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Downsizing the Parliament in Italy: A Missed Constitutional Amendment and Façade Innovation

Introduction

Back when the US Supreme Court established the doctrine of judicial review in the landmark case *Marbury v. Madison* (1803) holding that the Constitution is the supreme law of the land and that any act of Congress that is not consistent with it is therefore without effect, the amendment clauses served as a constitutional tool to ensure such superiority, distinguishing the Constitution from ordinary law.

In allowing constitutional change, the rules aim at different goals: among others, updating the organization of the state *vis-à-vis* the passage of time; enshrining new rights or new needs stemming from society; setting off in the Constitution a new value already recognized by case law.¹

From this point of view, a difference can be placed between constitutional amendments that take stock of the past, giving constitutional coverage to values or interests granted at the legislative level and constitutional amendments that look ahead, defining a new value that deserves protection for the future.

Additionally, contemporary constitutionalism has given rise to two other types of constitutional amendments worthy of remark: on the one hand, the unconstitutional constitutional amendment occurring when a constitutional change infringes on the very essence of the Constitution and results in a new constitutional order,² on the other hand, what I would call the “gut-speaking” constitutional amendment that occurs when the change does not address the core of the constitutional question, but its very purpose is to speak to the gut of the people, triggering their resentment against the privileges of politicians.

¹ For a comprehensive analysis of what is a constitutional amendment and how the procedures for constitutional change should be designed see R. Albert, *Constitutional Amendments. Making, Breaking, and Changing Constitutions*, Oxford University Press 2019.

² For a global approach to the theory of unamendability of constitutions see Y. Roznai, *Unconstitutional Constitutional Amendments: The Limits of Amendment Powers*, Oxford University Press 2017.

This second kind of constitutional amendment is an example of the populist challenge to constitutional democracy³ as populist parties worldwide try to undermine the political representation that is one of the pillars that underpins it. Claiming people have lost power and control over their representatives – “take back control” was not by chance the rallying cry of the Brexiters – they vow to give it back through direct democracy.

This is precisely what happened in Italy concerning the reduction of the number of lawmakers. Indisputably, such a constitutional bill was a vital point of the Five Star Movement’s political manifesto, the anti-establishment party that currently holds one-third of the seats in the Italian parliament.

The move was only a piece of a broader constitutional mosaic that included the repeal of the ban on the binding mandate for members of parliament, a foundational principle of every parliamentary system, and the provision of a new kind of referendum designed to introduce legislation as an alternative, and not simply an addition, to the Chambers.

As a whole, these three proposals were clearly aimed at dismantling parliament; however, this goal has been set aside. The bill concerning the free parliamentary mandate was not introduced, whereas the bill on the referendum was modified to make it consistent with the parliament’s supreme power to draft legislation. Nevertheless, the populist DNA of the constitutional change stands in full display even after these adjustments.⁴

In fact, the Five Star Movement is a web-based party that advocates direct democracy, holding votes periodically among its activists over the most important political issues through a web platform called *Rousseau* that is supposed to connect the elected official to the party base.⁵

After winning a relative majority in the 2018 general election and claiming that they would open up parliament like a can of tuna, they joined a coalition with the anti-European Union and anti-immigrant League led by Matteo Salvini. He turned what was originally a regional party, having its constituency in the north of Italy – the Northern League – into a national far-right party.

Although both parties were competitors during the electoral campaign, they channeled their anger over large-scale migration, economic crisis, and diktats from Brussels and mainstream parties. After long, difficult talks, they finally agreed to form

³ C. Pinelli, “The Populist Challenge to Constitutional Democracy”, *European Constitutional Law Review* 2011, vol. 7, pp. 5–16. See also: P. Blokker, “Populist Constitutionalism and Meaningful Popular Engagement”, *VerfBlog*, May 4, 2017. G. Martinico, *Filtering Populist Claims to Fight Populism. The Italian Case in a Comparative Perspective*, Cambridge University Press 2021; C. Koch, “Varieties of populism and the challenges to Global Constitutionalism: Dangers, promises and implications”, *Global Constitutionalism* 2021, vol. 10, issue 3.

⁴ On the cultural backdrop of the reform see: F. Rosa, “Reducing the Size of the Italian Parliament: Why I will be voting No”, *Int’l J. Const. L. Blog*, Sept. 17, 2020.

⁵ To learn more about this movement, see: N. Urbinati, “The Italian Five Star Movement for foreigners”, *Rivista il Mulino*, March 1, 2018. See also: A. Benasaglio Berlucchi, “Understanding the populism of the Five Star Movement – and its continuity with the past”, *LSE Blog*, August 26, 2021.

a government around a 58-page contract, the major point of which was cutting one-third of lawmakers.

