The year 2016 will be remembered as the year when another attempt to reform the Italian Constitution failed. Having been passed definitively by the Chamber of Deputies on 12 April, the Renzi-Boschi law to amend the Constitution was published three days later, triggering the three-month period in which a referendum can be called for. Both those parliamentarians who supported the reform and those who were against it started collecting the required number of signatures. The same target was achieved by citizens in response to an initiative by the Partito Democratico (PD, Democratic Party), while a similar drive by those opposed to the reform fell well short of the required number. No initiatives were undertaken by the regions. The following nine months passed by in anticipation of the referendum.

Regardless of the intentions of those who were promoting the reform, the referendum could not be avoided because Article 138 stipulates that a referendum must be held unless there is a two-thirds majority in both houses (rather than a simple majority of 50 percent plus one) in favor of the reform. While a high degree of consensus seemed a possibility when the process to amend the Constitution was first set in motion, this subsequently vanished. The referendum was to be run along the lines established by Law No. 352/1970 and was finally held on 4 December 2016, with a clear majority (59.12 percent) voting “no.”
The proposed revision of the Constitution approved by Parliament consisted of 41 articles, of which four (Arts. 38–41) contained norms of a consequential, coordinating, transitional, and final nature. The reform concerned only Part II of the Constitution, and it affected five of the six titles that it is composed of, leaving intact only the title that regulates the judiciary (Title IV). It was to repeal two articles: Article 58, which governs the active and passive electorate of the Senate (in fact, the new Senate was to be elected via a second-order election by the regional councils), and Article 99, which set up the Consiglio Nazionale dell’Economia e del Lavoro (CNEL, National Council for Economics and Labor). However, it also proposed to amend 45 articles. To be precise, it put forward amendments to 23 of the 28 articles regarding Parliament (Title I); 5 out of 9 concerning the president of the Republic (mainly consequential amendments) (Title II); 4 out of 9 concerning the government (also consequential amendments) (Title III); 11 out of 15 regarding the state and autonomous regions (Title V); and, finally, 2 out of 6 concerning constitutional guarantees (Constitutional Court and review) (Title VI).

Of course, it is one thing to consider the quantitative aspect and quite another to consider the qualitative one. But in this case there was a true correspondence in the sense that the two titles that were most affected—the parliamentary set-up and the relationship between the state and autonomous regions—were at the very heart of the reform, its two main pillars. The other titles in Part II were affected only as a result of these two main points of intervention, with one single exception, implicitly connected (and unwisely, in the opinion of some commentators) to the new legislation on a majoritarian electoral system. This raised the bar to three-fifths of voters (as opposed to 50 percent plus one) for the minimum majority required to elect the president of the Republic (new Art. 83).

To summarize the objectives of the reform and the institutional strategy behind it, it was necessary to tackle a first set of issues concerning the almost perfectly symmetrical and undifferentiated nature of the Italian bicameral system. This matter arose when the Constitution was first drawn up, as pointed out in a speech by Senator Meuccio Ruini on 22 December 1947 (Fusaro 2015a), and it has arisen again from time to time. A second set of more recent issues concerns the unsatisfactory sharing of legislative competencies between the state and the regions as laid out in Constitutional Law No. 3/2001, which reformed Title V entirely. This was the nub on which the remaining changes to Part II of the Constitution rested.

This chapter will provide an outline of the reform approved by Parliament, placing it within the political and institutional context in
which it was to be introduced, bearing in mind previous proposals for reform, both those dating back a long time and some that are more recent. We shall then trace its path through Parliament, identifying the changes that it set out to make, and will consider some of the points that were brought out in the debate that it generated. Lastly, we will attempt to assess its likely effects had it been approved by the voters and some possible consequences of its rejection.

The Historical and Recent Background to the Reform

The 2016 plan to comprehensively revise the Constitution was the last in a long series of attempts. Without going all the way back to the years when the Constitution was drawn up, put into effect, and became established (between 1948 and 1971), the Italian Parliament began discussing reforms already in 1982, that is, following the so-called Decalogo Spadolini (a program of institutional reforms), which was presented in August of that year by the president of the municipal council of Florence, and after each of the two chambers had set up a separate committee to collect proposals from all groups. This put the institutional issue on Parliament’s agenda for the first time, and not just on the agenda of one party or another, such as the attempts made by the secretary of the Socialist Party, Bettino Craxi. It will not take too long to review this history. Doing so will help convey a sense of the magnitude and persistence of the efforts made, which cannot be put down to a collective aberration that has gone on for decades.

