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Attempting to Change the Form of Government in Italy: The Proposed Constitutional Amendment

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As legal doctrine has largely explained, constitutional democracies[1] are experiencing a deep crisis, particularly evident when the analysis is focused on citizen abstention during elections at the national, regional, and local levels. Parliamentary representation all over the (democratic) world is increasingly less capable of adequately addressing citizen concerns; it seems to be unable to maintain the ties linking the representatives and those who are represented. Furthermore, repeated scandals concerning corrupt politicians have led citizens to mistrust political parties, and the phenomenon of "undemocratization"[2] is observed in several countries.[3]

In Italy, this trend has been confirmed by the data on electoral participation in national and regional elections.[4] To reverse this trend, the executive cabinet led by Giorgia Meloni has submitted to Parliament a constitutional bill aimed at altering the Italian parliamentary form of government[5] to improve – at least

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1 See J. G. Matsusaka, "The Eclipse of Legislatures: Direct Democracy in the 21st Century", *Public Choice*, CXXIV, no. 1/2 (2005), pp. 157-177.

2 See G. Milani, "How Democratic are Illiberal Democracies? The Parliament in Constitutional Retrogression", *Percorsi Costituzionali*, no. 2 (2019), p. 329.

3 "Populism", a word that has always been perceived in a negative fashion, is now used with a positive connotation ("the people rule!"). For some, one solution could be represented by *direct democracy*; that is, giving citizens the possibility to vote directly, even overruling previous decisions made by a representative, could be the right corrective tool in all cases in which elected representatives fail to follow the electorate's preferences. See J. G. Matsusaka, note 1 above, p. 159.

4 In the 2022 national elections, 36.21% of citizens did not participate in the vote. These data are particularly relevant considering that up to 2008, total participation was up to 80%. In a few years, almost another 20% of voters decided not to be part of the democratic process of selecting parliamentary representatives. Details on popular participation are available online.

5 According to the proponents of this constitutional reform, the main goal of this revision is to ensure political stability and give the electoral body the possibility to clearly indicate the person who should lead during an entire legislature.

theoretically – both popular participation and the stability[6] of future executive cabinets.[7]

The proposed constitutional revision would lead to a completely new form of government. In fact, this reform is not going in the direction of transforming the Italian system into a presidential system[8] or a semi-presidential system,[9] but rather, it is inspired by what is commonly referred to as premiership.[10]

[6] It is worth noting that, since 1948, 65 different executives have succeeded each other in Italy, whereas considering that a legislature should last five years, in theory, the number of governments should have been fifteen (from 1948 to 2023, on nine occasions the legislature lasted less than five years). A list of all the different executive cabinets is available online.

[7] The Constitution is perceived as the perfect scapegoat to blame whenever there exists an institutional problem. Nevertheless, bad administration is mostly dependent on a low-level political class; therefore, changing constitutional rules without changing the political class will not lead to any positive effect. On this point, see M. Volpi, "Quale forma di governo per l'Italia", in *Piccole Conferenze* (2023), p. 7.

[8] The essential characteristics of this form of government are the popular election of the president, who is the head of the executive power. The fixed duration of the mandate of the president and Parliament are guaranteed by the nonexistence of the fiduciary relationship (and the impossibility of causing an early dissolution of the Parliament) as well as the provision of checks and balances to avoid the excessive strengthening of one power at the expense of the other. The merits attributed to presidentialism are the popular choice and, therefore, supposedly "more democratic" in terms of the government and the stability of the executive. A flaw that can certainly be identified in this model lies in the strong delegation of political power to a single person, who is given wide margins of discretion. In addition, there is the possibility that an unreliable outsider who tries to prevail over other powers and jeopardizes the democratic stability of the system may be elected president (the Trump presidency is an example). Then, there is the phenomenon of the "divided government," whereby the elected president belongs to a party that does not have a parliamentary majority, a phenomenon that makes it compulsory to negotiate any political choice and can produce conflict and risk of paralysis. See M. Volpi, "Le molte facce del presidenzialismo", *DPCE Online*, no. 1 (2023), p. 765; G. Steffen, *Beyond Presidentialism and Parliamentarism* (2021); G. Sartori, "Ingegneria costituzionale comparata. Strutture incentive ed esiti", *Il Mulino* (2013), p. 103; R. A. Dahl, *How Democratic Is the American Constitution?* (2003), p. 77.