The government collapsed a few months later after Salvini withdrew his support and called for an early election to gain full power. Consequently, another ruling coalition was assembled between the Five Star Movement and the center-left Democratic Party around a new 20-point-agenda the central demand of which was, once again, shrinking legislatures that were conceived as the very condition for the alliance.⁶

So, it is not surprising that the constitutional amendment passed by a large majority, first in parliament and then among citizens in a constitutional referendum. According to art. 138 of the Italian Constitution, a law amending the Constitution shall be passed by each chamber after two successive votes within no less than three months and by an absolute majority of the members of each chamber in the second vote.

The law may be submitted to a referendum if, within three months of its publication, one-fifth of the members of a chamber, 500,000 voters, or five regional councils request it. The law submitted to the referendum may not be promulgated unless approved by a majority of valid votes.

However, if two-thirds of the members approve the law in both chambers in the second vote, no referendum shall be held. In the matter in question, the constitutional law was adopted by a majority of two-thirds of members of only one chamber in the second vote. The Democratic Party was initially against downsizing parliament and joined the parties who were in favor only in the last vote.

For this reason, the law was submitted to a referendum, which took place in September 2020, and almost 70 percent of voters definitively approved it. Thus, starting from the next term of the chambers in 2023, the total number of MPs will be lowered from 945 to 600, more than one-third (345 lawmakers). In particular, the Chamber of Deputies will be slashed from 630 to 400 and the Senate from 315 to 200.

The Pivotal Question of the Italian Parliament: Its (Unique) Symmetrical Bicameralism

In the constitutional history of the Italian Republic, this is the fourth time a referendum has taken place to complete the amendment process. The first time was in 2001, when citizens were requested to confirm or reject an amendment aimed at modifying the part of the Constitution concerning the relationships among states, regions, and municipalities to enhance the legislative and administrative functions of regional and local autonomies.

Then, voters backed the parliament's choice to amend the Constitution only by an absolute majority, namely, a governmental majority. Still, such a choice set a slippery

⁶ C. Invernizzi Accetti, "Italy's new experiment in populist technocracy", *Financial Times*, September 6, 2019.

precedent, breaking the parliamentary convention in force under which all the previous constitutional changes were supported by the opposition as well.

Coincidentally, two other attempts to modify the Constitution, in 2006 and 2016, came from two former prime ministers, Silvio Berlusconi and Matteo Renzi, who were on opposite sides of the aisle: the former was right-wing and the latter was left-wing.

In both cases, however, voters turned down the amendments by similar margins.⁷ They were both large-scale reforms; Berlusconi's aimed at rewriting all of the Second Part of the Constitution, while Renzi's proposed rewriting a good portion of it.⁸

Seemingly, this may not be a most appropriate way to make a constitutional change, as it involves a vast range of issues – from the form of government to the structure of parliament, from the role of the President of the Republic to the powers of the Regions – and voters might agree with some changes, but not necessarily with all of them.

Undoubtedly, the fact that the 2020 referendum focused on a single issue rather than on a variety was good news, but – this is the point – it did not affect the core question regarding reforming the Parliament in Italy or, to put it like Patterson and Mughan, the redundancy of the Italian Senate.⁹

On these grounds, I argue that the reduction of lawmakers is a missed constitutional amendment. From a comparative perspective, the uniqueness of the Italian bicameral system lies in the fact that both chambers have the same membership, the same powers over legislation, and the same power to grant (and withdraw) confidence in the government.

No government can exist unless it receives the confidence of both chambers; no law may come into force unless both chambers pass the same text. Hence, according to the general belief of constitutional law scholars and politicians, this is what needs to be changed.

Such a setting of legislative power was the outcome of the Framers' two opposing views of the parliament's structure.¹⁰ On the one hand, the leftist parties backed a single chamber parliament, arguing that one must be its representation if the people's will is one. On the other hand, the Christian Democrats and the other centrist parties favored a two chamber solution to express a different representation in the second chamber, not a political one, which was already conveyed by the first chamber, but a territorial and professional representation.

⁷ More in general on why the reforms of second chambers fail see: M. Russell, "The failed Senate reform" [in:] *Italy: international lessons on why bicameral reforms so often (but not quite always) fail* [in:] *The Constitution Unit*, July 20, 2018.

⁸ See M. Bassini, O. Pollicino, "Nothing left to do but vote – The (almost) untold story of the Italian constitutional reform and the aftermath of the referendum" [in:] *VerfBlog*, December 15, 2016.

⁹ *Senates. Bicameralism in the Contemporary World*, S.C. Patterson, A. Mughan (eds), Ohio State University Press 1999. See also: *A world of second Chambers. Handbook for constitutional studies on bicameralism*, J. Luther, P. Passaglia, R. Tarchi (eds), Milano 2006, Giuffrè.

