

# FROM A 'WOUNDED CONSTITUTION' TO A DISMANTLED CONSTITUTION?

## HOW FASCINATION FOR FRENCH-STYLE PRESIDENTIALISM PUTS THE 1947 ITALIAN CONSTITUTION AT RISK

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*Over recent decades, French-style presidentialism has grown increasingly captivating within Italy's legal and political spheres. This enchantment is perhaps most evidently manifested in the speeches and proposed constitutional reforms advanced by the incumbent Prime Minister, Giorgia Meloni, and her adherents. Although today Giorgia Meloni's presidentialism appears in the guise of premierato, her aspiration to approximate the features of the French model—the election of a leader directly by voters, bypassing political parties and Parliament—remains perfectly intact. This desire for rapprochement provides an opportunity to present a brief comparison, explanatory and critical, highlighting the limits of the explicit ideas defended by those promoting this reform, and revealing the implicit ideas behind their discourse, which have the objective of dismantling the 1947 Constitution with its guarantees and checks and balances.*

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## I. INTRODUCTION

‘Presidentialism is the mother of all reforms for those who truly believe that sovereignty belongs to the people, in accordance with Art 1 of our Constitution. It is the mother of all reforms for those who truly want a politics that is capable of taking decisions and that assumes responsibility for the decisions taken. It is the mother of all reforms for those who want to put Italy in a position to face up to the complex demands of the times’.<sup>1</sup>

Giorgia Meloni made these remarks in the Chamber of Deputies on 10 May 2022, when she was not yet Prime Minister (President of the Council of Ministers). She defended a draft constitutional law proposing a reform of the Italian political system, and said that this reform would provide for a ‘semi-presidentialism *à la française*’, ie

‘a President of the Republic elected by universal suffrage who presides over the Council of Ministers, directs the general policy of the government and coordinates the activities of the ministers with the Prime Minister’.

She concluded by saying, ‘but I want to say very clearly that we are totally available to discuss other types of system’.<sup>2</sup>

On 3 November 2023, the now Prime Minister confirmed this spirit of openness. At a meeting of the Council of Ministers, she presented a new proposal for constitutional reform, introducing not a French-style semi-presidentialism but the direct election of the head of government, in other words the President of the Council. In the press and in constitutional literature, this proposal is referred to as the *premierato* (prime ministerial regime). Its considerable advantage lies in the possibility of reforming the Constitution by amending only a limited number of its provisions. In the press conference following the Council of Ministers, Giorgia Meloni said of the *premierato*, ‘It will be the mother of all reforms’.<sup>3</sup> In short, it does not matter whether it is French-style presidentialism or *premierato*, the two are interchangeable, as long as the system provides for the direct election of the President..., be it the President of the Republic or the President of the Council.<sup>4</sup>

According to Giorgia Meloni, the direct election of one or other of the heads

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<sup>1</sup> Camera dei deputati, XVIII legislatura, 10 May 2022, available at <https://tinyurl.com/5ey9enhp> (last visited 30 May 2025).

<sup>2</sup> *ibid.* These two quotes show that semi-presidentialism and presidentialism are used as synonyms in Giorgia Meloni’s speeches.

<sup>3</sup> Council of Ministers Press Conference no 57, 3 November 2023 available at <https://tinyurl.com/3f5xsaxt> (last visited 30 May 2025).

<sup>4</sup> Traditionally, the two options (direct election of the President of the Republic/direct election of the Prime Minister) have been presented as ‘alternatives’ to each other, available at <https://tinyurl.com/h89surey> (last visited 30 May 2025). Recently, Giorgia Meloni did not rule out the possibility that they could be combined. A. Frascilla, ‘Riforme, Meloni apre all’elezione diretta del presidente della Repubblica: “Non sono contraria”’, *La Repubblica*, available at <https://tinyurl.com/343j9d3p> (last visited 30 May 2025).

of the executive will guarantee that the system is truly democratic. The person who governs will be the winner of national elections, chosen by the people to govern for five years, and therefore the person who can lead Italy to greater economic efficiency, thanks to (the increased) political stability and democratic legitimacy. The reference to economic efficiency is constant in the speeches of the supporters of this reform, which they place under the banner of stability, governability and efficiency with an all-purpose argument. Witness the words of the Minister for Institutional Reform and Regulatory Simplification, Elisabetta Casellati:

