The King and the Joker. Italy’s Debate on Constitutional Bill 813

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Abstract

My paper aims to analyse the debate that emerged in Italy in 2013 over the Constitutional Bill 813. The bill dealt with procedural issues in order to shorten the time necessary to approve amendments to the Italian Constitution and to assure the electorate’s participation to the constitutional process. The new party Five-star Movement dominated the opposition to the bill. The peak of the conflict was reached with the impeachment to the Italian President of the Republic Napolitano, accused of ‘monarchical’ leadership. The core of the debate has to be placed in the interaction and conflict between two opposite forces: on one side, the Italian government’s and the presidency’s attempt to promote more efficient decisional rules, in order to better fit into the EU’s integration project and meet the economical challenges from globalization; one the other, the M5S’resistance in defence of the national parliament’s role. In the specific case, I am arguing for the strong sponsoring and interference of Giorgio Napolitano into the constitutional reform process to be seen as a provocative, but necessary, attempt to push Italian parties to take responsibility in a situation of deep political and economical crisis.
Introduction

The aim of my paper is to analyse the debate that emerged in Italy in 2013 over the Constitutional Bill 813, proposed by the grand coalition government headed by Enrico Letta. The bill dealt with procedural issues in order to shorten the time necessary to approve amendments to the Italian Constitution and at the same time to assure the electorates participation to the constitutional process. It implied, in fact, not only the establishment of a new ad hoc commission dealing with constitutional reforms, but also minor changes to article 138 of the Italian Constitution, stating rules and limits for any revision to the 1948 constitutional chart. On the one hand, I will enter into the merit, method and content of Letta’s project for constitutional reforms and I will analyse the accusation on the alleged illegitimacy of the bill. On the other hand, I intend to analyse the political and juridical context in which such a debate was taking place in Italy, after the election in February 2013. Interest is focused on the conflict between the Italian President of the Republic and oppositional parties in Parliament. In the specific case, I am arguing for the strong sponsoring and interference of Giorgio Napolitano into the constitutional reform process – a sort of Italian-style Gaullism – to be seen as a provocative, but necessary, attempt to push Italian parties to take responsibility in a situation of deep political and economical crisis.

The debate in Italy on Constitutional Bill no. 813 was one of the last episodes of what has been labelled a constitutional or institutional ‘odyssey’. Until 2013 there had been four attempts to reform the Italian Constitution in its articles concerning the executive and the legislative powers and the Presidency – in 1983-1985, in 1992-1994, in 1997 and the last one under the second and third Berlusconi governments 2001-2006 –, but all of them had been unsuccessful. Each time, the initiated process had the clear intent to overcome some endemic and structural flaws of the Italian political system, such as weakness and inefficiency of the executive, instability of cabinets, too long legislative procedures due to symmetric

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2 For primary sources and documents on all proposals for constitutional reforms, see: Parlamento Italiano, Piattaforma didattica sulla Costituzione italiana, available online at http://piattaformacostituzione.camera.it/4?scheda_contenuto=7 (seen 01.01.2013). The Italian Constitution from 1948 has been amended on minor issues several times, each time with a majority of 2/3 of the votes in Parliament. This paper is only taking into consideration major projects on constitutional reform.
bicameralism and endless bargaining among the parties in Parliament, the latter described as a ‘degenerated consociationalism (consociativismo)’\(^3\), especially with regard to the period 1970-1992. Each time, the declared goal was to reach major flexibility, wider accountability and longer continuity of governments.\(^4\) Lately, the acceleration of the EU’s integration project and the economical challenges from globalization have done such goal a minimal prerequisite in order for Italy to remain ‘on the track’.