Since 1982 a number of initiatives have been undertaken. There have been three bicameral parliamentary commissions: (1) the Commissione Parlamentare per le Riforme Istituzionali (9th Legislature, 1983–1985, President Aldo Bozzi, liberal); (2) the Commissione Parlamentare per le Riforme Istituzionali (11th Legislature, 1992–1994, Presidents Ciriaco De Mita and Nilde Iotti, the former a Christian Democrat, the latter a Left Democrat); and (3) the Commissione Parlamentare per le Riforme Costituzionali (with a change from “Istituzionali” to “Costituzionali”) (13th Legislature, 1997–1998, President Massimo D’Alema, a Left Democrat). There have also been a series of debates in both chambers: in the 10th (1988), 12th (1995), 16th (2009), and 17th (2013) Legislatures. Some attempts at reform failed to reach their target but were passed by one of the two branches of Parliament: the plan by Elia-Labriola in the 10th Legislature (1989–1991); the plan put forward by the Berlusconi government, which was rejected in a 2006 referendum; and the plan launched by the Senate during the 16th Legislature (2012). In addition, various study groups
were set up by the government: Comitato Speroni (1994), Comitato Maccanico (1996–1998), Comitato Bossi-Brigandi (2002–2004), and Comitato Letta-Quagliariello (2013). And that is not all. From the 10th Legislature onward (i.e., since 1987), 15 out of 19 governments have had a minister of reforms, and even the internal organization of the presidency of the Council of Ministers has, since 1994, had a dedicated department for institutional reforms. Lastly, we should add the requests for reform that have been made by every president of the Republic, from Giovanni Leone onward. A detailed list would be too long; instead, I will point out the strongly felt and controversial message from President Francesco Cossiga in June 1991 and—22 years later—the speech made by President Giorgio Napolitano on 22 April 2013, when he brought the two chambers together and pleaded with them to at last move forward toward conclusive reforms, drawing much applause.7


The government led by Matteo Renzi had been installed on 21 February 2014. The previously announced plan to revise some titles in Part II of the Constitution, signed by the prime minister and by Maria Elena Boschi, the minister of constitutional reforms and relations with Parliament, was presented to the Senate a few weeks later (Senate Act No. 1429/2014).

Based on an agreement between the governing majority and the main party of the center-right, Forza Italia, which had been in opposition for some months after supporting the previous Letta government, the plan directly followed up on the conclusions of the Letta-Quagliariello Commission. Those findings took into account the reforms proposed up until that time, thereby becoming almost like a ledger, recording decades of attempts to introduce reforms and an attestation of the solutions that were broadly supported in the world of academia. The Commission for Constitutional Reforms (2013) had unanimously declared that reforms were urgently needed, explicitly considering them an indispensable tool to enable Italy to emerge from its sovereign debt crisis.

The title given to the plan8 describes the aims of the revision, albeit emphasizing some relatively unimportant aspects that were nevertheless significant in terms of how they were seen by the general public. These included, for example, cutting the number of members of Parliament and reducing the costs incurred to run the institutions—part of
the so-called costs of politics. In reality, as we have seen, the most substantial changes involved two of the pivotal points of the Constitution: the bicameral legislative system (Title I) and the relations between the state, regions, and local autonomies (Title V). In addition, there was the late inclusion of the proposal to abolish the CNEL, which was seen as pointless.

The Senate’s Commission examined the plan for Constitutional Affairs over 41 sittings in four months. It reached the Chamber on 14 July 2014, where the majority rapporteurs were Anna Finocchiaro (PD) and Roberto Calderoli of the Lega Nord (LN, Northern League). It was debated in the Chamber in 23 sittings and had its final reading before the summer recess, despite the occasional obstructionist opposition from Movimento 5 Stelle (M5S, Five Star Movement) and Sinistra Ecologia e Libertà (SEL, Left Ecology and Freedom) and from the dissenting fringes within the groups that supported the plan (i.e., the PD and Forza Italia). The plan was approved on 8 August 2014, with 183 votes in favor and 0 abstentions: those who were opposed to it decided to leave the Chamber at the moment of voting.

During the lengthy examination by the Senate’s Commission, the text had been significantly altered, confirming only 19 of the articles in the Constitution as modified by the government’s plan, amending 25 (in one case retaining the text as it stood), and adding amendments to an additional 3 articles. These were Article 63, giving powers to the new Senate to avoid conflicts of interests and multiple office-holding; Article 73, introducing preliminary checks on the constitutionality of electoral laws; and Article 74, granting power to the president of the Republic to make partial referrals of laws, a measure that was later withdrawn in the Chamber. Furthermore, new limits on urgent decree-making had been brought into Article 77. The Senate had established, as an additional counterbalance (Arts. 71 and 75), revisions to existing forms of direct democracy (popular initiative, abrogative referendum), as well as new forms of direct democracy (citizens initiative, consultative referendum). Thus, 47 articles were affected, including those to be removed.

The next stage in the Chamber would not be completed until 10 March 2015, seven months later. The Chamber went back over 15 of those 24 articles containing amendments introduced in the Senate and added a further 3, for which no amendment had been proposed either by the government or by the Senate. These were Article 78, concerning the declaration of a state of war being decided by an absolute majority instead of a simple majority; Article 97, about the inclusion of the principle of transparency in public administration; and Article 122, which sought to impose a gender balance between men and women
in regional electoral legislation. It was also established that preventive
appeals to the Constitutional Court on electoral laws would be extended
to any electoral law already passed in the legislature, the target clearly
being the Italicum (Law No. 52/2015), which had just been passed in
January 2015. The election of constitutional judges was to revert to
a joint sitting in Parliament, instead of the separate election of three
judges by the Chamber and two by the Senate, as proposed earlier.