[9] The semi-presidential form of government is characterized by the popular election of the president of the Republic by an executive made up of the president and the prime minister and by the relationship of confidence between Parliament and government. The presence of a presidential component and a parliamentarian one can produce very different outcomes depending on the prevalence of one or the other. The merits attributed to the semi-presidential form of government are, in part, similar to those attributed to presidentialism. In fact, the supposed democratic value of the popular election of the president, the stability of government, and the greater responsibility of the head of the executive power are usually emphasized. The popular election of the president implies the strong probability that (s)he is the effective holder of executive power when (s)he can count on the support of a parliamentary majority. Conversely, presidential dominance is not a foregone conclusion, as cohabitation may occur—that is, when the elected president belongs to a party that does not have a majority in Parliament and, therefore, the leadership of the government is assumed by a prime minister belonging to another political party. In this case, however, the president retains an important role in foreign and defense policy and holds significant veto powers over the government. Obviously, this could lead to conflict and confusion.

[10] The term "premiership" is used to identify several possible forms of parliamentary government, presenting different peculiarities. This concept does not have a clear definition because it refers to different situations. On the one hand, premiership can define a system in which the prime minister has, for example, the power to revoke the ministers while, at the same time, remaining linked to a relationship of confidence with Parliament. On the other hand, it can define a system in which the president of the council is elected directly by the people, hence with no need to receive a vote of confidence by the elected chambers. Common to all systems generally defined as premierships is that voters have the possibility to choose the prime minister, though not directly. In Germany, for instance, the chancellor is elected by the Bundestag and formally appointed by the president of Germany. The Bundestag can express its distrust to the chancellor only when it elects a successor by a majority of its members (Article 67). The

The proposed bill would provide Italy with a new institutional solution, never experienced elsewhere, in which the "aut simul stabunt aut simul cadent" principle would be partially applied.[11] Adopting a comparative approach, the present article provides some preliminary observations of the submitted constitutional amendment while trying to evaluate whether the proposed solution is likely to solve the issue of participation and rationalization of the form of government.

THE DRAFT PROPOSAL: A COMPARATIVE PERSPECTIVE

If approved, the proposed amendment would modify a few extremely relevant articles of the Italian Constitution. The bill proposed by the executive and the changes approved by the Constitutional Affairs Committee of the Senate seem to have considered some of the criticisms advanced by legal doctrine following the presentation of the draft constitutional bill revision (DCRB).

Article 1 of the DCRB proposes that Article 59 of the Italian Constitution[12] be changed to read, "*He is a senator by right and for life, unless (s)he renounces, who was President of the Republic*". Therefore, the head of state will no longer exercise the power to nominate up to five senators for life; that is, (s)he would lose one prerogative that (s)he exercises with a wide margin of discretion. In addition, according to Article 2 of the DCRB, the president of the Republic, having heard the chairs of the chambers, could dissolve only the entire Parliament, not only one chamber, as is possible now.[13] Another important change relates to the procedure for electing the head of State (Article 02, DCRB): if approved, in the first six ballots (now the first three), the majority needed to elect the head of State would be equal to 2/3 of both chambers, plus the regional representatives, and only in the seventh ballot would an absolute majority be sufficient. The Constitutional Affairs Committee of the Senate also added Article 2 bis to the original DCRB,

federal president must adhere to the request and appoint the elected individual. The concept of premiership is often linked to the form of government in the United Kingdom – the so-called Westminster system. In the United Kingdom, the prime minister is also the leader of the majority party. If the government loses the confidence of the House of Commons, it must either resign or a general election must be held.