After sixty years and until 2013, though, the only relevant changes that had occurred concerned the introduction of decentralisation by Constitutional Law 3/2001 and electoral law, which, however, is not a Constitutional matter. The first electoral reform in 1993 was a consequence of wide public opinion’s mobilisation, after a strong wish to move from a consensual, but inefficient, system to a competitive and more efficient one, with no excuses for under-the-table bargaining. There had, in fact, been a widespread belief that proportional representation had contributed to the malfunctioning of the Italian political system.\(^5\) The electoral reform promoted by Segni in 1993 had a clear ‘anti-hegemonic’\(^6\) or ‘anti-establishment’\(^7\) character, but, given its nature (mixed solution, combining a majority system

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inspired by the Westminster model for 75% of seats in the Senate and the Chamber of Deputies with proportional representation for the remaining 25%), it left leeway for partitocrazia, i.e. the overwhelming power of party secretaries. It succeeded only to a certain extent, with regard to alternation and open competition between two coalitions. However, the Italian political system remained in a state of ‘stable instability’, the condition it was in before 1993. Finally, the party secretaries’ power was strengthened even further through the electoral law promoted by Silvio Berlusconi in 2005 (law nr. 270, December 21, 2005: a proportional system with low electoral threshold, majority premium for the winning party/coalition, without any minimum threshold of votes or seats to be reached, and with fixed electoral lists without preference).

After Election 2013

A reform of the Italian Constitution appeared again on the Italian political agenda soon after election in February 2013, which saw an equal victory of the Democratic Party (Partito Democratico [PD]), the People of Freedom (Popolo della Libertà [PdL]) and Grillo’s Five-star Movement (MoVimento Cinque Stelle [M5S]). During governmental consultations in March 2013, the former PD leader Pierluigi Bersani, whose coalition had won the majority premium for ca. 200,000 votes, launched the idea of a sort of convention for constitutional reforms that was supposed to gather a chosen number of deputies and senators together with experts. This convention was supposed to draft new formulations to the second part of the Italian Constitution concerning the executive, the Parliament and the form of government. Well-known political scientists and jurists like Giovanni Sartori and Stefano Rodotà immediately opposed the initiative. On one hand, they referred to the previous unsuccessful examples of bicameral commissions and, most of all, pointed to the probable unconstitutional nature of a convention, considering that the Parliament has appropriate committees for constitutional affairs. On the other hand, they claimed that priority had to be given to a reform of the

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electoral system, not necessarily linked to constitutional amendments. At that time, one was expecting the verdict from the Supreme Court (Cassazione) on the legitimacy of the 2005 electoral law, following the lawyer Aldo Bozzi’s appeal. Both the so-called ‘majority bonus’, without the minimum threshold of votes or seats having been reached, and the fixed lists without preference were issues on trial.\footnote{In June 2009, three referenda with the intention to modify the law in several points took place, but they did not reach the necessary quorum and were therefore declared invalid. In January 2012, the Constitutional Court vetoed a new referendum for the abrogation of the law. In November 2009, the lawyer Aldo Bozzi sued the cabinet presidency and the Minister of Interior. Bozzi claimed that, after the implementation of electoral law 270/2005, and specifically during election in 2006 and 2008, his voting right had been violated. He pointed out to the violation of Art. 48 of the Constitution, which states that the vote is ‘personal and equal, free and secret’.}

Bersani failed in setting up a coalition cabinet, but the initiative for a new constitutional convention was not abandoned. The initiative simply moved from political leaders to the President of the Republic Giorgio Napolitano. On April 22, 2013, Napolitano was elected President, in his second mandate, by the new parliament. In his speech before the Chambers, Napolitano pronounced clear words on the need to provide satisfactory solutions to ‘the urgent calls for institutional reforms and a renewal of politics and of the parties’\footnote{Napolitano, Giorgio. Speech before the Chambers by the President of the Italian Republic, 22.04.2013. http://www.quirinale.it/elementi/Continua.aspx?tipo=Discorso&key=2700 (seen 08.10.2013).}, in a situation characterized by financial crisis, recession and growing social malaise. Similarly, on the need for the pursuit of ‘certain essential goals – the goals of reforming the political parties and the channels of democratic participation, and of reforming the representative institutions and relations between Parliament and Government and between State and Regions – to be accompanied by a close focus on strengthening and renewing the organs and powers of the State’\footnote{Ibid.}.