‘The figures bear this out. In 75 years of republican history, we have had sixty-eight governments lasting an average of fourteen months. This is unacceptable. The continual alternation of executives weighs heavily on the functioning and costs of the state machinery and has a serious impact on the economy. According to experts, over the last ten years, instability has cost Italians €265 billion in interest on government bonds. Stability is synonymous with savings for citizens and the ability of governments to tackle the country’s problems with long-term planning. This is why this first reform is also an economic lever, the ‘reform of the reform’ that will enable the completion and implementation of measures related to taxation, justice, pensions, education, employment, etc., making Italy more competitive and capable of attracting foreign investment’.<sup>5</sup>

The triptych of stability, governability, and economic efficiency seems quite distant from the concerns of the 1946-1948 Constituent Assembly. Seventy-five years ago, the Italian Constitution aimed to establish a democratic regime in response to 20 years of fascist rule. In this regard, it is a Constitution deeply distrustful of executive power. For this reason, the Assembly chose to adopt an only weakly-rationalised parliamentary system. This weakness in rationalisation contrasted with the robustness of the Constitution’s ‘guarantees’ system, consisting of constitutional checks and balances designed to limit the power of political majorities. In addition to the strict bicameralism allowing both chambers to challenge the political responsibility of the government, the Constitution provides for a specific procedure for its revision; a Constitutional Court; an independent judiciary (both bench and prosecution); and a system of regional autonomy. Finally, the entire first part of the Constitution is dedicated to the proclamation of civil, political, economic, and social rights and freedoms, a set of rights and freedoms that can potentially be opposed to the power of parliamentary majorities.

The Constituent Assembly’s interest in constitutional guarantees was based on a firm commitment to limiting executive power. When this new Constitution was adopted, no one knew which party would win the first post-war legislative election. This ‘guarantee-based’ constitution was adopted by a large majority in a

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<sup>5</sup> *Il Sole 24 Ore*, 17 December 2023.

Constituent Assembly composed of politically ideologically diverse – parties or members – (notably the Christian Democrats and the Marxist Party), which nonetheless all shared a common antifascist stance. Until the 1980s, the Italian Constitution did not face any major critiques; on the contrary, it was its implementation that was at the core of concerns. Although Italian political life was marked by ministerial instability, this was linked to the interplay of political parties between the Christian Democrats and their allies, who monopolised power for forty years, keeping the Communists far away from government and excluding any form of alternation.

After the fall of the Berlin Wall, criticism of the Italian Constitution became more virulent, both on the right and centre-left of the political spectrum. These multiple attempts at reform led the prominent Italian constitutionalist, Alessandro Pizzorusso, to publish *The Wounded Constitution* in 1999. In it, he denounced the delegitimising effects of the revision projects, which have multiplied further since the 1990s,<sup>6</sup> mostly supported by right-wing parties<sup>7</sup> (almost the same as those in the coalition currently supporting Giorgia Meloni's government). These political forces, each in their own way, have been notable for their attacks on the principles of democratic, liberal, and social constitutionalism that are the foundations of the 1947 text. They consider, for example, that the two parts of the Constitution – fundamental principles and human rights (civil, political, economic, and social) and the organisation of relations between state organs – are established on two parallel, completely independent planes.<sup>8</sup> This position sharply contradicts the previously widely held interpretation that the two parts are closely linked.<sup>9</sup> This close link means that the implementation of the principles and rights enshrined in the first part cannot be based on just any organisation of powers, but only on a

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<sup>6</sup> A. Pizzorusso, *La Costituzione ferita* (Roma-Bari: Laterza, 1999). At the time the book was published, there had already been three bicameral commissions for constitutional reform: Commissione Bozzi (IX legislatura 1983-1987); Commissione De Mita-Iotti (XI legislatura 1992-1994); Commissione D'Alema (XIII legislatura). Massimo D'Alema, Secretary General of the Democratic Left Party (PDS), envisaged a prime ministerial regime with indirect election of the Prime Minister. This project was not completed. Later, in 2006, another draft constitutional reform initiated by the centre-right government led by Silvio Berlusconi (Berlusconi IV) was presented with the aim of extending the powers of the head of government. The bill was rejected in a constitutional referendum; see also A. Pizzorusso, 'Le riforme costituzionali: una transizione per destinazione sconosciuta' *Il Foro Italiano*, 11, 217-243 (2005).

<sup>7</sup> Two of these right-wing parties are recent creations: Forza Italia dates back to 1994 and was led by Silvio Berlusconi, while Lega Nord was founded in 1989 by Umberto Bossi and is now led by Matteo Salvini. These two parties are joined by the Movimento Sociale italiano (MSI), a party founded in 1946 as the political heir to Fascism, and as such totally uninvolved in the drafting of the 1947 Constitution. Today, Fratelli d'Italia (FdI) is central to the majority coalition supporting Giorgia Meloni. FdI was founded in 2012 and includes former members of the Alleanza Nazionale party, which was formed in 1995 by turning the MSI into a more modern party with fewer links to the fascist past, while retaining some of its electorate and ideological heritage.