[11] The proposed reform provides that if Parliament votes to revoke confidence in the elected prime minister, the head of state will have to dissolve the chambers.

[12] Article 59 now reads "*Former Presidents of the Republic are Senators by right and for life unless they renounce the office. The President of the Republic may appoint five citizens, who have honored the Nation through their outstanding achievements in the social, scientific, artistic and literary fields, as Senators for life. The total number of sitting Senators appointed by the President of the Republic may not, under any circumstances, be greater than five*".

[13] The head of State in Italy's republican system is the organ that guarantees the separation of powers and the proper functioning of the so-called circuit of guarantees and political decision-making. In other words, the president, true to the name, "presides over" important functions in defense of the Constitution. These functions include the promulgation of laws and the formation of new governments in the alternation of parliamentary majorities. The president of the council of ministers is appointed by the head of state, and on his/her proposal, all the ministers are also nominated to form the executive cabinet. After the election, the appointee is usually the leader of the party or the coalition that won the election. However, in some cases, the head of state can appoint another person if this person enjoys the confidence of Parliament. In times of political instability, a new government can be appointed during a legislature after a governmental crisis. In this case, as long as the new government holds the confidence of both Houses of Parliament, there is no need to call new elections to renew Parliament and form a new executive. Parliament is free to give confidence to as many governments as it deems appropriate.

which reads, "*The acts of the President of the Republic are countersigned by the proposing ministers, who assume responsibility for them. The appointment of the Prime Minister, the appointment of the judges of the Constitutional Court, the granting of pardons and the commutation of sentences, the decree calling elections and referendums, messages to Parliament and the referral of laws to the Chambers are not countersigned*".

These four changes would serve different purposes: (a) considering that the Senate is now composed of 200 senators,[14] the possibility for the head of State to nominate five senators for life can potentially have an impact on the stability of the political majority (five senators represent 2.5% of the votes, which is not a small percentage); (b) because the constitutional reform provides that the prime minister is elected directly by the people but receives the confidence of Parliament, if (s)he loses this parliamentary confidence, the head of state should have to call for a new election, unless it is possible for the head of state to renominate the resigning president of the council or another member elected in connection with the elected former prime minister (Article 4, DCRB); (c) for the election of the head of State, the political parties – if they wanted to elect the new president of the Republic in a short time – would be forced to find a shared name; (d) those acts that the head of State will adopt by exercising a wide margin of discretion (for example, the appointment of five of the fifteen constitutional judges) or those obligatory acts (such as the appointment of the prime minister) will no longer need a countersignature; therefore, the head of state will be personally responsible for them. Considering Article 2 bis of the DCRB, what remains unclear is why this Article equates obligatory acts with acts for which the president has a wide margin of discretion.

According to Article 3 of the DCRB, the presidents of the council were elected by direct universal suffrage for five years. Votes for the election of the president of the council and the Houses of Parliament are held on a single ballot. In addition, the proposed constitutional revision provides that electoral law should guarantee both the principles of representativeness and governability, and to reach these goals, an electoral prize would be awarded to the coalition linked to the president of the council of ministers. In its original version, the DCRB proposed by the government would have given the winning coalition 55% of the seats in Parliament. The Constitutional Affairs Committee of the Senate has now amended the bill by providing that Parliament will have to approve a new electoral law (ordinary law) to ensure that the winning coalition obtains a majority of seats in Parliament – both in the Senate and the Chamber of Deputies – without distorting representation.