In the very same speech, Napolitano expressed a harsh critique of the prevailing attitude of all political forces in Parliament during the former legislature (2008-2013), accusing them of ‘confrontation, feet-dragging, hesitations, calculations, tactical manoeuvring and instrumentalism’.\footnote{Ibid. So the consequence was – he stated – that the dialogue on institutional reforms had remained sterile. In particular, Giorgio Napolitano did not hesitate in emphasizing the failure to reform the 2005 electoral law before the intervention of the
Judiciary, and the failure to make any headway on the reforms pertaining to the second part of the Constitution. Napolitano claimed that such failures were ‘unforgivable’¹⁵. He also reminded that not even the minimum agreement on the institutional reforms reached so far by the parties – the abolition of equal bicameralism – had been concretized. The speech concluded with an open threat: ‘if I find myself once again faced with a wall of deafness like the one I have come up against in the past, I will not hesitate to draw the appropriate conclusions and act accordingly before the entire country’¹⁶. So he clearly linked not only his mandate, but also the very same parliamentary term to a successful outcome of a new constitutional reform process.

Two days after this speech, on April 24, 2013, the young democrat Enrico Letta was appointed Prime Minister by the neo-elected President. At the end of April, Letta was able to set up a grand coalition government with the participation of both the People of Freedom and the Democratic Party, together with Mario Monti’s party Civic Choice (Scelta Civica [SC]) and other minor actors. The Five-Star Movement (M5S), the largest party in Italy out of election 2013, opted for an uncompromised rejection of any alliance in Parliament and remained at the opposition, together with the Northern League (Lega Nord [LN]) and the party Left/Ecology/Freedom (Sinistra Ecologia Libertà [SEL]). One of the first acts by the Letta grand coalition government was to propose a Constitutional Bill (ddl no. 813, June 10, 2013) dealing with the setting up of an ad hoc parliamentary committee for constitutional and electoral reforms (‘Comitato parlamentare per le riforme costituzionali ed elettorali’, hereinafter called Comitato).¹⁷ Constitutional Bill 813 was exclusively a procedural bill. According to the text, twenty deputies and twenty senators were supposed to be chosen among the members of the parliamentary committees for constitutional affairs in the Chamber of Deputies and in the Senate. The presidents of the two parliamentary committees would have joined them (total 42). The competence of the Comitato was restricted to a revision of the articles under Title I (Parliament and promulgation of laws), Title II (President of the Republic), Title III (Government) and Title V (regions, provinces and municipalities) of the

¹⁵ Ibid.

¹⁶ Ibid.

second part of the Italian Constitution, and to a revision of the electoral law. A reform of the Judiciary and justice in general and a reform of the constitutional guarantees (independent authorities; composition and role of the Constitutional Court) were kept out of the law proposal.

The Constitutional Bill (ddl no. 813), signed by the Prime Minister Enrico Letta, the Minister for Constitutional Affairs Gaetano Quagliariello (PdL) and the Minister for Relations to the Parliament Dario Franceschini (PD), was first approved by the Senate on July 11, with a 2/3 majority from the governmental parties (PdL, PD, SC and others) and from the Northern League. On August 1, the bill was passed to the Chamber of Deputies, but after heavy protest from the M5S, the vote was postponed to after the summer holidays. The Constitutional Bill (ddl 1359) was then approved by the Chamber of Deputies on September 10, 2013, again with a 2/3 majority. The governmental parties PD, PDL and SC, the Northern League and minor parties voted in favour (397 votes), while M5S and SEL voted against (132 votes).