The Senate was to take a further seven months for its second “first
reading,” given the modifications made in the Chamber. It came back
on four of the articles that had been modified, insisting that its own
decisions should stand. It also turned down the proposal to have the
constitutional judges elected by two separate branches of Parliament
(and not by the two chambers in joint session), while some new func-
tions, particularly in relation to European policies, were added to the
future Senate. Other important modifications were (1) the raising of the
quorum for the election of the president of the Republic (increased to
not less than three-fifths, albeit of votes cast, rather than an absolute
majority, calculated on the basis of the number of those with the right
to vote); and (2), the most controversial modification, that is, the
introduction—via an addition to clause 5 of Article 57 (technically, the
least appropriate place, as it concerns the length of time in office of
senators, not the method for electing them, which is covered by clause
2 of the same article)—of elections to be carried out by regional coun-
cilors “in compliance with the choices expressed by voters for councilor
candidates when council elections take place.” It was the compromise
reached within the PD in order to gain the votes of the rebels in the
Senate, who wanted a directly elected Senate that would act as guar-
antor. The text was not subjected to further changes. The Chamber
passed it without amendments three months later on 10 January 2016,
and the Senate gave it its second reading on 20 January 2016. Finally,
the Chamber gave the text its final reading on 12 April 2016. The three
files that document the passage through the Senate contain 6,795 pages
for the first stage, 1,897 for the second, and 472 for the third. This adds
up to more than 9,000 pages for a process that took two years and
four days. It provides evidence of a fairly thorough examination that
involved a total of 175 sittings, 4,705 speeches (excluding hearings),
and 5,272 amendments passed (Fusaro et al. 2016).

Arguments surfaced because the reform had been passed with a
supposedly “limited” majority. It received the votes of 183, 179, and
180 senators in the three readings (out of a total of 321, equivalent to
56–57 percent of the members), while in the Chamber it was sup-
ported by 357, 367, and 361 deputies (out of a total of 630, equivalent
to 56–58 percent of the members). Some opposition groups joined the
majority in supporting the reform, at least in the first stage, which was the decisive one in the Senate insofar as it set out the structure and the content of the text. On that occasion, the text was supported by the PD, Nuovo Centrodestra (NCD, New Center-Right), Scelta Civica per l’Italia (SC, Civic Choice), and Forza Italia, that is, all the parties except the LN, SEL and M5S. Later, Forza Italia withdrew its support, safe in the knowledge that the reform had the backing of a group of parliamentarians who had broken away from the party. In the last rounds of voting, there was support both from the majority—the PD, SC, and Area Popolare (AP, Popular Area)—and from the Alleanza Liberalpopolare–Autonomie (ALA, Liberal Popular Alliance–Autonomies) group, which had broken away from Forza Italia under the leadership of the senator Denis Verdini. This explains why, in all six rounds of voting, the percentage of votes in favor had always oscillated between 56 and 58 percent. Finally, it should be noted that in the Chamber there had been around 40 more votes in favor of the reform than the absolute majority required (20 more than in the Senate).

The Content of the Reform

The draft retained the first part of the Constitution in its entirety (Arts. 13–54), as well as the fundamental principles (Arts. 1–12), as was to be expected, and focused on the second part of the Constitution. The following are the main points in the constitutional reform, which was to be put into effect by the forthcoming 18th Legislature.

Per the new Article 57 in the revised Constitution of 2016, the Senate of the Republic was to become a chamber representing “the territorial institutions” (regions and municipal councils, with no further role for the provinces, which were to be abolished), made up of 74 regional councilors and 21 mayors elected by regional councils. These councilor senators were to be elected based on indications given by the voters as each regional council was renewed. The Senate would thus not be renewed in its entirety with every new legislature. Instead, it would be renewed, pro quota, each time regional elections were held (nowadays on different dates, no longer simultaneously on a fixed date as was earlier the case for the ordinary regions). It was to be a pared-down body consisting of persons who would retain the positions to which they had been elected by the citizens in virtue of which they would have the passive support of the electorate. Moreover, they would continue to receive their existing allowances, with no additional financial support, although presumably some of their expenses would be refunded. The idea was to bring together the local-regional institutions and the Senate so as to
provide an efficient means to transmit the demands and the territorial interests from the periphery to the center (and vice versa). The Senate would also include former presidents and up to five senators appointed by the president of the Republic, no longer as Life Senators but for a term of seven years. Some transitional rules were also significant. On the first occasion, the Senate would not be elected immediately after regional elections in order to avoid the early dissolution of no fewer than 13 out of 21 councils.\textsuperscript{11} Also, the existing Life Senators would remain in their posts. The president of the Republic would be able to appoint up to five but never exceed the overall limit of five, which would include the current ones.