<sup>8</sup> See also S. Rodotà, 'Il grande Assalto alla Costituzione' *La Repubblica*, available at <https://tinyurl.com/yamu2ady> (last visited 30 May 2025).

<sup>9</sup> *ibid*

system compatible with the programme defined in the first part to ensure maximum space for the social, cultural, and political pluralism that inspires the entire constitutional text. The proposed reforms have so far all been unsuccessful (apart from the 2001 reform concerning regions and territorial autonomies Title V Part II), the most recent under the impetus of Silvio Berlusconi (2006) and Matteo Renzi (2016). From the 1990s onwards, a fascination has developed for a ‘French-style presidentialism’, in the sense of an institutional organisation allowing presidents (of the Republic or the Council) to exercise ‘unquestionable general political leadership’.<sup>10</sup> Many were arguing that the parliamentary Republic must come to an end. They recommend ‘doing as the French do’ where ‘presidentialism has provided solutions to the problems that arose in French political history, the same problems that we are experiencing today’.<sup>11</sup>

Although today Giorgia Meloni’s presidentialism appears in the guise of *premierato*, her aspiration to approximate the features of the French model – the election of a leader directly by voters, bypassing political parties and Parliament – remains perfectly intact. This desire for rapprochement provides an opportunity to present a brief comparison, explanatory and critical, highlighting the limits of the explicit ideas defended by those promoting this reform, and revealing the implicit ideas behind their discourse, which have the objective of dismantling the 1947 Constitution with its guarantees and checks and balances.

This comparative analysis proceeds in four stages. First, we examine Giorgia Meloni’s reform and its arguments based on French-style presidentialism’s purported advantages. Second, we critically compare these purported virtues with the actual functioning of the French political system. Third, we unveil the underlying target of the reform: dismantling the constitutional guarantees established in 1947. Fourth, drawing on Italian constitutionalists’ critiques of Meloni’s reform, we explore their implicit criticisms of the French system.

## II. A CONSTITUTIONAL REFORM INSPIRED BY THE VIRTUES ATTRIBUTED TO FRENCH-STYLE PRESIDENTIALISM

In accordance with the Gaullist ideology that inspired the French model, the institutional reform that the Meloni government advocates aims to shift the Italian constitutional balance in favour of the head of the executive to achieve two objectives: a strengthening of the democratic legitimacy of the person who

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<sup>10</sup> We have adapted a definition of ‘French-style presidentialism’ proposed by A. Le Divellec in his article ‘Présidence de la République et réforme constitutionnelle “L’impossible rationalisation” du présidentielisme français’’, in J. De Maillard et al eds, *Politiques publiques 3 Les politiques publiques sous Sarkozy* (Paris: Presses de Sciences Po, 2012) 91-110.

<sup>11</sup> G. Rebuffa, *Elogio del presidenzialismo* (Roma: Ideazione, 1996), 78 quoted by C. De Fiore, ‘Ascesa e declino della Repubblica semipresidenziale in Italia’, in G. Azzariti and M. della Morte eds, *Il Führerprinzip, La scelta del Capo* (Napoli: Editoriale Scientifica, 2024), 110.

exercises power; and guaranteed stability and effectiveness in leading the State.

According to Giorgia Meloni, one of the primary objectives is to guarantee citizens the right to choose who will govern them. This argument has been a constant in Giorgia Meloni's speeches since 2022. It is hard not to see it as a reference to what is likely one of the hallmarks of French presidentialism, at least until the dissolution and legislative elections in July 2024. In the explanatory memorandum to the constitutional bill, the emphasis is placed on

'consolidation of the democratic principle by enhancing the role of the electorate in determining the nation's policy through the direct election of the Prime Minister and the stabilisation of their office to provide support and continuity to the democratic mandate'.<sup>12</sup>

To put it more directly, the one who governs must be the one who won the election. In Giorgia Meloni's sights are the traditional negotiations between political parties that regularly occur in Italy under the auspices of the President of the Republic when a clear majority has not emerged from the polls. The goal is thus to put an end to 'Palace negotiations' and technocratic governments, to eliminate 'governments that have acted over the heads of citizens to accomplish things that citizens had not decided'.<sup>13</sup>

The reform project also stipulates that the election of the Prime Minister through direct universal suffrage occurs simultaneously with the elections for both Chambers of Parliament. Here again, French inspiration is evident. As Anna-Maria Lecis Cocco Ortu notes,