Since its conception, the Constitutional Bill 813 provoked sharp resistance on the part of oppositional parties (M5S and SEL), trade unions, a section of the Italian public opinion and notorious constitutional jurists. The protest culminated with a procession in Rome on October 12, 2013, in defence of the 1948 Charter. In fact, the front against Letta’s initiative was large and varied. The daily Il Fatto Quotidiano, most critical of the political establishment over the later years, gathered over 430,000 signatures for a petition against the Constitutional Bill. The petition, promoted by the newspaper’s director Antonio Padellaro, saw the support, among others, by the jurists Gustavo Zagrebelsky, Lorenza Carlassarre and Stefano Rodotà

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(the latter was the M5S candidate to the Presidency in April 2013); representatives of NGOs such as don Luigi Ciotti; trade union leaders such as the FIOMs national secretary Maurizio Landini; prominent artists such as Dario Fò; well-known journalists such as Marco Travaglio and Milena Gabanelli; intellectuals such as Paolo Flores D’Arcais and Maurizio Viroli; relevant exponents from the PD such as Sergio Cofferati, now deputy in the European Parliament.

The arguments against the Constitutional Bill 813 can be divided in three major blocks. First of all, there was a protest against the procedures chosen by the young Prime Minister in order to accelerate a constitutional reform process that in Italy started precisely thirty years ago. The main argument here dealt with the alleged illegality of the bill. Secondly, there was a critique of the supposed contents to be expected from the work of the Comitato. And finally the open sponsoring of the Constitutional Bill by the President of the Republic Giorgio Napolitano was criticized.

Method and procedures

The idea of appointing a bicameral committee in order to amend the Constitution is indeed not new. The first bicamerale (Bozzi Parliamentary Commission), appointed in 1983, had twenty deputies and twenty senators from twelve parties, either experts or influential MPs, gathered to develop proposals for institutional reforms. The second bicamerale (De Mita-Jotti Parliamentary Commission), appointed in 1992, consisted of thirty deputies and thirty senators from all fourteen parties in Parliament. The third bicamerale (D’Alema-Berlusconi Parliamentary Commission), set up in 1997, consisted of thirty-five deputies and thirty-five senators from all fourteen parties, assigned according to parties’ proportional representation. In this regard, only Berlusconi was an exception, when he chose to appoint a very narrow group of Italian politicians from the governing centre-right coalition, to draft the ‘Grand Reform’. The Comitato intended to follow the Bozzi Parliamentary Commission’s model. Another precedent was the Balladour commission, set up by Nicolas Sarkozy in 2008, whose work strongly inspired the constitutional reform later approved by the national French Parliament. As for the mandate, though, it must be noted that the Comitato was supposed to have only consulting and engrossing powers in front of the parliamentary committees for constitutional affairs, while the previous bicamerali had legislative powers. It must be credited to the Letta cabinet that it had an intention to give more centrality and role to the
parliamentary committees, compared with previous experiences with bicameral commissions. However, there were specific aspects in Letta’s approach that attracted fierce criticism and fuelled the debate on the Constitutional Bill 813. Its alleged illegitimacy was the first and main issue.

The Bill intended to introduce an exception to article 138 of the Italian Constitution (title VI, section II, Amendments to the Constitution), on two points. The Bill 813 stated that laws amending the Constitution and other constitutional laws – proposed by the Comitato – were to be adopted by each Chamber after two successive debates at intervals of not less than 45 days, and were to be approved by an absolute majority of the members of each Chamber in the second voting. It was foreseen that the process for the revision of the second part of the Constitution would have concluded within 18 months from the entry into force of the bill. Moreover, the said laws were to be submitted to a popular referendum when, within three months of their publication, such request was made by one fifth of the members of a Chamber or five hundred thousand electors or five region councils, even when the law had been approved in the second voting by each of the Chambers by a majority of 2/3 of the members. The law submitted to referendum were not to be promulgated if not approved by a majority of valid votes.\(^{21}\) Art. 138 states that ‘Laws amending the Constitution and other constitutional laws shall be adopted by each House after two successive debates at intervals of not less than three months....’ and ‘A referendum shall not be held if the law has been approved in the second voting by each of the Houses by a majority of 2/3 of the members’. Criticism focused especially on the former point, with the M5S accusing the governmental parties for inhibiting debate within the parliamentary committees or even shrinking the Parliament’s sovereignty, while the latter, showing Letta’s intention to guarantee the electorate’s participation, was ignored. From a legal point of view, though, it is indeed difficult to argue that the bill represented any legal problem, since it was supposed to be approved by the Parliament according to normal procedures.