After the election, the head of State would reserve the prerogative to appoint the elected prime minister and, on a proposal from the appointed prime minister, his/her ministers. In its original version, the elected prime minister could propose only the ministers (as it is now); the new version amended by the Constitutional Affairs Committee of the Senate provides that the head of state appoint and dismiss ministers upon the proposal of the elected prime minister. This innovation will allow something completely new: the prime minister will have the possibility to very easily change the members of his/her cabinet; that

[14] The constitutional revision law n. 1 of 2022 has reduced the number of representatives in both chambers of Parliament from 630 deputies and 315 senators to 400 deputies and 200 senators.

is, ministers will no longer be able to refuse to resign at the request of the prime minister, as happened in the *Mancuso* case.[15]

Then, Article 4 of the DCRB states that "*within ten days of its formation, the Government should come before the Chambers to obtain their confidence. If the motion of confidence is not approved, the President of the Republic shall renew the appointment to the elected President of the Council to form the Government*. *If (s)he does not obtain the confidence of the Chambers again, the President of the Republic shall dissolve the Chambers*". Therefore, the appointed prime minister may fail only once in his/her attempt to form a new executive cabinet, and if this effort should fail twice, there would be no chance for the head of state to identify a new person able to obtain Parliament's confidence, as happens now. In addition, considering the amendments of the DCRB made by the Constitutional Affairs Committee of the Senate, if Parliament revokes confidence in the elected prime minister, the head of state dissolves the chambers. In the event of the voluntary resignation of the elected prime minister, within seven days, (s)he can require the dissolution of the chambers to the president of the Republic. However, if the prime minister does not exercise this faculty, or in case of death or permanent impediment, the president of the Republic could confer (only once during the legislature) the task of forming a new executive cabinet only to another person elected in the coalition winning the election linked to the former prime minister. If this scenario occurs, the appointed new prime minister would be bound to implement the same political program on which the previous (elected) prime minister asked the Parliament for confidence.

Articles 3 and 4 of the DCRB are not easy to understand for those who are unfamiliar with institutional mechanisms or constitutional law, and the wording of the proposed constitutional reform is quite confusing; it is necessary to read it more than once to understand its implications. Therefore, it is appropriate to elaborate on its impact on the actual Italian form of government.

First, as is evident, the prime minister would be directly elected by the people, as occurs in presidential and semi-presidential systems. Nevertheless, the president of the council would have to be formally appointed by the head of State and receive confidence from Parliament. Some commentators have

[15] In October 1995, for the first time in the history of the Republic, the majority made an *ad personam* motion of no confidence against the minister of justice, an unprecedented event. On 19 October 1995, Minister Mancuso's no-confidence vote was approved with 173 votes. This was the first and so far only member of the government in Italian republican history to resign after the approval of a motion of no confidence by Parliament. The Constitutional Court confirmed the legitimacy of the distrust, rejecting Mancuso's appeal for a conflict between state powers. In its judgment n. 7 of 1996, the Court clarified that it was up to each chamber to approve a motion of no confidence even against a single minister and that it was therefore up to the Senate to approve the motion of no confidence against the minister of justice. The fact that the institution of individual no confidence was not expressly provided by Article 94 of the Constitution could not lead to it being considered to be outside the constitutional framework. In providing collegial and individual responsibility in the second paragraph of Article 95, the Constitution gives substance to the political responsibility of ministers in the dual role of members of the government team on the one hand and heads of the respective ministries on the other. The collegial activity of the government and the individual activity of the individual minister, taking place in harmonious correlation, are linked to the unitary objective of realizing the political direction that Parliament and government contribute to determining: collegiality itself is a method of the executive's action, which can be broken precisely by the dissonant behavior of the individual, and the recovery of unity of direction can be favored precisely by resorting, when one of the chambers deems it appropriate, to the institution of individual no confidence. The no-confidence vote – whatever the possible variants of an act addressed to the government or the individual minister – involves a purely political judgment.

argued that this constitutional reform would make Italy more closely resemble those systems wherein premiership is applied. However, if the lens of legal comparison is used to analyze this constitutional reform attempt, it is evident that in premiership systems, if the prime minister resigns or (s)he is forced to, the head of State is not obliged to dissolve Parliament.