The new Senate, consistent with its nature as a second-order body, would lose its prerogative to vote on confidence motions; only the Chamber would be able to give and withdraw its confidence in the government. Also, the Senate’s legislative powers would no longer be the same as those of the Chamber. Its role would have a dual nature: it would still be an equal co-legislator, as now, for a specific range of laws set out in detail (new Art. 70), the length of which caused a great deal of controversy. Other than this, it would only have the power to recall laws approved by the Chamber (within a period of 10 days) in order to propose amendments (within a further 30 days) on which the deputies would have the final word, normally, with a simple majority vote. In the case of laws transcending the legislative competence of regions, an absolute majority would be required in the Chamber. The new Senate would have some further functions. It would act as a bridge between state, regions, and municipal councils; facilitate links between these bodies and the European Union; take part in decision-making with regard to the drawing up and implementation of EU regulations and policies; assess public policy and the activities of public administrations; assist in providing opinions on appointments made by the government; and check the effective implementation of state laws (new Art. 55.5).

The laws for which the new Senate was to maintain equal powers with the Chamber included the following: all constitutional laws; laws safeguarding linguistic minorities; laws on referendums and on other forms of direct democracy; and laws concerning the regulatory system, elections, government bodies, and the main functions of councils and metropolitan cities. Also included were laws containing guidelines on principles (not on details) regarding associational arrangements made between councils, such as council mergers, and the bodies covering a vast area (possibly the regions) that will replace the provinces and what remains of them; European law, which establishes the general norms regarding Italy’s participation in the drafting and implementation of the
regulations and policies of the European Union;\textsuperscript{12} law covering cases of non-electability and incompatibility of senators; electoral law of the Senate; law ratifying treaties with the European Union; and some laws specifically established by Title V of the Constitution, for example, laws granting additional powers to regions that request them (new Art. 116.3). In total, this amounts to less than 5 percent of legislation.\textsuperscript{13}

The Chamber of Deputies would remain as it is in terms of its make-up and its current powers, although its legislative powers would be strengthened as a result of maintaining its law-making functions outside those listed in the previous paragraph, and it would also be able to reject any amendments proposed by the Senate. Moreover, it would continue to be the only chamber able to set the general political direction. Elected by all those entitled to vote due to universal suffrage, it would thereby hold the exclusive power to give or withdraw confidence in the government.

The legislative procedure would be changed in a number of ways, over and above the new division of competences between the Chamber and the Senate. The main one concerned the provision that parliamentary rules should ensure that the process for the key legislative initiatives set out in the government’s program should reach a conclusion by a certain date. However, some types of laws were excluded from this: laws covered by Article 70, clause 1, and in any event laws concerning the electoral system, those ratifying international treaties, and laws covered by Article 79 (amnesties and pardons) and Article 81, clause 6 (law on the budget). Legislative proposals should be voted within 70 days, with a maximum of 85 days (new Art. 72.6). This innovation would go hand in hand with the introduction of limits on urgent decrees in the new Article 77. These limits are already imposed on the government by Law No. 400/1988 and are partially drawn from the increasingly restrictive jurisprudence of the Constitutional Court. It was hoped that this would significantly reduce the current use of the emergency decree, which is normally used in order to obtain a parliamentary decision by a certain deadline (within 60 days).

Offices and management of staff in the two chambers would be brought together in a single organization that would supply jointly run services, as well as the coordinated use of human and material resources. Given that the Senate’s components would be reduced to one-third of their current level, this innovation could bring significant savings.

As far as the constitutional guarantees covered by Title VI are concerned, the reform introduced the opportunity for a strong minority (one-fourth of the deputies, one-third of the senators) to challenge the electoral laws of the Chamber and of the Senate after they have been passed and before they are promulgated (new Art. 73.2). There was
also a change to the process for electing judges to the Constitutional Court by the chambers: there would no longer be a joint sitting of Parliament, but three judges would be elected by the Chamber and two by the Senate (new Art. 135.1). Otherwise, the imbalance in the number of members between the Chamber and the Senate would not guarantee the election of candidates put forward by the territorial institutions.

In the constitutional reform, the institutions of direct democracy would be renewed: the popular initiative to propose legislation was changed to a certain extent (new Art. 71.3); citizens’ initiatives and consultative referendum were introduced (new Art. 71.4); and the provisions relating to the abrogative referendum were varied (new Art. 75.4). As for the popular initiative by voters to propose legislation, the number of signatures required would go from 50,000 to 150,000. Parliamentary rules would have to be applied to ensure that a response would be given within a certain period of time. The increase in signatures was proposed to ensure that the agenda of the chambers would not be swamped by popular initiatives. As far as the citizens initiative and consultative referendum were concerned, these would be run in accordance with a specific constitutional law, using the same technique that had been employed in 1948 to set up the Constitutional Court. The same law should be able to establish other forms of consultation, including social groups. Finally, with regard to the abrogative referendum, if the promoters of the referendum had gathered not 500,000 signatures, but, say, 800,000, the quorum would be lower—no longer half plus one of those entitled to vote, but half plus one of the number of votes cast at the previous political elections (e.g., not 50 percent plus one vote, as if it took place today, but 37.6 percent plus one vote). With this revision, it was hoped that the process would be relaunched, making it more difficult to organize campaigns for a “no” vote by abstention.