¹⁰ On the origins of Italian bicameralism see M. Cartabia, N. Lupo, *The Constitution of Italy: A Contextual Analysis*, Bloomsbury 2022.

Ultimately, an arrangement established two chambers but made them completely equal. Shortly after the Constitution came into force on January 1, 1948, a question arose concerning the utility of the second chamber, as it was deemed a duplication of the Chamber of Deputies.

Even the minimal differences then existing between the two chambers were soon undone. In 1963, a constitutional amendment provided the exact duration of five years for both chambers, whereas the original term for the Senate was six years. Besides, the provision under which the Senate is elected on a regional basis has never served as a device to turn it into a territorial second chamber. Still, it has only meant that the districts for the election of senators must be region-shaped.

So the reform of the Senate became, and still is, a central issue in the attempts to modify the Constitution in place since the 1980s. Reducing it to a mere matter of numbers means losing sight of the primary target, namely a differentiation of membership as well as of functions among the chambers. Shakespeare would indeed say, "that is the question!"

Without doubt the Italian parliament also has a problem with size. As comparative analysis shows, among bicameral parliaments worldwide, the Italian one, with its 945 members, ranks only second to the UK parliament with 1,443 members.¹¹

As for the parliaments of countries similar to Italy, when considering territorial expanse or number of citizens, only the French parliament resembles the Italian one with its 925 members; the German parliament has 778 lawmakers,¹² and the Spanish parliament has 615.

In countries much larger than Italy, either geographically or demographically, we observe the following: India has a population of 1 billion 297 million and a parliament of 790 members; Japan – a population of 126 million and 710 members; Mexico – a population of 125 million and 628 members; Russia – a population of 142 million and 620 members; Brazil – a population of 209 million and 594 members. The US Congress has 535 members in a country with a population of 329 million.

Hence, it is not surprising that all the constitutional reform proposals introduced in the 1980s foresaw a cut in the overall number of congress members. However, it was the first time such a reduction was proposed just for its own sake, regardless of a wider constitutional design reforming the bicameral system or the form of government.¹³

Accordingly, the Italian parliament will be streamlined, but its chambers will continue to play the same role. Therefore, the Senate will not have new functions or a new composition, but rather it will remain a minor duplication of the first chamber.

¹¹ J. Murphy, "Size and representativeness of legislatures in historical evolution; observations from the anglo-american context", *SOG Working Paper* 2020, no. 58.

¹² V. Kreiling, "Downsizing the German Bundestag", *SOG Working Paper* 2020, no. 60.

¹³ F. Palermo, "Reducing the Size of the Italian Parliament: The Wrong Means to the Right End", *Int'l J. Const. L. Blog*, Sept. 18, 2020.

Missed Constitutional Changes and Problems Still Pending

The push for the reform has been grounded in non-persuasive arguments, first and foremost, the decreased costs of politics; eliminating 345 seats with their respective benefits (allowances and golden pensions, to name but a few), would save the country roughly 57 million euros annually.¹⁴

Carlo Cottarelli, a prominent economist, pointed out that the savings would be insignificant, being equivalent to 0.007 percent of the country's public spending, more or less the amount that every Italian citizen pays for one cappuccino each year.

In fact, during times of populism both in Europe and around the world, when and where people are struggling to make ends meet and calling upon political elites to share the burden of economic and social crises, mantras like "too many professional politicians" or "parliamentary privileges are a waste of public money" are irresistible, especially in binary consultations like referendums. Undeniably, using suggestive arguments is the best way to stimulate people's guts.

One-directional answers must be taken for granted in this kind of consultation. After all, who would answer no to the question "do you love your mom?". So a more general question arises about whether a referendum is suitable for addressing complex issues (see Brexit).

The Five Star Movement had made cutting the numbers of lawmakers and the moralization of politics a longstanding campaign promise and obtained a historic win, claiming that they put citizens back at the center of politics, and that they kept this promise that others had broken for years.

What is next? The constitutional amendment will come into force after the general elections are held in 2023, but none of the reforms required to adjust the constitutional system to the reduced number of lawmakers – a new electoral law; constitutional amendments to modify the quorum for the election of the President of the Republic; procedural reforms of parliament's standing orders – have yet to be enacted.

So the pro-referendum camp argument under which the YES vote would have opened a new season of constitutional change, otherwise impeded by the NO, has proven itself wrong. The only new reform extends the right to elect senators to voters over eighteen years old; until now, the threshold was twenty-five years of age, so this equalizes the right to vote for both chambers.¹⁵

The move pushes towards a "super-symmetrical bicameralism", making the two chambers even more equal. The underlying idea is to move toward a *de facto* unicameralism so that the two chambers can work as one. In other words, parliament first, partition in the chambers second.