In other words, why does this institutional reform aim to introduce the "*aut simul stabunt aut simul cadent*" principle at the national level (it is already applied at the regional level) but does not eliminate confidence? Maintaining Parliament confidence should mean that the executive cabinet should be linked to its parliamentary majority and not the other way around. Put differently, as occurs in premiership systems, if Parliament can agree on designating a new government team, the head of state can proceed to nominate a new prime minister regardless of whether there exists a relationship between the former and the "substituting" prime minister.

Proponents of the DCRB argue that this reform will not reduce the power of the head of State. In contrast, when the president of the Republic is compelled to dissolve Parliament, this reform eliminates any possible margin of maneuver for the head of State. Many times, in Italy, the president of the Republic has been able to find the right political solution to form a new executive cabinet without calling for a new election after a prime minister's resignation.

In addition, the so-called "technocratic executive" – that is, those governments that are made of experts who do not belong to any political party and are appointed by the head of State to face a critical moment, as was the case with the Monti government – will no longer be a possibility.[16]

THE MAJORITY BONUS: CONSTITUTIONALITY ISSUES

Even though the declared purpose of the DCRB is to allow citizens to regain direct control over their representatives, the representativeness of Parliament could be seriously compromised by this reform. In fact, Article 3 of the original DCRB provided that the winning coalition linked to the elected prime minister would have been granted an electoral prize ensuring 55% of the seats in both chambers of Parliament regardless of the percentage of votes obtained. Otherwise stated, in a highly fragmented political scenario, such as the Italian one (where at least three political parties obtain from 18% to 30% of the votes), the party linked to the elected prime minister, even with a very low number of votes, would have received 55% of the seats in Parliament.

In the constituent assembly, the drafters of the Italian Constitution discussed at length the possibility of constitutionalizing electoral law, but eventually the prevailing idea was not to crystallize specific rules concerning elections, except

[16] See T. Fazi, "The Eternal Return of 'Technical Government' in Italy", *American Affairs*, V, no. 2 (2021), p. 116; C. Wratil and G. Pastorella, "Dodging the Bullet: How Crises Trigger Technocrat-Led Governments", *European Journal of Political Research*, LVII (2018), p. 450; F. Marangoni and L. Verzichelli, "From a Technocratic Solution to a Fragile Grand Coalition: The Impact of the Economic Crisis on Parliamentary Government in Italy", in E. Giorgi and C. Moury (eds.), *Government-Opposition in Southern European Countries During the Economic Crisis* (2016), p. 44; M. Zulianello, "When Political Parties Decide not to Govern: Party Strategies and the Winners and Losers of the Monti Technocratic Government", *Contemporary Italian Politics*, V, no. 3 (2013), p 5.

those related to the division of electoral districts and those related to the so-called electoral basis.[17]

On this last point, the original and the amended versions of the DCRB do not seem to consider that according to the Italian Constitution, the Chamber of Deputies is elected on a national basis, whereas the Senate is elected at the regional level (Article 57). Therefore, the new electoral law should identify two different solutions for awarding electoral prizes: one for the Chamber of Deputies and one for the Senate. Considering the differences between a national and regional electoral bases, the award could significantly change the election result, particularly if the coalition linked to the elected prime minister gained more votes at the national level but did not win on a regional basis (Senate). According to this hypothesis, the election prize would change *de facto* the election results.

Moreover, in 2014, the Italian Constitutional Court (ICC) struck down the electoral law,[18] considering the electoral prize guaranteed to the winning coalition to be in violation of Articles 1(2), 3, 48, and 67 of the Italian Constitution.[19] In this judgment, constitutional judges highlighted how no specific model of electoral system is imposed by the Constitution; that is, the legislator can choose the system it considers to be the most suitable and effective within a particular historical context. Conversely, the ICC affirmed that although the electoral system represents the result of a wide margin of legislative discretion, it is not exempt from constitutional review, particularly if it proves to be manifestly unreasonable.[20]

For the electoral prize, the Court had to ponder the proportionality of the means chosen by the legislator (a majority bonus) – when exercising its absolute