Other aspects were also taken up. Both the opposition in Parliament and the spokesmen for the public opinion criticised the limits posed to single deputies and senators to the possibility of presenting amendments and the rule stating that the 42 members of the Comitato could not

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– in case for instance of sickness – be substituted by other members of the parliamentary committees. The M5S insisted in more transparency, asking the government to open an online platform in order to inform the citizens and involve them in the discussion on every single amendment.

Moreover, experts and jurists raised the question on a point not clearly expressed in the text: Would the Comitato engross several constitutional laws to be drafted by the parliamentary committees and approved by the electorate individually, or would it work on a single platform, a sort of package? In the second case, as noted by the president emeritus of the Constitutional Court Valerio Onida, the committees and the electorate would have been prevented by accepting some amendments to the Italian Constitution, but not others.22

Finally, Enrico Letta was criticised for setting up, in June 2013, an informal group of 35 experts with the role as consultants for the government.23 The move was immediately interpreted as the government’s wish to direct the constitutional reform process, in contradiction to the declared intention to increase the role of the parliamentary committees.

Letta’s agenda

In fact, the Letta government had an agenda on constitutional reform. Consequently, the outcome of the constitutional process was another element of concern for the opposition. Important sources here are the Final Document elaborated by the group of 35 experts nominated by Letta, dated September 17, 201324, and the speech before the Chambers by the Minister for Constitutional Affairs Gaetano Quagliariello (PdL), on October 1525. Quagliariello, speaking on behalf of the group of experts, listed four priorities.

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25 Quagliariello, Gaetano. Informativa del ministro per le riforme costituzionali al Parlamento sull’esito dei lavori della Commissione di esperti per le riforme, 15.10.2013. http://riformecostituzionali.gov.it/primo-
The first priority was a reform of the structure and role of Parliament. It would include the abolition of symmetric bicameralism with two options: either a monocratic system or the setting up of a federal Senate including the presidents for the regions. The number of deputies and senators could be reduced to 450 and 200 respectively. A reform of Parliament would probably impose new rules on legislative procedures and a new discipline in the use of decree laws. The abolition of symmetric bicameralism was present in all previous drafts on constitutional reform. However, the parties so far have not shown a high degree of consistency. While governmental parties and the largest ones have always supported a differentiation of functions for the two Chambers and a reduction of MPs, the oppositional parties and the smaller ones have had a tendency to resist both. Positions have changed whenever the parties have shifted their role or dimension.

The second priority for the Letta government was the re-introduction, in Title V of the second part of the Constitution, of the principle asserting ‘national interest’ vis á vis regions and local autonomies. The Parliament would had scrutiny over regional laws that are deemed to conflict with the national interest. Such scrutiny had been established by the 1948 Constitution, but was repealed by Constitutional Law 3/2001 on federalism.\(^{26}\) A reform of Title V was also present in the ‘Grand Reform’ of Silvio Berlusconi and was already at that time the least controversial point. It is in fact evident that devolution in Italy has created a situation of ‘polycentric anarchism’\(^{27}\) that calls for a new set of balance and coordination between state and periphery, in order to avoid interference or conflicts between central and local powers.