The position of the president of the Republic was not affected, but the quorum required to elect the president would be increased. It would no longer require an absolute majority but three-fifths of those casting a vote, based on the assumption that all those having a right to vote in the elections for the president would do so (unless prevented from doing so for serious reasons). This decision was implicitly linked to the Italicum (Law No. 52/2015); in fact, the majority required of around 430–435 votes would be significantly higher than the number of seats in the Chamber gained by the political party winning the elections (340), even if we include any votes from senators belonging to the same party. The president would also have a more realistic chance of postponing laws converting decrees. In that event, the decree would remain in force for 30 more days, removing any unease
the president might have about causing it to lapse and thus allowing him to use without qualms the power that was his to exercise.

The few articles in Title III on the government were unchanged, apart from Article 99 on the CNEL, which was to be closed down with immediate effect.\textsuperscript{15} There was, however, a change to the provision concerning authorizations to proceed against members of the government: it was to be handed over only to the Chamber of Deputies (new Art. 96). Furthermore, the government would be indirectly strengthened by the removal of the dual vote of confidence mechanism that involves both chambers—a unique feature of the Italian parliamentary system whose overhaul was one of the main aims of the reform.

Title V of the Constitution, which had already undergone wholesale reform between 1999 and 2001, would be changed once again.\textsuperscript{16} First, all references to the provinces would be deleted. In this way, the state and single regions at their own expense would be able to set up the so-called functions for vast areas that they believed most appropriate, sharing them out among the territorial bodies set up by the Constitution or handing them over on an ad hoc basis to other non-statutory bodies (new Art. 114). Second, the regulation concerning the powers of the ordinary regions with special autonomy would be strengthened, with the condition that the region concerned should have a balanced budget. Third, there would be a new division of legislative powers between the state and the regions. Competing competencies would be abolished, and matters currently within the domain of competing competencies would be transferred exclusively to the state. All other matters would remain within the remit of the regions (new Arts. 117.2 and 117.3).\textsuperscript{17} Fourth, a safeguard clause would be added. State law could be applied to matters not confined to its own exclusive legislation in cases where it was necessary to protect the judicial or economic integrity of the Republic, that is, to safeguard the national interest (new Art. 117.4). Fifth, there would be new regulations concerning the state’s substitution powers in its dealings with the regions, the metropolitan cities, and the municipal councils (new Art. 121.1). Lastly, upper limits would be set for the salaries of regional councilors—the same as the limits for mayors of the councils in larger towns and cities—and financing political parties with council funds would be expressly forbidden (new Art. 122.1), following the scandals of a few years ago.

The Debate on the Reform

For the most immediate political considerations concerning the reform, I would refer you to the chapter by Martin Bull in this volume. Here I
will make some general points and observations on the academic (or pseudo-academic) debate on the reform.

As for the general points, it became spectacularly clear that it would not be possible to separate opinions on the aims and merits of a proposed revision of this kind from the positions taken by the parties and by the citizens with respect to the governing majority. Even worse, it turned out to be impossible to separate the assessment of the reform from the internal battle for the control of a single party—the PD. The truth of this is confirmed by the number of times there were appeals “not to make the referendum on the reform become an early PD congress,” that is, to exploit it with regard to the internal battle for or against Renzi, the party secretary. This was confirmed by the unusual circumstance whereby a number of PD leaders announced that they would vote against the reform and would also support committees working for a “no” vote. Even some deputies and senators who had voted for the reform in Parliament shifted to the “no” side on the basis of the previously unheard of theory of the distinction between a vote cast as a member of Parliament and a vote cast as a citizen.

There was also further confirmation of a phenomenon well known to those who have studied referendums: the almost irresistible tendency of those leading the public debate to attach distorted meanings, albeit seen as real ones, alongside the actual (“judicially true”) question, almost as though the question posed to the voter was not the one printed on the voting paper, but an entirely different one. In particular, in the case of the referendum to revise the Constitution, seen as a specific plan approved by Parliament, it was successfully shifted from an overall evaluation of the government, and whether it was right to “send it packing,” to a judgment on the current electoral law—the Italicum (Law No. 52/2015)—even though this was legally quite distinct and independent from the reform and thus technically (but not politically) unrelated to the aim of the referendum. All we need to remember is the success enjoyed by an expression drawn from the technical legal lexicon, combinato disposto (combined provisions), which was first used by journalists and then became part of the everyday language of millions of people.18

The academic debate on the merits of the reform, that is, on what it objectively contained, also deviated, surprisingly in my view, toward issues that were only partially related to it and, in some cases, non-existent from a legal point of view (in the sense that they were not directly linked with positive law). First was the argument about the alleged illegitimacy of the entire revision process following the declaration of unconstitutionality of some parts of the existing electoral law (Sentence No. 1/2014) at the time of the election of the 17th Legislature, which
in the end reaffirmed the full powers of the chambers. Second was the discussion on the appropriateness and the legitimacy of those who had drawn up the reform to call for and demand the referendum (Art. 138.2). A third issue involved giving up the attempt to strengthen the powers of the opposition in Parliament by detailed constitutional provisions, leaving the matter to future unspecified parliamentary regulations. Lastly, the debate focused on the wording of the question in the referendum, which was considered misleading and thus likely to influence the voters when it was confined to repeating the title of the law, as expected. In relation to these questions, the supporters of the “no” campaign, bolstered by their previous successes in disputes on electoral legislation (e.g., the misguided decision made by the Constitutional Court to allow appeals against Law No. 270/2005), attempted to go down the judicial route (administrative, ordinary, and constitutional) in several places, thereby succeeding in filling newspaper columns and in spreading uncertainty about the whole revision procedure.