[17] On the Constituent Assembly debate over the right system of representation, see A. Gigliotti, "Sui Principi Costituzionali in Materia Elettorale", *Rivista AIC*, IV (2014), p. 2; M. Luciani, *Il voto e la democrazia. La questione delle riforme elettorali in Italia* (1991), p. 19; G. Amato and F. Bruno, *La forma di governo italiana. Dalle idee dei partiti all'Assemblea costituente*, in *Scritti in onore di Egidio Tosato* (1984), III, p. 47; E. Bettinelli, *All'origine della democrazia dei partiti* (1982), p. 267; F. Bruno, "I giuristi alla Costituente: l'opera di Costantino Mortati", in U. De Siervo (ed.), *Scelte della Costituente e cultura giuridica* (1980), II, p. 147.

[18] The electoral law was brought before the ICC again in 2017. In judgment n. 35 of 2017, the ICC annulled significant parts of the new electoral law for the Chamber of Deputies passed by Parliament in 2015. The transition of the Italian electoral system from a proportional to a majoritarian system of representation was once again called into question only a few weeks after a broad constitutional reform proposal, here initiated by the government and approved by Parliament, was definitively rejected by the electorate in the 2016 constitutional referendum. See P. Faraguna, "Do You Ever Have One of Those Days When Everything Seems Unconstitutional?: The Italian Constitutional Court Strikes Down the Electoral Law Once Again", *European Constitutional Law Review*, XIII (2017), pp. 778-792; I. Massa Pinto, "Dalla sentenza n. 1 del 2014 alla sentenza n. 35 del 2017 della Corte costituzionale sulla legge elettorale: una soluzione di continuità c'è e riguarda il ruolo dei partiti politici", *Costituzionalismo.it*, no. 1 (2017), pp. 43-57; A. Ciancio, "Electoral Laws, Judicial Review and the Principle of 'Communicating Vessels'", *Diritti Fondamentali*, no. 2 (2017), pp 2-8.

[19] ICC judgment n. 1/2014, delivered on 01/15/2014.

[20] See V. Tondi Dalla Mura, "La discrezionalità del legislatore in materia elettorale, la «maieutica» della Consulta e il favor (negletto) verso il compromesso legislativo: continuità e discontinuità fra le sentenze n. 1 del 2014 e n. 35 del 2017", *Rivista AIC*, no. 1 (2018), pp. 1-43; G. Sobrino, "l problema dell'ammissibilità delle questioni di legittimità costituzionale della legge elettorale alla luce delle sentenze n. 1/2014 e n. 35/2017 e le sue possibili ricadute: dalla (non più tollerabile) 'zona franca' alla (auspicabile) 'zona a statuto speciale' della giustizia costituzionale?", *Federalismi.it*, no. 15 (2017), pp. 2-39; B. Caravita, "La riforma elettorale alla luce della sent. 1/2014", *Federalismi.it*, no. 2 (2014); G. Azzariti, "La riforma elettorale", *Rivista AIC*, no. 2 (2014) pp. 2-24 ; R. Bin, "'Zone franche' e legittimazione della Corte", *Forum di Quaderni Costituzionali* (2014), pp. 1-5.

discretion vis-à-vis the objective requirements to be met or the goals it intends to pursue – considering how this electoral prize would somehow have an impact on the right to vote. The ICC, similar to other European constitutional courts, used the "reasonableness test" – that is, "*an assessment as to whether the provision under review, along with the arrangements stipulated for its application, is necessary and capable of achieving legitimately pursued objectives by requiring that the measure chosen out of those most appropriate is the least restrictive of the rights in play and imposes burdens that are not disproportionate having regard to the pursuit of those objectives*".[21]

The challenged provisions were intended to facilitate the formation of an adequate parliamentary majority to provide the country with a stable government and to streamline the decision-making process, an objective, following ICC reasoning,[22] that is undoubtedly consistent with the Constitution. This objective can be pursued by awarding of a bonus, which is triggered whenever voting under the proportional system has not secured for any list or coalition of lists a number of votes sufficient to translate into a majority exceeding the absolute majority of seats. In such a case, then, the premium mechanism would grant additional seats to the list or coalition of lists that obtained even one vote more than the others, even when the number of votes was not high in absolute terms because there was no minimum threshold in terms of votes and/or seats.