The third priority was a reform of the form of government in order to reinforce the executive. That meant a strengthening of the executive power and a reform of the decision-making system. The Letta cabinet’s group of experts worked on two main options: A. Rationalization

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\(^{26}\) In the 1948 text, Title V listed in detail the areas in which the regions were entitled to legislate and stated that the central government had the power to check whether such legislation was in accordance with state prerogatives, constitutional principles or national interests. These lines were cancelled by the 2001 reform on federalism.

of the parliamentary system; B. Semi-presidentialism after the French model. The first option would had involve changes such as the confidence vote only in a single chamber, the introduction of constructive no-confidence vote and the introduction of deadlines for law proposals. The second option would had involve the direct election of the President of the Republic and a reduction of veto powers. Quagliariello presented a third option as well: C. A sort of ‘parliamentary government of the Prime Minister’ based on the clear indication through the vote not only of the parliamentary majority, but also of the leader for the majority coalition. This third option was meant to be a combination of the previous two solutions, in order to guarantee wide representation of all political instances as well as stability and efficiency. Yet, the power of the Prime Minister was also meant to be wider than what was suggested by the Italian Constitution; from setting up the political agenda to appoint and dismiss ministers, and to dissolve Parliament.

A reform of the form of government according to option A. or B. was indeed following the same path taken by the D’Alema-Berlusconi Commission in 1997. At the time, the governing centre-left coalition favoured a rationalization of the parliamentary system after the German model, with a strong Prime Minister (Chancellor) elected by Parliament, who could be replaced by a new parliamentary majority. This parliamentary model leaves the possibility of bargaining and mediation in the hands of the parties, both before and after the formation of any cabinet that needs the support of Parliament; this solution was therefore also favoured by the small parties. The centre-right coalition preferred the French model of semi-presidentialism with second turn, in which a strong President, chosen through direct popular election, shares executive powers with a Prime Minister who commands a parliamentary majority. This presidential model enhances the power of the voters, who have an influence in the formation of the executive; it was therefore opposed by the small parties.

A reform of the form of government according to option C. would had resembled the ‘Grand Reform’ approved in Parliament in 2005, based on the strengthening of the Prime Minister’s role, with relevant changes to the parliamentary system. Berlusconi’s reform conferred on the Prime Minister the power to appoint and dismiss ministers, and to dissolve Parliament. However, it did not allow the opposition to gain governmental power in the case of a vote of no-confidence. It permitted a constructive no-confidence vote, but only when the existing parliamentary majority was not at risk of being overruled. Precisely this point attracted the greatest criticism. Constitutional scholars noted that the reform would had made way for a
sort of ‘absolute premiership’ or ‘Prime Ministerial dictatorship’ as opposed to the system of ‘checks and balances’. Such an innovation, different from both the parliamentary and the presidential model, would had provided an exception to the constitutional arrangements in all contemporary European democracies.\textsuperscript{28} It was also problematic that, in the meantime, the majority led by Berlusconi was voting for a statute giving the Prime Minister and a number of other institutional heads judicial immunity, later declared unconstitutional by the Constitutional Court (decision nr. 24/2004).

With regard to the electoral system, the minister Quagliariello, in May 2013, left the question of the electoral law open, claiming that it was depending on the form of government.\textsuperscript{29} However, in his speech in October, he specified that a ‘parliamentary government of the Prime Minister’ would have presupposed a proportional electoral system, with a high electoral threshold and majority premium, provided the majority party or coalition had obtained over 40\% or 50\% of the seats. Without a clear majority, one would go to a second turn vote between the two major parties or coalitions. In many ways, this electoral system resembled the present one, but it would have re-introduced the vote of preference and it would have had a corrective to the ‘majority bonus’. Apart from technicalities, the opposition was able to register that the government was seriously considering opting for a form of government that was dangerously close to the ‘absolute premiership’ in Silvio Berlusconi’s 2005 reform.