As far as the merits of the reform are concerned, not a word went unchallenged in academic circles, and there were often harsh criticisms. I will report only the most well-founded objections and criticisms here, leaving aside the most specious or even absurd ones. One example was the argument put forward by the president of one of the committees for the “no” vote, Alessandro Pace, who argued that the fundamental principle of popular sovereignty (Art. 1) would in theory and in practice prevent any revision affecting the directly elected make-up of the Senate. The fact that so many academics were clutching at straws—in an obvious attempt to force through their arguments—bolstered the public’s opinion that constitutionalists can freely support a point of view or its very opposite, while their common academic discipline did not seem able to provide either a shared language or a shared set of principles, regardless of any differences of opinion.

Returning to serious matters, the soundly based criticisms revolved around several issues. The first was the composition of the Senate under a dual profile characterized by lack of clarity around its direct or indirect derivation and the (inexplicable) continued presence of former presidents and appointed senators. With regard to this, there were doubts about the capacity of regional representatives in the new Senate to go beyond the party cleavage. A second issue was the appropriateness of extending what very little remained of the bicameral legislative powers to all constitutional laws, and a third matter involved giving up attempts to strengthen constitutional rules (e.g., the rule concerning the statute of the opposition), which were all referred back to the existing parliamentary rules. Lastly, the academic debate
focused on scepticism that the new system of allocating legislative powers between the state and the regions would actually lead to fewer conflicts and therefore less litigation, without a reduction in the powers of the regions.19

The Effects That the Reform Would Have Had and Some Notes on the Consequences of Its Being Rejected

Had it been approved, the constitutional reform would first of all have introduced rules to be applied immediately. These would include (1) the closure of the CNEL, determined by temporary norms as well as by the abrogation of Article 99; (2) powers being granted to the regions to establish new bodies for the “vast areas,” in light of the fact that all references to provinces in the Constitution would be eliminated; (3) the administrations of the two chambers being brought together; (4) electoral or political reimbursements for political groups in regional councils being banned; and (5) the means for parliamentary minorities to lodge a direct appeal against electoral laws with the Constitutional Court. It would also have introduced rules whose enactment would be postponed until the following legislature: (1) the dissolution of the symmetrical bicameral system, at least as far as preventing the new Senate from taking part in votes of confidence and in terms of the superior status of the Chamber in the ordinary legislative process; and (2) the new division of legislative powers between the state and the regions, including the application of the safeguarding clause (new Art. 117.4).

However, the introduction of the new citizens initiative and the consultative referendum were to be postponed to a possible future constitutional law. There would also be the following postponements to a possible future ordinary law: (1) the electoral law on the composition of the Senate; (2) bringing Law No. 352/1970 into line with the new legislation and the innovations in the abrogative referendum, as well as the systems put in place for the citizens initiative and consultative referendum; and (3) the state framework law with guidelines for the regional bodies concerning the maximum amounts to be claimed for salaries and expenses.

Above all, the new text in Part II of the Constitution called for the complete rewriting of the regulations governing the Senate, a sweeping reform of the regulations for the Chamber, and an update of the regulations governing all 21 regional or provincial councils. The aim of all this was to promote the kind of coordinated work that would lay the foundations for what would later become a real network of representative assemblies. In particular, the internal organization of
the Senate would provide the councilor senators with the real opportunity to carry out their role of representing the bodies from which they originated. But the regulations would also involve establishing new features: voting to take place on a fixed time frame (new Art. 72.6); the statute for the opposition in the Chamber (new Art. 64); protective measures for the minorities in both chambers (new Art. 64.2); and the guarantee that popular legislative initiatives would be given a reading (new Art. 71.3).

With reference to the declared aims of those who had pressed for the reform, it was to be expected that a series of objectives might be achieved from the time of its implementation, and that other, less certain and automatic objectives might follow later. The first group of objectives called for discontinuing the symmetrical bicameral system, a speedier legislative process, and some strengthening of the functioning of government. As far as the last objective was concerned, the government in Parliament would have been strengthened as a result of the vote by a determined date. However, Parliament itself would also have been strengthened insofar as it would have been able to operate without the restrictions caused by the procedure to convert decree laws, as there would be less recourse to these than in the past, due to the new limits set by Article 77. Furthermore, the executive would have been indirectly strengthened thanks to the confidence vote being limited to the Chamber of Deputies alone. In reality, this removed a potential blockage that could not be justified.