Nevertheless, according to the ICC, the challenged provisions did not merely introduce a corrective mechanism to the system of converting votes into seats, with the legitimate goal of fostering the formation of stable parliamentary majorities and thus stable governments; rather, they were completely at odds with the rationale of the electoral system chosen by the legislature in 2005 to ensure a representative parliamentary assembly. As the ICC specified, these provisions resulted in an excessive imbalance between the composition of Parliament, which is the basis of the system of representative democracy, and the parliamentary form of government provided for in the Italian Constitution, on the one hand, and the will of the people expressed through the ballot box as the main means of expression of popular sovereignty under art. 1(2) of the Constitution, on the other hand.

In other words, as the ICC pointed out, electoral law did not require the relative majority list (or coalition of lists) to reach a minimum threshold of votes but automatically assigned the electoral prize capable of hypothetically transforming a grouping that had obtained a very low percentage of votes into one with an absolute majority in the Chamber of Deputies.

As a result, it was clear that the challenged law allowed unlimited damage to the representativeness of the parliamentary assembly, incompatible with the constitutional principles according to which the Houses of Parliament are the exclusive place of "*national political representation*" (Article 67); therefore, they are constituted on the basis of elections and, thus, of popular sovereignty and, by virtue of this, are vested with fundamental functions of a "typical and unique character",[23] including the direction and control of the government along with

[21] ICC judgment n. 1/2014, para. 3.1, delivered on 01/15/2014.

[22] Ibid., para 3.1.

[23] Ibid.

the delicate functions contributing to safeguarding the principle of the separation of powers.

CONCLUDING REMARKS

After this brief analysis of the proposed constitutional reform, some conclusions can be drawn. First, this attempted reform would give citizens the ability to choose their own prime minister, so the newly elected president would have a stronger popular mandate.

However, the elected person would still (and unreasonably) need to gain (and maintain) the confidence of both Houses of Parliament. In addition, although formed based on the preferences of the elected prime minister, the executive cabinet would still be appointed by the head of state. Certainly, for the prime minister, the introduction of the possibility of forcing the resignation of a minister could be considered a positive innovation. In other words, a strong popular mandate will be accompanied by a reasonable margin of discretion for the elected prime minister.

Conversely, given the reduction of the prerogatives of the head of State regarding appointing the new prime minister and considering that if the elected prime minister does not gain confidence in Parliament or resigns, the head of State must call for new elections, the parliamentarians would be under the control of the prime minister, who could threaten to resign, leading to the end of the legislature.

In this case, the principle of the separation of powers seems to be compromised, leaving the executive in a stronger position vis-à-vis Parliament. Indeed, thus far, the concrete application of the principle of the separation of powers can be observed by examining how Parliament is able to influence governmental activity, given its power to vote so-called no confidence and, if possible, to find an alternative political coalition to give birth to a new executive.

Comparing the institutional innovation that the DCRB would bring with other solutions adopted in different legal systems, such as Germany[24] or the United Kingdom,[25] it is unclear why this reform proposal did not simply import something that has been proven to work and ensure political stability elsewhere. Moreover, in the original version of the DCRB, there was no limit to the reelection of the premier, which was in stark contrast to what is provided for by other democratic constitutions inspired by presidentialism. However, the Constitutional Affairs Committee of the Senate has amended the original DCRB, which now provides that a prime minister can serve for no more than two consecutive legislatures, increased to three if in the previous ones, he held the office for a period of less than seven years and six months.

