Sartori, *Ingegneria costituzionale comparata* (Bologna: Il Mulino, 1995); S. Cassese, *Maggioranza e minoranza* (Milano: Garzanti, 1995); C. Chimenti, *Addio alla prima Repubblica* (Torino: Giappichelli, 1995). The annual meeting of AIC discussed 'The form of State and the revion of the constitution', cf M. Dogliani, 'Potere costituente e revisione costituzionale' and L. Carlassarre, 'Forma di Stato e diritti fondamentali' *Quaderni costituzionali*, 7-66 (1995); U. De Siervo, 'Ipotesi di revisione costituzionale: il cosiddetto regionalismo "forte" ' *Le Regioni*, 27-70 (1995); M. Mazziotti

When Umberto Bossi proposed secession of the northern part of Italy and proclaimed the transitory 'Constitution of a Federal Republic of Padania' (1996), the idea of passing a constitutional reform became more a dividing than a uniting political issue. The first Government of Romano Prodi no longer included a minister for institutional reforms, but launched administrative reforms under the ministry of Franco Bassanini. Nevertheless, a third bicameral commission for 'constitutional reforms' presided over by Massimo D'Alema and Silvio Berlusconi received a further mandate to enact a reform of the form of State, the form of government, the bicameralism, and the system of guarantees, derogating from Art 138 of the Constitution (legge costituzionale 24 January 1997 no 1). The final draft changed the structure and most articles of the second part of the Constitution, now entitled 'Federal Order of the Republic', and was presented as a 'new Constitution' for the purpose of an 'institutional modernization'. Most amendments regarding the form of State (first title) have been implemented by the reform of 2001, except for the constitutionalization of the conferences of all levels of government that realize the principle of loyal cooperation among territorial entities. A new weak semi-presidential form of government, supported by a thin majority of the commission, left a strong power over most national policies to the Prime Minister. Differentiated legislative procedures were provided, with an absolute or relative veto power of the Senate, for certain categories of laws integrated by regional, provincial, and local council members. Furthermore, the Senate would elect the bodies of independent authorities and the Bank of Italy was granted autonomy and independence. A specific title was reserved to the participation of Italy in the European Union (EU). The draft redefined the competences of the Superior Council of the Judiciary, prospected a Court of Justice for magistrates and assigned to the Constitutional Court new competences, including direct access for citizens, and five more judges. The different parts of the reform were sustained by different majorities, but strongly criticised by constitutional lawyers. Constitutional reform could not be separated from other issues of the political process and the weakest consensus on the last part of the reform regarding the judiciary could not be maintained.[27]

The reform of 2001 tried to save the most consolidated part of the

di Celso, 'Principi supremi dell'ordinamento costituzionale e forma di Stato' *Diritto e società*, 303 (1996).

[27] A. Pace, U. Rescigno et al, 'La riforma costituzionale nel progetto della Commissione Bicamerale' *Diritto pubblico* (1997); N. Bobbio, *Verso la seconda repubblica* (Torino: La Stampa, 1997); A. Baldassarre, *Una Costituzione da rifare* (Torino: Giappichelli, 1998); G. Pitruzzella, *Forme di governo e trasformazioni della politica* (Roma: Laterza, 1998); A. Pizzorusso, *La Costituzione ferita* (Roma: Laterza, 1999); A. Spadaro ed, *Le 'trasformazioni' costituzionali nell'età della transizione* (Torino: Giappichelli, 2000); Associazione Italiana dei Costituzionalisti ed, *La riforma costituzionale* (Padova: Cedam, 1999).