'these simultaneous elections are intended to facilitate the emergence of a majority supporting the government through a kind of drag effect, placing the election of parliamentarians in the service of the designation of the Prime Minister, following the same dynamic observed in France since the establishment of the five-year term and the reversal of the electoral calendar designed to prioritise the presidential election'.<sup>14</sup>

Regarding the constitutional reform's goal of establishing stable governance, Art 3 introduces a significant innovation: the constitutionalisation of a majority premium. Initially proposed in November 2023 as a 55% majority premium, the June 2024 Senate version contains a broader formulation. It stipulates that a majority premium must guarantee seats in both chambers for lists supporting the voter-designated head of government. While implementation details remain unclear, proponents view this reform as emulating the majoritarian model admired

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<sup>12</sup> <https://tinyurl.com/58xr2tcb> (last visited 30 May 2025), 4.

<sup>13</sup> Council of Ministers, n 3 above.

<sup>14</sup> A.M. Lecis Cocco Ortu, 'Un regard critique sur le projet de révision constitutionnelle en vue d'instituer un «Premiérat»' *JP blog*, available at <https://tinyurl.com/bebe73f5> (last visited 30 May 2025).

in the French political system.

### III. THE REALITY OF THE FRENCH PRESIDENTIAL SYSTEM

The French political system has traditionally been characterised by its stability and efficiency. This perception is primarily rooted in the historical context surrounding the establishment of the Fifth Republic. This regime emerged as a solution to the frequent governmental changes that plagued the Fourth Republic, and by significantly enhancing presidential powers, it restored order during the tumultuous period of the Algerian War. These attributes were further reinforced through constitutional reforms, including the reduction of the presidential term from seven to five years and the reorganisation of the electoral calendar.<sup>15</sup>

Legislative elections placed after the presidential election were intended to confirm the choice of the voters by granting the newly elected President the absolute majority needed to implement his policy. In other words, for most of the Fifth Republic and even until recently, the person who governs has been the one who won both the presidential and legislative elections. It is worth noting that this broad support from a majority in the National Assembly is complemented by the many instruments of ‘rationalised parliamentarism’ in the 1958 constitution. In particular, during his first term, even while supported by a comfortable majority in the National Assembly, President Macron normalised the use of the emergency procedure (expedited procedure since 2008), which allows the government to shorten parliamentary debates, thus further diminishing the role of Parliament in institutional practice.<sup>16</sup>

Moreover, the stability and effectiveness of the government had been made possible by the emergence of the *fait majoritaire* (majority effect). However, unlike what the current *premierato* project seems to suggest, the French Constitution does not ensure the *fait majoritaire*; it is not the product of constitutional norms. Since the 1962 reform of the presidential election, it has emerged from the balance of power between political parties that organise around the figure of a political leader, a candidate in the presidential election, whose support is then confirmed by the representatives elected, forming a presidential majority once it reaches an absolute majority (two hundred and eighty-nine seats). This *fait majoritaire* in a way neutralises the mechanisms for holding the government politically accountable,

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<sup>15</sup> ‘Combined with the inversion of the electoral calendar (placing the presidential election before the legislative elections), the five-year term ensures the stability of the presidential leadership over the parliamentary majority for five years. By aligning the electoral timetable, the five-year term also forces citizens to act consistently. Since 2002, all elected presidents have thus benefited from a stable legislative majority during their term’. P. Blacher, ‘L’enracinement du présidentielisme, La Constitution de 1958, toujours d’actualité?’ *La Documentation française*, 21-45 (2018).

<sup>16</sup> E. Lemaire, ‘La procédure accélérée ou la regrettable normalisation d’une procédure dérogatoire’ *JP blog*, available at <https://tinyurl.com/42cj524v> (last visited 30 May 2025).

which explains why since 1962, only one motion of censure has led to the resignation of a government.

What is less often pointed out is that the French President makes extensive use of changes in prime ministers and cabinet reshuffles when faced with crises. As Christophe Le Digol points out, 'reshuffling is one of those institutional acts that serves to reaffirm who holds power and where it resides'.<sup>17</sup> The government's accountability to the President has led to France having 16 governments in the past twenty years, while Italy has only had 11.<sup>18</sup> Indeed, these changes in prime ministers and cabinet reshuffles do not necessarily coincide with an instability that makes government in the country impossible. However, they can be seen as forms of inadequate response to social and political crises that often unfold outside the framework of the institutional system.