In all probability, the resolution of the excessive friction between the state and the regions would also have been one of the effects of the reform. The abolition of competing powers (i.e., the areas where there was a potential overlapping of powers between the state and the regions), the move to grant the state sole powers over “general and common arrangements” in some matters that remained largely within the scope of regional legislation, and, lastly, the inclusion of the clause giving Parliament the authority to safeguard the national interest would have provided the legal basis for a reduced degree of friction between the state and the regions. These measures would also have afforded a solution to the excessive fragmentation of public policies and to the lack of coordination between various levels of government. Moreover, the new rules governing the relations between the state and the regions would have made it possible, in most cases, to transfer the safeguarding of national interests from a non-political seat (Constitutional Court) to the political headquarters par excellence (Parliament), as originally conceived by the 1948 Constitution.

Another consequence of the reform would have been a degree of institutional simplification. This would have come about as a result of
the deletion of all references to the provinces, the abolition of the CNEL, and the termination of the bicameral system in its symmetrical form.

Finally, the reform would have brought a limited containment of costs in the functioning of the institutions. It would be sufficient just to consider the drastic reduction in the outlay for the new Senate from the public purse: once phased in, it probably would have amounted to less than one-sixth of the outlay for the Chamber of Deputies, especially if the administration of the two chambers had been brought together. Closing down the CNEL and banning reimbursements to political groups in regional councils would also have resulted in cost containment.

However, the outcome of the referendum on 4 December ended any prospect of a revised Constitution in the short or medium term, despite the fact that many of those reforms were—and still are—exactly the ones that just as many “no” supporters as “yes” supporters say that they would like to see enacted. I do not know if this result means that the Italian Constitution can no longer be reformed. Certainly, there are lessons to be drawn from it, and in my view the first one is this: our collective memory span is getting shorter and shorter. Even when an emergency situation appears to make it more urgent to take certain steps, it does not take long before everything is forgotten. Between March and September 2013, and even right up to the end of 2014, it seemed that revising the Constitution in Italy was an urgent priority. Nonetheless, when the vote was held 22 months later at the end of 2016, many people (even some political commentators) were asking why it was necessary to split the country on a reform of that type, challenging the very premises it was based on, as well as its merits, its appropriateness, and the solutions it put forward. We need to be aware of this, because it is difficult to see how systemic reforms like the Renzi-Boschi law can be launched unless they are widely seen as urgent and necessary over a sustained period of time.

The second lesson, which is linked to the first one, is that the quality and the extent of a reform package that lacks widespread support can easily become quite separate from an overall evaluation of the reform, regardless of whether this evaluation is expressed in Parliament or, even more so, put out to a referendum. The fact that the governing classes (political and non-political) are fragmented makes it easier for partisan interests to influence the outcome. Those interests may be legitimate, but they are indifferent to what has traditionally been described as the general systemic interest.

The third lesson is that it might be useful to break the reform proposal down “into separate parts,” provided that it is possible to retain the proposal’s overall coherence as well as the coherence of each part (which is not at all easy or to be taken for granted). This would
avoid the situation where so many of those groups opposed to specific points, each of which would represent only a minority interest, nevertheless come together to form a winning aggregate. It is true that breaking down the proposal would risk systemic coherence and would make the legislative process through Parliament more arduous as a result of the greater difficulties in reaching compensatory deals. Still, it might be the best way to reconcile the decisions made by Parliament and the decision of the referendum, putting an end to the stalemate.

The fourth lesson is that in Italy, as elsewhere, it is no longer the right time to embark on reform processes structured like the one for revising the Constitution (and also for other laws), that is, a structure based on two stages, the first one in Parliament and the second with a popular vote. Until this historical time is over—when everything that rightly or wrongly appears to be establishment-oriented is highly contested—processes of this kind are unlikely to lead to concrete outcomes. The first sign of this was the defeat in 2005 of the referendum on the European Constitution treaty in France. The same thing was seen in Ireland in 2013 with the referendum on the Seanad Éireann (Senate), when its abolition was fully expected to be confirmed. In the final analysis, all this is linked to the fact that European parliamentary democracies are proving to be ever more difficult to govern, especially where the electoral systems reflect their growing fragmentation (Fusaro 2015b).

In the case of Italy, the outcome of the referendum, which could not be avoided due to Article 138, led to the defeat of the most coherent attempt to turn the Italian political regime into a (moderately) majoritarian one, consistent with solutions that have proved successful at the local and regional levels. It now seems very likely that the country will revert to predominantly proportional systems as far as electoral legislation is concerned, since the Constitution will remain unchanged and given the Constitutional Court’s reluctance to enact corrective mechanisms or, at best, to allow rather mild ones. Consequently, there will be no attempt to set up a government led by a single party. Instead, we shall go back to governments formed by coalitions as in the First Republic, the only difference being that the East-West cleavage will be replaced by the cleavage surrounding the European Union, that is, between those in favor of the European community versus those who favor national sovereignty. It falls outside the scope of this chapter to predict what the prospects and outcome of this development might be.

As for constitutional reforms and further attempts to make Italian political institutions structurally more stable and efficient, this will depend on the ability of future majorities to build a political and cultural hegemony and on the chances—which today appear remote—of
obtaining two-thirds of votes in each chamber, which would make it possible to avoid going to a referendum. It is impossible to make any predictions. However, we know that the impetus will need to come from either an exceptionally serious crisis or an extraordinarily determined political will, and probably both of them.