consensus, but it was perceived as a sort of '*coup de constitution*' of a government majority that aimed at a fresh plebiscitarian legitimacy through the first constitutional referendum ever made. The Government did not survive, but partisan reforms became attractive. The new Government initiated another reform approved by Parliament in 2005 that would have changed forty-six articles and added another three. It was a counter-reform that devolved new competences to Regions and created a federal Senate with legislative powers on laws of regional interest, but reintroduced clauses of national interest and supremacy and excluded the Senate from the mechanism of votes of confidence in favour of a Government headed by a strong premiership. The President was obliged to appoint the candidate of the elected majority and the premier could be changed only through a vote of constructive non-confidence. The judiciary and the Constitutional Court would have been changed.[28] The government majority also changed the electoral system, but lost the elections. And in 2006 the people finally rejected the reform with a clear majority (sixty-one point twenty-nine per cent) in a referendum with a higher turnout (fifty-two point forty-six per cent) than in 2001.

Nevertheless, the commission for constitutional affairs of the next Chamber of deputies made an attempt to find a new minimum consensus. The twenty-four articles-draft of Luciano Violante (2007) designed a new 'Senate of the autonomies', a reform already promised by a provision of the constitutional law of 2001. The failures of the governments of Mr Prodi and Mr Berlusconi stopped this project as well as governmental initiatives that designed a new constitutional statute of the judiciary and a more liberal constitution of economy (Arts 41, 97, 118).[29] In 2012, the Senate approved by a simple majority twenty-one articles designing a more complex reform of bicameralism with a new federal Senate, the reduction of the number of members of Parliament, the direct election of the head of State who would preside over the government, stronger powers for the prime minister, a duty to participate in the works of Parliament, a reform of the Superior Council of the Judiciary (CSM) presided over by the president of the Court of Cassation, and the access of parliamentary minorities to the Constitutional Court.[30] In the same year, the new Government of Mario Monti obtained the reform

[28] F. Bassanini, *Costituzione: una riforma sbagliata. Il parere di sessantatre costituzionalisti* (Firenze: Passigli, 2004); S. Ceccanti and S. Vassallo eds, *Come chiudere la transizione* (Bologna: Il Mulino, 2004); L. Elia, *La Costituzione aggredita* (Bologna: Mulino, 2005); G. Sartori, *Mala Costituzione e altri malanni* (Roma: Laterza 2006); 'Seminario sul disegno di legge costituzionale contenente modifiche alla parte II della costituzione, maggio 2005 – Resoconto', available at http://archivio.rivistaaic.it/materiali/convegni/20050516_roma/resoconto.html (last visited 20 March 2017).

[29] A.C. XVI, 4144.

[30] 'Riforma Costituzionale: Parlamento e Governo nel testo proposto dalla Commissione affari costituzionali del Senato (A.S. n. 24 e abbinati-A)', available at http://www.senato.it/service/PDF/PDFServer/BGT/00737451.pdf (last visited 20 March 2017).

enshrining the balanced budget rule into Art 81, but did not get approved a mini-reform of the competences of Regions (Arts 116, 117, 127).[31]

In the meantime, the financial crisis pushed for a reconsideration of constitutional reform as a tool or a precondition for structural reform, to be appreciated by European and global market analysts. When the seventeenth legislature started with the failure of the majority to pass a new electoral law, the constitutional reform policy entered onto the agenda of the President Giorgio Napolitano. He first set up in 2013 a working group for institutional reforms that recommended some amendments and a reform of bicameralism[32] and he accepted re-election only under the informal condition of a new constitutional reform. The Government of Mr Letta presented a new bill of constitutional law for an *ad hoc* procedure in derogation from Art 138 and created a commission composed of constitutional lawyers that delivered a survey of the most relevant reform ideas.[33] The Government of Mr Renzi opted for a procedure based on Art 138 and did not consult with the commission on the amended forty-one articles. The Constitutional Court declared the electoral law unconstitutional (2014) and the Parliament adopted a new electoral law only for the Chamber of Deputies, the so-called *Italicum* (2015), again declared partially unconstitutional (2017). Sixty-five point forty-seven per cent of voters participated in the referendum and fifty-nine point twelve per cent of them rejected the reform (2016).[34]

The new Government of Mr Paolo Gentiloni abolished the minister for constitutional reforms. What can the people learn from this long history of failures? It might be easier to learn from success than from failure, but one can observe that politicians and citizens do not suffer from a reform fatigue. There could be a consensus over the need for more and larger constitutional reforms, not only among politicians, but there is not a consensus on their details and probably not even on their urgency.