**Giorgio Napolitano’s Sponsorship and Agenda**

The role of Giorgio Napolitano within the constitutional reform process is the third topic that dominated the Italian debate in 2013. We have to make a step back to the last months of his first mandate. In March 2013, as one of his presumably last initiative as President, Napolitano sat up an informal group of four ‘wise men’ (Mario Mauro, Valerio Onida, Gaetano Quagliariello and Luciano Violante) who were supposed to advance some specific proposals on constitutional matters with the aim of improving political participation, efficiency, stability and last, but not least, public ethic. Their final document was ready on April 12, 2013, only a


few days before the end of Napolitano’s first mandate. The most relevant suggestions from the group regarded: A new electoral law (mixed proportional and majoritarian or after the French model; threshold; majority premium); Abolition of symmetrical bicameralism; Introduction of constructive no-confidence vote; Reduction of the number of deputies and senators; Public financing to parties, but with guarantee for internal democratic procedures; Introduction of popular referendum to confirm constitutional amendments. The document also dealt with a reform of the executive that was meant to increase the powers of the Prime Minister after the German model. A comparison between this document and the document elaborated by the Letta government’s 35 experts would easily support the thesis, advanced by the opposition and by a section of the public opinion, that President Napolitano was strongly supporting and even sponsoring the initiative by Enrico Letta, beyond his role as representative figure super partes.

Both Beppe Grillo and the daily Il Fatto Quotidiano fomented a fierce campaign against ‘the king Giorgio’31, accusing him of supporting the ‘unnatural’ coalition PdL-PD, of directing the constitutional process, of inspiring the Bill 813 and of acting against the Constitution. The M5S leader, however, used a much harsher tone and went so far as to announce an impeachment against Napolitano for ‘violation’ of the Italian Constitution, well aware of the fact that such a threat would have no real legal basis.32 Moreover, Grillo repeatedly used the argument that Napolitano’s inner wish was to introduce presidentialism in Italy. On the contrary, in the document formulated by the President’s ‘wise men’, it was advised strongly against both a presidential and a semi-presidential system, and against the direct election of president.


31 Travaglio, Marco (2013). Viva il re! Giorgio Napolitano, il presidente che trovò una repubblica e ne fece una monarchia, Milano: Chiarelettere.

However, notwithstanding the intentions of Napolitano with regard to a presidential or a parliamentary system, it is evident that in 2013 he played a relevant and quite unusual role within the constitutional reform process. There are indeed elements supporting the thesis that the Italian President of the Republic attempted an approach similar to that of Charles de Gaulle in France during the passage from the Fourth to the Fifth Republic, which saw the drafting of a new French Constitution. Also with regard to the political context in Italy in the post-Berlusconi era and in France during the Fourth Republic, I would suggest a comparison between French Gaullism and Italian de facto presidentialism under Napolitano, based also on official declarations from the part of the Letta government’s representatives.33 Such comparison is outside the scope of this article, but it is undoubtedly worth a further analysis.

Parties’ agenda and fluid political constellations

Both Letta’s and Napolitano’s agenda must be seen in relation to different political positions assumed by the parties in Parliament during the summer and autumn of 2013.34 On a number of matters, it was possible to register a high level of consensus among all parties: abolition of perfect bicameralism, reduction in the number of MPs, simplification of parliamentary procedures in order to shorten law-making time, new formulation of Title V defining the powers of regions versus the state central power. Letta’s statement in September ‘Symmetric bicameralism is craziness’35 was really never contested. Even the issue of the setting up of a federal chamber instead of a Senate never met relevant opposition. The political confrontation focused instead on the question dealing with the form of government.

During spring 2013, highly profiled exponents of both the PD and PdL expressed their clear preference for the semi-presidential model with direct election of a President who would be the real head of the executive. It seemed indeed that there was, within the majority, a transversal agreement on the semi-presidential solution, based on a return to bipolarism.