Stability and efficiency are supposed to be the key virtues of the French system in the eyes of proponents of the constitutional reform advocated by Giorgia Meloni, but do not produce all the expected effects in terms of the legitimacy of the government. France has been grappling with a longstanding crisis of representation, which has evolved into a broader crisis of legitimacy affecting the entire political class. The Yellow Vest protests were probably the most prominent manifestation of this discontent. In the same vein, in Italy, Giorgia Meloni has attributed low voter turnout and political disengagement to the country's parliamentary system.

In France, however, voter participation is notably low, with presidential elections being an exception. Yet the current President's victories in two consecutive runoffs were largely due to voters opposing the far-right candidate rather than endorsing his policy agenda. This dynamic was starkly illustrated during the pension reform crisis, which exposed the disconnect between a President elected by default and his attempt to leverage electoral legitimacy to implement a controversial reform lacking broad public support. Recent political developments in France have significantly undermined the long-held notion that the French presidential system ensures stability and efficiency. The dissolution of the National Assembly by the President on 9 June 2024, triggered early legislative elections that have plunged the country into an unprecedented political crisis. This absence of a *fait majoritaire* has significantly challenged the traditional power dynamics of the Fifth Republic.

The National Assembly is now fragmented into three blocs, none of which holds an absolute majority. The Prime Minister, Michel Barnier (appointed after an 'Olympic truce' declared by Emmanuel Macron), comes from a right-wing political formation (formerly the party of Presidents Jacques Chirac and Nicolas Sarkozy), now in a small minority, which for the moment seems to survive only because it has the support of the remaining Macronist deputies, traditional right-wing deputies, and the implicit support of the far right (Rassemblement National). No one can

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<sup>17</sup> C. Le Digol, 'Pour une analyse séquentielle des remaniements' *Pouvoirs*, IV, 135-144 (2022).

<sup>18</sup> 'Meloni è imprecisa nel confronto tra i governi di Italia e Francia', available at <https://tinyurl.com/yckrb6uu> (last visited 30 May 2025).

predict how long this government will last. As for its ability to govern effectively, it could possibly rely on constitutional provisions typical of the rationalisation of the parliamentary system desired by General De Gaulle and Michel Debré, specifically designed to allow the executive to govern without a majority, such as the notorious Art 49, para 3. However, when this article is invoked, as it was for pension reform, it is perceived to be a high-handed move by the President, who seems to be governing against the French people protesting in the streets against his policy.

#### IV. THE REAL TARGET OF THE CONSTITUTIONAL REFORM: ‘THE SYSTEM OF GUARANTEES’ ESTABLISHED BY THE 1947 CONSTITUTION

Advocates of the Italian constitutional reform present a paradoxical narrative. On one hand, they downplay the reform’s scope, describing it as a modest adjustment affecting merely four constitutional articles and representing a ‘minimal modification’ to the existing Constitution.<sup>19</sup>

On the other hand, they elevate its significance, labeling it as ‘the mother of all reforms’ and claiming it would usher in a Third Republic for Italy, implying a fundamental transformation of the country’s political system.<sup>20</sup> However, all of this can be explained fairly easily: once it is understood that the *premierato* is just one of the three reforms needed for Giorgia Meloni to change the regime and transition, according to the words of the Prime Minister herself, from a ‘democracy of discussion’ to a ‘democracy of decision’,<sup>21</sup> the reasoning becomes clearer. The other two reform projects are well known to Italians. The first targets the judiciary and presents itself as a separation of careers between the bench and the prosecutor’s office, an issue that has obsessed the party founded by Silvio Berlusconi since the 1990s. The second is differentiated autonomy between regions, a long-standing set idea of the Lega Nord party. Together, those reforms might definitively dismantle the constitutional balance established in 1947.

The introduction of the direct election of the Prime Minister by universal suffrage, according to its supporters, would have no impact on the powers of the President of the Republic, which would remain intact. However, this point is highly controversial. The President is generally presented as an arbiter and a guarantor of the Constitution: this grants Presidents essential powers that can have a decisive

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<sup>19</sup> Council of Ministers, n 3 above.

<sup>20</sup> In Italy, ‘Second Republic’ is not an official designation in the legal or constitutional sense. It is used to describe the end of a political era, that of the First Republic, marked by corruption scandals and the collapse of the dominant political parties (particularly the Christian Democrats and the Socialist Party). The beginning of the Second Republic is generally set around 1992, following electoral reforms aimed at establishing a more stable political system.