Did thirty years of 'eternal' reform debates without a total revision cause

[31] Disegno di legge costituzionale 15 October 2012 no 3520 'Disposizioni di revisione della Costituzione e altre disposizioni costituzionali in materia di autonomia regionale', available at http://www.senato.it/service/PDF/PDFServer/BGT/00680798.pdf (last visited 20 March 2017).

[32] The final report of the group composed of the former President of the Chamber of Deputies, Luciano Violante, the former President of the Constitutional Court, Valerio Onida, and the former Ministers for Institutional Reforms, Gaetano Quagliarello, and the Minister for Defence, Mario Mauro was not officially published: http://www.giurcost.org/cronache/relazioneriforme.pdf (last visited 20 March 2017).

[33] Cf M. Siclari, *L'istituzione del comitato parlamentare per le riforme costituzionali* (Roma: Aracne, 2013); F. Rigano, *La Costituzione in officina* (Pavia: University Press, 2013). For a retrospective view on the last ten years M. Volpi ed, *Istituzioni e sistema politico in Italia* (Bologna: Il Mulino, 2015); on the last twenty years S. Sicardi, M. Cavino and L. Imarisio eds, *Vent'anni di Costituzione (1993-2013)* (Bologna: Il Mulino, 2015).

[34] Cf E. Rossi, *Una Costituzione migliore?* (Pisa: University Press, 2016); A. Apostoli, M. Gorlani and S. Troilo, *La Costituzione in movimento* (Torino: Giappichelli, 2016); G. Zagrebelsky and F. Pallante, *Loro diranno, noi diciamo* (Roma: Laterza, 2016).

some damages? One could argue that it served to delay structural reforms. It might be even a threat to the convention of recognition of the Constitution itself, but the text of the 'formal Constitution' seems still to find more patriotism than the system of political parties and forces which are dominating the so-called 'material Constitution'.

Further observations could help the sovereign to learn more about democracy and the perspectives of future constitutional reforms. First of all, since the referendum has been used, citizens have not trusted revisions that are perceived as potential new constitutions. Small is smart and great is suspect, especially under conditions of an uncertain 'transition'. The greater the distrust in the political class, the less a great reform is the right means for regenerating citizens' confidence in the political class that is considered a 'caste'. The constitutional referendum can regenerate citizens' confidence in themselves, but not necessarily in their representatives. The new or renewed political parties seem to need a new constitutional compact or some sort of constitutional populism more than the citizens.

Secondly, the eight major drafts partially approved in Parliament (1985, 1990, 1993, 1997, 2005, 2007, 2012, 2016) do at least partially converge on a political *acquis* of common reform wishes and alternative solutions. Most elements of the last draft recycled ideas of earlier ones, but did not sufficiently declare their origins. A minimal consensus in Parliament seems to be possible, but the differences grow when elections are coming. And over the last decades, the political, legal and socioeconomic context evolved to an extent that the *acquis* risks being no longer up do date. On the one hand, the multipartitism changed first towards bipolarism and later towards tripolarism. On the other hand, the re-personalisation of power and politics pushed a demand for new 'guarantees' and practices of constitutionalism. The informal presidentialization of the form of government makes progress, but the memory of the fascist Republic of Salò is still a strong argument against presidentialism.

Thirdly, the failures show again how much procedure matters, not only in the sense that the best ideas can be outweighed by bad procedures, but also that a good memory of past failures could help to save time and provide for better problem-solving. This was the bad experience of the constitutional laws that created *ad hoc* procedures for constitutional reform. The greater a reform's size is, the more accuracy is needed for consensus-building, especially if the Government takes the initiative. The proceedings did not optimize the organisation of academic expertise and popular participation. No public investigation was made of the costs of the constitutional reform. Most proposals neglected time limits and the need for transition rules. A special attention should thus be drawn to the increasing relevance of the procedure of constitutional referendums.