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Notes

1. Those with the power to call a referendum are one-fifth of the members of each chamber, five regional councilors, or 500,000 voters (Art. 138).
2. For more details on the build-up to the referendum and its outcome, see the chapter in this volume by Martin Bull.
3. The Italian Constitution has 134 articles, although the original numbering system has been retained so that the last one is still numbered 139. The Constitution consists of three sections: Fundamental Principles (Arts. 1–12); Part I, Rights and Duties of Citizens (Arts. 13–54); and Part II, Organization of the Republic (Arts. 55–139). Part II has 80 articles.
4. The two directly elected chambers have equal powers, the only differences being the number of members who are able to vote (315 in the Senate, 630 in the Chamber of Deputies), the presence in the Senate of some Life Members (five appointed by the president, as well as former presidents), and the fact that the right to vote in elections for the Senate is granted to citizens over the age of 25 rather than 18, which means that the electorate is smaller by 4 million compared to that for the Chamber.
5. In fact, a major constitutional reform was passed in 2001. However, it was limited in scope because it affected state-regional and local relations only. It is widely referred to as the reform of Title V of the Constitution.
6. It could be considered that with the launch of Law No. 352/1970 on referendums and with the establishment of the regions with an ordinary statute (1970), Part II of the 1948 Constitution was brought into effect.
7. For an analysis of the series of failed attempts to reform the Constitution between 1982 and the 16th Legislature (2008–2013), see Fusaro (2015a, 2016), Crainz (2016), and Sicardi and Cavino (2015). These works describe the ongoing trends, the repeatedly identified priorities, and the possible solutions that have been put forward.
8. The title of Senate Act No. 1429 reads as follows: “Measures to end the symmetrical bicameral system, the reduction in the number of parliamentarians, the containment of the costs incurred to make the institutions function, the closure of the CNEL, and the revision of Title V of Part II of
the Constitution.” This was to spark unexpected controversy when the
time came to decide on the question posed in the referendum.

9. The controversy over this point was symptomatic of a debate not based
on actual data. While the reform raised the quorum required, this was
used to attempt to show the exact opposite due to the references to vot-
ers as opposed to those with the right to vote. But the average number of
voters in the 13 presidential elections is over 98.5 percent: the reference
to voters was intended to leave out those who were absent through illness
or other exceptional circumstances.

10. Part II consists of six titles: (I) Parliament, (II) President of the Republic,
(III) Government, (IV) Judiciary, (V) Regions, Provinces, Municipalities,
and (VI) Constitutional Guarantees.

11. Following are the dates when the regional councils would naturally reach
the end of their term: Valle d’Aosta, Lombardy, Trentino-Alto Adige, Friuli-
Venezia Giulia, Lazio, Molise, and Basilicata in 2018; Piedmont, Emilia-
Romagna, Abruzzo, Calabria, and Sardinia in 2019; Liguria, Veneto,
Tuscany, Marche, Umbria, Campania, and Puglia in 2020; Sicily in 2022.
By 2022, the Senate would have been partly composed on the basis of the

12. It is one law, Law No. 234/2012, which was preceded by the so-called Butti-
glione law, which in turn replaced the better-known La Pergola law, which
was named after the minister who proposed it 30 years ago in order to put
a stop to severe delays in the implementation of EU laws in Italy.

13. This calculation has been made on the basis of the first three years of the

14. The way in which parties are represented in the Senate would have been
degressively proportional. With the current councils, it had been calcu-
lated that the PD, which is part of 17 majorities out of 21, would have had
51–53 senators. If we add these to the 340 deputies, even if they all voted
for the same presidential candidate, there would still have been a shortfall
of 40–50 votes for the PD to ensure that their candidate would win.

15. Founded in 1958 and conceived as a means to represent the interests and
socio-economic groups that were not given space in Parliament (accord-
ing to the proposal by the Christian Democrats), the CNEL has never
accomplished its function as a subsidiary body of the chambers. Instead,
it has mainly acted as a forum for dialogue between social partners.

16. The current division of law-making powers between the state and the
regions has created tensions that have resulted in about 40 percent of
the decisions of the Constitutional Court, due to uncertainty over how
to interpret the law. Moreover, it has forced citizens (first and foremost
economic operators) to take on extra administrative burdens in order to
comply with dozens of different regional laws covering areas such as
safety in the workplace, urban planning, and transport.

17. It was actually the report of the president of the Constitutional Court in
2014 that pointed to the need for a “reform to Title V … in order to meet
the requirements for simplification and clarity.”

18. The term combinato disposto is used to refer to those cases in which a
norm is not drawn from a single regulation but from the “combined”
simultaneous reading of two regulations contained in different juridical sources. In this specific case, it concerned the idea that the main elements in the constitutional reform had to be seen in conjunction with the majority formula adopted by the electoral law. This meant that rejecting the electoral law automatically led to a rejection of the constitutional revision.

19. For a thorough analysis of the reform, see Costanzo et al. (2016), Guzzetta (2016), Occhetta (2016), Panizza and Romboli (2016), and Rossi (2016). Arguments in favor can be found in Fusaro et al. (2016). Critical arguments can be found in Urbinati and Ragazzoni (2016).

**References**