Furthermore, the decision to award the party, or the political coalition linked to the elected prime minister, with an electoral prize on a national basis that guarantees a majority of seats in each of the Houses of Parliament – *in compliance with the principle of representativeness and protection of linguistic minorities* – does not clarify above which percentage this electoral prize will be awarded.

24 See note 9 above.

25 Ibid.

Is there any suggestion to make? As underlined by many Italian legal scholars,[26] institutional reform is deemed necessary, particularly to correct some typical distortions of the parliamentary form of government; that is, its instability. To achieve this goal, one solution might be the introduction into the Italian system of the constructive vote of no confidence,[27] which is a variant of the motion of no confidence that allows Parliament to withdraw confidence from a head of government only if there is a positive majority for a future successor. This institutional solution is aimed at ensuring the stability of governments and ensuring that the substitute has sufficient parliamentary support to govern. This mechanism has been embedded in the Belgian, Hungarian, German, Polish, Slovenian, and Spanish constitutions.[28]

Because the Italian system is a bicameral system, another possible solution for improving government stability could be to allow a vote of confidence and a vote of no confidence only through a vote of both chambers jointly by the absolute majority and not separately by the simple majority, as is currently the case.

These suggestions concern only a few effective changes that could maintain the current parliamentary form of government without the need to move to a presidential or semi-presidential system. These are all changes that could ensure the stability of the executive without weakening the role of Parliament; that is, compromising its functions.

Given that the government's proposal is still being examined by Parliament, it is likely that it will undergo further amendments before both houses vote on its final version, obviously assuming that the constitutional reform bill manages to complete all the steps necessary to become definitive.[29] In fact, there have been several attempts to modify significant sections of the second part of the Italian Constitution, but the legislature has succeeded on only a few occasions.[30]

[26] See S. Ceccanti, "Per un'efficace (ma non troppo rigida) forma di governo neo-parlamentare", *Federalismi.it* (2023), pp. 1-5; M. Volpi, "Le molte facce del presidenzialismo", *DPCE Online*, I (2023) pp. 765-785.

[27] In Germany, it is called *konstruktives Misstrauensvotum*; in Spain, *moción de censura constructiva*.

[28] See G. Amato, E. Balboni, F. Bassanini, M. Cammelli, M. Carli, V. Cerulli Irelli, E. Cheli, F. Clementi, D. Casanova, E. Caterina, F. Costantino, G. De Minico, F. Donati, A. Floridia, F. Gallo, M. C. Grisolia, M: Luciani, G. Macciotta, G. Maestri, M. Malo, A. Manzella, F. Marone, O. Massari, G. Muraro, A. Pajno, S. Paparo, S. Passigli, C. Pinelli, M. Podetta, L. Spadacini, R. Tarchi, G. Tarli Barbieri, L. Torchia, and M. Volpi, "Costituzione: quale riforma? La proposta del Governo e la possibile alternativa," *Paper di Astrid* (2023), pp. 1-79 (available online).

[29] According to the Italian Constitution (Article 138), the laws that amend the Constitution and other constitutional laws are adopted by each chamber after two subsequent debates with an interval of no less than three months and are approved in a second vote by a majority of the votes of the members of each chamber. These laws are subjected to a popular referendum when, within three months of their publication, a fifth of the members of a chamber, or five hundred thousand voters, or five regional councils request it. The law subjected to referendum is not promulgated if it is not approved by the majority of valid votes. The only case in which it is not possible to submit a constitutional bill to a referendum is when both Houses of Parliament approve the bill, in the second vote, with a two-thirds majority.

[30] The last extensive constitutional reform was in 2001, when the Italian regional system was transformed, modifying the organization of state and regional competences referred to in Article 117 of the Constitution. In 2006 and 2016, there were two failed attempts to amend the second part of the Constitution. In 2019, the constitutional revision law n. 1 reduced the number of parliamentarians in both Houses of Parliament, and in 2021, another constitutional reform was passed to allow 18-year-old citizens to elect the Senate (before that reform, citizens could vote to elect the Senate from the age of 25).

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