V. Better Constitutional Referendums

The 2016 referendum was more participated in than earlier constitutional referendums, but still less than elections. This is a positive development if the constitutional referendum becomes an instrument of civic participation to a deliberative democracy and matters for both the contents and the results of constitutional reform.[35]

Nevertheless, the people experienced various forms of abuse and manipulation by the political elites. An early Italian experience was the plebiscites of 1929 and 1934 when the voters just answered 'yes' or 'no' to Benito Mussolini's demand for consensus, instead of choosing their representatives. Any confusion of referendum and election should be accurately avoided, but the referendums of 2001 and 2006 were not held in sufficient temporal distance from general elections (five and three months, respectively). In the long time between the parliamentary deliberation (15 April) and the referendum (4 December) of 2016, regional elections took place and confusion occurred because the President of the Council of Ministers Matteo Renzi announced he would resign if the reform was rejected. The decision on the constitutional reform could then be perceived as a decision on a sort of non-confidence vote or recall of a government non prospected at the last elections.

Furthermore, the Parliament was elected on the basis of electoral laws that were later declared unconstitutional by the Constitutional Court. The judgment 14 January 2014 no 1 explained that elections should not necessarily be invalidated, but the opposition argued that the residual powers of the Parliament were limited to the approval of a new electoral system, not to a revision of the Constitution that is the only source of legitimacy of a parliamentary government elected with an unconstitutional electoral law. As an intermediate position, one could argue that in the case of popular consensus for the reform the people would have changed the basis of the parliamentary form of government and this decision would have implied a de-legitimation of the Parliament. However, the constitutional reform was preceded by an electoral reform of the first chamber pending in the Constitutional Court. It would have changed the parameters of constitutionality and the decision on the constitutional referendum was partially influenced by the opinions on the electoral reform.

One can conclude that if confusions of referendum and elections as well as constitutional and electoral reform issues are not avoided, the sovereignty of the electors is at risk of being a mere fiction. This suggests asking whether the constitutional referendum was organized effectively in a way consistent

[35] S. Voigt, 'The Consequences of Popular Participation in Constitutional Choice – Towards a Comparative Analysis?', in A. van Aaken, C. List and C. Luthge eds, *Deliberation and Decision: Economics, Constitutional Theory, and Deliberative Democracy* (Aldershot: Ashgate, 2003), 199-229.

with meaningful democratic deliberation.

A first objection regarding the intelligibility and the format of the referendum question, notably the incorrect title of the law and the non-identification of the amended articles of the Constitution, was rejected as inadmissible by an administrative court.[36]

A second objection regarding the impossibility to vote article by article or chapter by chapter was rejected by the ordinary and administrative courts.[37] This issue was already discussed for the referendum of 2006. The relevant law allows only a single vote and leaves the decision on the question to a special office of the Court of Cassation. The 'Guidelines for constitutional referendums at national level' of the Venice Commission of 2001 state that

> 'except in the case of total revision of the Constitution, there must be an intrinsic connection between the various parts of the text, in order to guarantee the free suffrage of the voter, who must not be called to accept or refuse as a whole provisions without an intrinsic link; the revision of several chapters of the Constitution at the same time is equivalent to a total revision'.