<sup>21</sup> See Giorgia Meloni’s speech to the Chamber of Deputies, 25 October 2022, available at <https://tinyurl.com/4kz5r6ej> (last visited 30 May 2025).

political impact on the constitutional balance and Italian political life. Many constitutional scholars therefore attack the undermining of these balances that would inevitably result from the reform proposed by the Meloni government.

Throughout the 75 years of the current Constitution, and especially from the 1990s onward, the powers of the Italian President have had a significant influence on the functioning of the political system. To put it simply, in times of major political crises, when the parliamentary majorities are either fragile or often need to be rebuilt (as happens when coalitions break apart), the President plays a crucial political role. This gives the Italian parliamentary system a marked dualistic character. The President can either dissolve the Chambers and resolve the political conflict through elections or choose not to dissolve them and call for consultations with parliamentary political forces in an attempt to appoint a new Prime Minister. Under Art 92 of the 1947 Constitution, it is the President who appoints the Prime Minister. The deeper the crisis in the political system, the greater the President's room for manoeuvre. It is in such circumstances that 'technocratic governments', also known as 'Presidential governments', have been formed with the trust of the Head of State (eg, Ciampi Government 1993-1994, Dini Government 1995-1996, Monti Government 2011-2013, and more recently the Conte Government 2018-2021 and Draghi Government 2021-2022).<sup>22</sup> Under these scenarios, parliamentary parties must acquiesce to the President's choice of Prime Minister, inverting the usual dynamic. These ostensibly apolitical administrations have been controversial due to their tendency to implement stringent free-market policies under the guise of technocratic expertise in economics or law. Conversely, when clear majorities emerge following elections, the President acknowledges the majority outcome and appoints the leader of the majority who won the elections according to a more monistic reading of the Italian parliamentary system. It is clear, therefore, that the Meloni government's reform is directly aimed at eliminating scenarios in which the President plays this major political role. Presidential power to appoint the Prime Minister would be seriously undermined if the Prime Minister had to emerge solely from the direct expression of the people, elected from one of the Chambers, and could not be an outsider to the political world appointed by the President of the Republic (who, in contrast, is not directly elected by the people).<sup>23</sup> In the event of a political crisis, Giorgia Meloni's reform provides for the obligation to appoint a new Prime Minister, and a government, drawn from the same majority. In the case of failure, an automatic dissolution takes place, which, in turn, means removing the power to dissolve from the hands of the President.

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<sup>22</sup> A. Lucarelli, 'Premierato e riforme costituzionali: il mito della governabilità' *Rivista AIC*, available at <https://tinyurl.com/3wz2s2ka> (last visited 30 May 2025).

<sup>23</sup> Art 83 Italian Constitution 'The President of the Republic is elected by Parliament in joint session. Three delegates from every Region elected by the Regional Council so as to ensure that minorities are represented shall participate in the election. Valle d'Aosta has one delegate only. The election of the President of the Republic is by secret ballot with a majority of two thirds of the assembly. After the third ballot an absolute majority shall suffice'.

Moreover, as pointed out by 180 Italian constitutional scholars in a petition ‘against an elected *premierato*’,<sup>24</sup> the electoral law could also have major consequences on the election of the President of the Republic by the two chambers of Parliament.<sup>25</sup> In solemn language, they align with life senator Liliana Segre,<sup>26</sup> who particularly emphasised this point in her speech against a *premierato* in the Senate on 14 May 2024. She said that, due to the electoral law instituting a majority bonus, the victorious coalition or party might represent only a small portion of the electorate. Nevertheless, this party could still, in a single electoral event, obtain the position of Prime Minister and the government, the absolute majority of senators and deputies, the President of the Republic, and consequently also control of the Constitutional Court and other guarantor entities. This is because the President of the Republic presides over the High Council of the Judiciary, appoints members to the Constitutional Court, whereas the other members of this Court are also appointed by the entire Parliament. It is the entire balance of powers – and thus the 1947 Constitution – that seems to be at risk. In their petition, the 180 constitutional scholars argue along these lines:

‘A minority, even a limited one, through the majority bonus, could take control of all our institutions without checks or balances. Parliament risks no longer representing the country and becoming a mere structure at the service of the government, thus destroying the separation of powers. The President of the Republic would be reduced to a notarial role and might lose their function as an arbiter and guarantor’.<sup>27</sup>

To these potential upheavals generated by a *premierato*, we must now add those that could arise from the other two reforms which do not necessarily imply constitutional amendments but are constitutional in a substantial sense – affecting the organisation of powers itself. The first one plans a destabilisation of the balance between Italian regions, with the reform of differentiated autonomy between regions; however, the Constitutional Court, in a recent judgment, struck down a significant part of the statute on differentiated autonomy (Corte Costituzionale sentenza 4 December 2024, no 192); and, the second one contains a challenge to the ‘separation of careers among judges and prosecutors’ which aims to establish two sections within the High Council of the Judiciary (a solution also adopted in France), – one for judges and another for prosecutors—in which non-judicial members would be in the majority, as well as the creation of a High Disciplinary Court composed of randomly selected judges (the creation of this body would

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<sup>24</sup> ‘Appello di 180 costituzionalisti: “Noi con Liliana Segre contro il premierato. Non possiamo tacere”’ *La Repubblica*, 18 June 2024, available at <https://tinyurl.com/yuj394n5> (last visited 30 May 2025).