¹⁴ For other pro-reform arguments see: C. Fusaro, "Reducing the Size of the Italian Parliament: A Limited Constitutional Reform with No Risks and Some Benefits", *Int'l J. Const. L. Blog*, Sept. 16, 2020.

¹⁵ See F. Palermo, "Two Almost Identical Chambers Doing the Same Job Twice: On the lowering of the voting age and the lack of a constitutional strategy in Italy", *VerfBlog*, July 13, 2021.

In my opinion, this shift is not what Italian bicameralism needs to become more efficient. It obscures turning the Senate into a second chamber fully representative of regional and local institutions.¹⁶

After the 2001 overhaul of the Constitution, which introduced key innovations in the relationships between state and territorial autonomies and devolved extensive legislative powers to the regional level, an effective system of intergovernmental relations cannot do without a territorial second chamber enabling the law – namely the will of the state – to embrace the multiple points of view of the territorial autonomies that compose the republic alongside the state.

Only such a chamber can fulfil the essential function of integrating regional and local authorities into the state, binding the nation together and providing an institutional setting where state and territorial autonomies can engage in dialog and find common positions to resolve their conflicts of competence politically without having to bring them before the Constitutional Court.

After all, the comparative investigation shows that a unicameral parliament is unfit for a country as large as Italy. Of the 189 parliaments worldwide, 113 have only one chamber, and 76 are bicameral. Among the one-chamber parliaments, 78, namely two-thirds, are in countries with populations of less than 10 million.

This is a cautionary tale for Italy, the population of which is over 60 million. Not to mention that globally, in countries with populations exceeding 50 million, parliaments are always bicameral with few exceptions. Nor would a 200-member Senate be too small to be transformed into a territorial second chamber.

Comparative law, once again, confirms this. Among 76 bicameral parliaments, 55 second chambers do not exceed 100 members: the Belgian Senate has 71 members, the German *Bundesrat* 69, the Austrian one 61, and the Council of States in Switzerland 46. Outside Europe, the quintessentially federal chamber worldwide – the US Senate – has 100 members.

Nonetheless, in current Italian constitutional debate, and probably also actually elsewhere, too, such thoughtful, long-term considerations seem to find no room. Second chambers are among the most challenging institutions to amend, as it is not easy to find widespread agreement on whom they represent, how they should be elected, or what kind of functions they need to carry out. There is no question about this.

The crucial issue is what kind of change does the Italian parliamentary system need? From what has been said so far, what makes Italy unique in the comparative spectrum of second chambers is its perfect identity between the chambers. The 2020 constitutional reform missed the target; it did not tackle the point that is the most peculiar feature of Italian bicameralism. The hope for the future is that constitutional designers will focus their sights and hit the bull's eye.

¹⁶ I argue this thesis thoroughly, see: L. Castelli, *Il Senato delle Autonomie. Ragioni, Modelli, Vicende*, Padova, Cedam 2010.

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Summary

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Downsizing the Parliament in Italy: A Missed Constitutional Amendment and Façade Innovation

In September 2020 a referendum on the reduction of the number of lawmakers was held in Italy and almost 70 percent of voters definitively approved it. Accordingly, effective next term of the chambers in 2023, the total number of MPs will be lowered from 945 to 600, more than one-third. In particular, the Chamber of Deputies will be slashed from 630 to 400 and the Senate from 315 to 200. Such a constitutional amendment is a façade innovation as it did not address the very question of Italian bicameralism, namely the perfect identity between its chambers.

Keywords: Italy; downsizing parliament; symmetrical bicameralism; populist constitutionalism; façade innovation.

Streszczenie

Luca Castelli

Zmniejszenie liczby członków parlamentu we Włoszech: chybiona zmiana Konstytucji i fasadowa innowacja

We wrześniu 2020 r. we Włoszech odbyło się referendum w sprawie zmniejszenia liczby deputowanych, w którym prawie 70% głosujących zaaprobowało poddane pod głosowanie zmiany. W związku z powyższym od następnej kadencji izb, która rozpocznie się w 2023 r., całkowita liczba deputowanych zostanie obniżona z 945 do 600, czyli o ponad jedną trzecią. Liczba członków Izby Deputowanych zostanie zmniejszona z 630 do 400, a członków Senatu – z 315 do 200. W ocenie autora, przyjęte w referendum zmiany Konstytucji mają jedynie pozornie innowacyjny charakter, gdyż nie rozwiązały problemu braku równowagi pomiędzy dwiema izbami włoskiego parlamentu.

Słowa kluczowe: Włochy; zmniejszenie liczby członków parlamentu; dwuizbowość symetryczna; konstytucjonalizm populistyczny; innowacja fasadowa.