The reform of 2016 invested several chapters and was therefore similar to a total revision, but this should raise a further question as to whether Art 138 of the Constitution can be used also for 'total revisions' or whether the Constitution doesn't reserve the adoption of a new one implicitly to a new constituent assembly.[38]

A third objection could be based on the right to be informed on the content of the constitutional reform. The soft law of the Venice Commission of 2001 states that

> 'electors must be informed of the consequences of the referendum; (…). The authorities must provide objective information. This implies that the text submitted to referendum and an explanatory report should be made available to electors sufficiently in advance, as follows:
>
> - they must be published in an official gazette at least one month before the vote; they must be sent directly to citizens and be received at least two weeks before the ballot;
> - the explanatory report must give a balanced presentation not only of the executive and legislative authorities' viewpoint but also the opposing

[36] Tribunale Amministrativo Regionale-Lazio 20 October 2016 no 10445, *Guida al diritto*, 94 (2016).

[37] B. Randazzo and V. Onida, 'Note minime sulla illegittimità del quesito referendario' *Rivista AIC*, 4 (2016).

[38] P. Carnevale, 'Il referendum costituzionale del prossimo (sic!) dicembre fra snodi procedurali, questioni (parzialmente) inedite e deviazioni della prassi' 2 *Costituzionalismo.it*, 35-70 (2016).

one'.[39]

The minister held that the title of the law and the publication in the *Gazzetta Ufficiale* would be sufficient. But neither the internet access to the discussions in Parliament, nor the propaganda of the committees for the Yes and for the No in public media, nor the work done by most constitutional law professors granted sufficient information.[40]

Several parliamentary interrogations focussed on questions of excessive campaigning for Italians abroad and insufficient information on the cost-savings effects of the reform. The said guidelines state that

> 'the national, regional and local authorities must not influence the outcome of the vote by excessive, one-sided campaigning. The use of public funds by the authorities for campaigning purposes during the referendum campaign proper (ie in the month preceding the vote) must be prohibited. A strict upper limit must be set on the use of public funds for campaigning purposes in the preceding period'.

Similar limitations have not been established in Italy and the expenses incurred by the authorities cannot really be controlled.

VI. The Future of the Constitution

To conclude, the long history of constitutional reforms, no matter if approved or rejected, shows that the Italian Constitution is neither the most beautiful of the world, nor a wreck. Italians do not like to veil the divisions and weaknesses of Governments, but external observers should not underestimate the resilience of the people and their constitution. Italy might need further 'slim-fit' amendments without referendum, but could also have a medium to large reform with a new constitutional referendum in the next legislature. A reform 'at any cost' or just for the sake of 'revisionism' cannot help – only a reform that makes real 'savings' to the benefit of constitutionalism.[41] Informal changes through new conventions, jurisprudence, and amendments to ordinary legislation and standing orders are possible as well as better practices of constitutional referendum.

The sovereignty of a people depends upon its capacity to learn constitutional

[39] 'Guidelines for constitutional referendums at national level' (adopted by the Venice Commission at its 47th Plenary Meeting (Venice, 6-7 July 2001)), available at http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-INF(2001)010-e (last visited 20 March 2017).

[40] The Authority for Guarantees in Communications (AGCOM) reported an asymmetry in the first time: 'Il Referendum Costituzionale nei Tg e negli Extra-Tg' (2016), available at https://www.agcom.it/documents/10179/5139876/Dati+monitoraggio+15-072016+1470066868257/cf6de3c1-8768-42b9-b442-1d432eb0edd6?version=1.0 (last visited 20 March 2017).

[41] G. Azzariti, *Contro il revisionismo costituzionale* (Roma: Laterza, 2016).

democracy even in conditions of global uncertainty. One could be sceptical and believe that the people decided not to save the Constitution, but just to kick out 'the caste' of today instead of 'the caste of yesterday'. But one could even hold that the people learned to distrust thin majorities and greater reforms that frequently suffered from approximation, instrumentalism, emotionalism and inconclusiveness.[42] The accuracy in the making and interpretation of the texture, the coherence of a plurality of values, the civilisation of passions, and the ability of reasonable conclusions are virtues of the people and the best guarantees for a good Constitution. A moderate optimism is still in order.

[42] U. Allegretti, *Storia costituzionale italiana* (Bologna: Il Mulino, 2014), 223.