<sup>25</sup> A. Lucarelli, n 22 above.

<sup>26</sup> ‘Liliana Segre sul premierato: “Aspetti allarmanti, non posso e non voglio tacere”’, 15 May 2024, available at <https://tinyurl.com/bdzcwvch> (last visited 30 May 2025).

<sup>27</sup> ‘Appello di 180 costituzionalisti’ n 24 above.

remove the disciplinary function from the CSM). The outcome of these reforms is the dismantling of the Constitution to satisfy the interests of the right-wing political forces that support the Meloni government,<sup>28</sup> rather than a 'Constitution for all'.<sup>29</sup> According to Gaetano Azzariti,

'what unites these various reforms is the clear intention to verticalize power. With differentiated autonomy and presidentialism (now in the form of a *premierato*), this would impose a democracy of the leader'.<sup>30</sup>

## V. AGAINST A 'DEMOCRACY OF THE LEADER': PRESIDENTIALISM IN THE FRENCH FIFTH REPUBLIC CHALLENGED

Examining the reservations expressed by Italian constitutional scholars regarding a *premierato* can offer valuable insights for French legal experts, who may perceive an implicit critique of the Fifth Republic when it operates following the logic of presidentialism.

Gustavo Zagrebelsky emphasises that the core element of the proposed constitutional reform in Italy is the direct election of 'a leader'.<sup>31</sup> Proponents of the reform insist that this aspect is non-negotiable. The underlying principle is that the leader's legitimacy should stem exclusively from universal suffrage, rather than from parliamentary or presidential powers. According to this logic, the directly elected 'prime minister' would then be empowered to govern based on the mandate received from the electorate. However, since Giorgia Meloni's proposal does not eliminate Parliament, she would still need the support of a parliamentary majority. In France, the stability and effectiveness of government have since 1962 mostly relied on the political gamble that the parliamentary majority aligns with the presidential majority (the *fait majoritaire*). This gamble has generally paid off in France, helping present the Fifth Republic as a model of 'governability'. It has also been linked to a political culture of vertical power and a chain of command, alongside a considerable weakening of Parliament within the institutional system.

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<sup>28</sup> 'It seems more significant to me to continue to emphasise the strategy pursued by the current government and its majority of preoccupying themselves with producing draft constitutional revisions without any involvement of opposition groups and always seeking to make changes that move away from the current parliamentary system of government', A. D'Andrea, 'Punti fermi da mantenere nel caos costituzionale (e non solo)', available at <https://tinyurl.com/5yws8aa3> (last visited 30 May 2025).

<sup>29</sup> G. Azzariti, 'Premierato, una regressione democratica' Collettiva, 20 February 2014, available at <https://tinyurl.com/nhevk6av> (last visited 30 May 2025).

<sup>30</sup> *ibid*; see also G. Azzariti, n 11 above, 109 and F. Sorrentino, 'I rischi del premierato', available at <https://tinyurl.com/4rya68z4> (last visited 30 May 2025).

<sup>31</sup> G. Zagrebelsky et al, *Loro dicono, noi diciamo su premierato, giustizia e regioni* (Roma-Bari: Laterza, 2024).

When the French President is supported by an absolute majority in the National Assembly, everything seems to flow from the President's will.<sup>32</sup> Here too, the Italian constitutionalists' critique could be applied to French presidentialism, particularly in the most common scenarios under the Fifth Republic, where a *fait majoritaire* exists and Parliament becomes little more than a structure at the service of the government, hampering its function as a check on the executive.

This is a sharp departure from the functioning of those systems that, in principle,

‘rely on the diversity of political actors (pluralism) and the search for difficult compromises (conflict) within Parliament. Parliamentary democracies play this role: it is here that the confrontation between majorities and oppositions must take place’.<sup>33</sup>

Consequently, since the disappearance of the *fait majoritaire* in July 2024, French editorialists and commentators have been urging French politicians to embrace a culture of compromise and form coalitions, even though such a culture has been largely swept away by the presidentialist development of the Fifth Republic.

Despite the call to strengthen the executive through direct universal suffrage and expanded prerogatives, Giorgia Meloni, supported by a solid majority in the two chambers, already possesses a range of powers within the current institutional system that allow her to govern with great effectiveness, even though she is not directly elected by universal suffrage. Indeed, most legislative texts in Italy originate from the executive's proposals. This situation is partly due to the use of Art 77 of the Italian Constitution, which allows the government to legislate without parliamentary approval in cases of emergency (decrees-law). In other words, an imbalance in favour of the executive already exists within Italy's institutional framework, and the adoption of the constitutional reform would only further strengthen it. For some Italian constitutionalists, such as Gaetano Azzariti, ‘the real issue with the constitutional system would be to reduce the power of the government in relation to Parliament, not to increase it’.<sup>34</sup>

France experienced this significant strengthening of the executive with the adoption of the 1958 Constitution. It established new constitutional balances and notably weakened Parliament without seriously considering the issue of checks and

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<sup>32</sup> ‘... under the Fifth Republic, and even more so since the introduction of the five-year term and the reversal of the electoral calendar, no one can be unaware that the president determines, and even leads, national policy, in contrast to the wording of Art 20 of the French Constitution, which assigns this dual responsibility to the government. Outside of periods of cohabitation, the Élysée thus decides on the content of reforms, their timetable, and the pace of their implementation. The presidency also takes the lead during crises, as shown since the late 2000s by financial crises, the euro crisis, terrorism, and COVID-19. There is no issue, whether major or minor, that is not likely to be decided by the Élysée.’ E. Mignon, ‘L’Élysée, lieu de décision’ *Pouvoirs*, I, 23-36 (2022).

<sup>33</sup> S. Alliva, ‘Questa non è la riforma del Premierato ma l’elezione del capo. Un suicidio della democrazia’ *L’Espresso*, 24 June 2024, available at <https://tinyurl.com/bdh5x8hc> (last visited 30 May 2025).

<sup>34</sup> *ibid*

balances. It is less often recalled that this text also rolled back the guarantees of the independence of the judiciary from the executive that were provided under the Fourth Republic.<sup>35</sup> In contrast, in Italy, the ordinary judiciary and the Constitutional Court enjoy strong guarantees of independence from the political authorities under the 1947 Constitution. The Constitutional Court is largely shielded from strictly partisan appointments of its fifteen members due to the nomination procedures established by the constitutional text, which require the intervention of the President of the Republic (one-third), high-ranking magistrates (one-third), and members of Parliament (one-third), with an enhanced majority requirement (two-thirds for the first three rounds of voting, and then three-fifths from the fourth round onward). Most importantly, these guarantees of independence enable the Constitutional Court and the judiciary, each within their respective areas of competence, to ensure the supremacy of constitutional and international law and act as a counterbalance to political powers. This was demonstrated by the recent decision of the immigration section of the Rome Tribunal not to validate the transfer of migrants from Italian territory to Albania. This judicial decision brought to a halt Giorgia Meloni's migration policy, even as this was in the international spotlight and seemingly being elevated as a model by Ursula von der Leyen and various European governments, notably France.

All in all, the critical argument often raised by Italian constitutionalists opposed to the reform proposals based on the French model, points out the risk of setting up an authoritarian government:

‘What will the current supporters of various forms of presidentialism say when, in the not-too-distant future, “charismatic leadership” reveals its centralising, oligarchic, and authoritarian consequences? Will they claim that these are unexpected effects?’<sup>36</sup>

While Italy currently has a far-right leader, she governs within a constitutional framework with robust checks and balances – a system that offers fewer executive powers than those available to a French President backed by an absolute majority in Parliament. In France, this matter has gained particular urgency given the possibility of the *Rassemblement National* securing victory in the 2027 presidential election: what will be said and what will be done when an extreme-right leader comes to power, supported by an absolute majority, and has access to the full arsenal of governance offered by the Fifth Republic?<sup>37</sup>

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<sup>35</sup> I. Boucobza, *La fonction juridictionnelle, contribution à une analyse des débats doctrinaux en France et en Italie* (Paris: Dalloz, 2005), 215.

<sup>36</sup> S. Rodotà, ‘Uno strappo alla Carta’ *La Repubblica*, 7 June 2013.

<sup>37</sup> M. Vogel, ‘While the Fifth Republic long claimed to be a bulwark against the far-right’s rise to power, it has now become its surest path to victory’ *Le Monde*, 24 April 2023.