34 For an account of the political context in the specific period, I refer to official declarations from political leaders, either in Parliament, or to the press (Corriere della Sera, Il Fatto Quotidiano, Il Giornale, la Repubblica, L’Unità). Beppe Grillo’s blog has also been consulted regularly.

Arguments in favour, centred on the need to modernize the Italian political system and 'shorten the gap between public opinion and politics', came from Gaetano Quagliariello and Maurizio Gasparri (PdL), as well as from Matteo Renzi, Walter Veltroni, Romano Prodi and Guglielmo Epifani (PD). On the opposite front, the voice of Beppe Grillo through his blog was definitively the loudest against any attempt to move from the parliamentary system. However, resistance against the semi-presidential solution was to be registered within the left as well, from Roberto Saviano to Rosy Bindi, from Gustavo Zagrebelsky to Nicky Vendola (SEL). Apart from propagandistic argumentations launched by Beppe Grillo, such as those referring to the threat that Silvio Berlusconi wished to be a new *Duce*, the opposition against the French model wanted to enlighten, in case of a reform towards a presidential system, the transformation of the President’s role, from institutional figure *super partes* to a head of the majority. Such a reform would inevitably weaken the Parliament. The role of the parties therefore became the essential issue. To those who interpreted such a reform as the only way to contrast the crisis of parties in Italy and their incapacity to represent social demands, to elaborate coherent political projects and to select leadership, the defenders of the parliamentary system indeed answered by insisting on the need, first and foremost, to reform the parties. As stated by Quagliariello, a clear paradox in the Italia case is that ‘the state of crisis of the parties on one hand requires an incisive intervention of institutional reform that can restore their strength and legitimacy, on the other, it constitutes a formidable obstacle to its realization’.


As a matter of fact, the Italian political context became increasingly chaotic during the year 2013. The diagnosis of parties in crisis was confirmed by the high degree of fragmentation and change of course. SEL and the Northern League, right after election, left the coalitions that brought them into Parliament, and went to the opposition. The party headed by Monti, and part of the governmental majority, was split in two. Within the PD, several currents made it increasingly difficult to recognize a common political line. And finally, the conviction of Silvio Berlusconi in August 2013 for fiscal fraud started a process of disintegration from inside the PdL. The only party that remained loyal to itself, was the M5S.

In such an extremely fluid political situation, it was possible to register exactly the same pattern that had emerged in concomitance with previous processes of constitutional reform: a new electoral law became the main topic of political debate, and an issue of fierce confrontation and conflict. The parties within the governmental majority expressed their will to link the electoral reform to a reform of the form of government. This explains the PD’s vote on May 29 against its deputy Giachetti’s proposal to return to the 1993 law. The M5S was the only party that voted in favour, moved by a strong will to abolish the 2005 electoral law. Apparently, both the PD and the PdL seemed to agree on a proportional solution with threshold and second turn, but on specific matters the conflict between the two parties in government became evident: the PdL insisted on the need for a majority premium, provided the majority party or coalition had obtained at least 40% of the seats, but expressed its opposition to the vote of preference. A proportional system with correctives and preferences, but not necessarily with a majority premium and certainly without a second turn, became instead the target for the M5S. Time went by without any specific decision on the electoral law from 2005, in spite of the fact that the Cassazione had required the Constitutional Court to pronounce a verdict on the law 270/2005’s legitimacy.

At the end of October 2013, the crisis of the party system, characterised by both fragmentation and personalised leadership, was described in the following terms by Antonio


Polito: ‘The PD, though it is the most democratic, is an elected monarchy (four leaders in five years, the only party in the world choosing its secretary through a popular consultation). The PdL is a hereditary monarchy. The third pole, the M5S, is an oriental diarchy, with a prophet and a caliph. With today’s parties, and taking election polls into consideration, no electoral system, not even the most majoritarian, would guarantee a solid majority. Whenever a majority would result from the vote, it would split in Parliament a second later, as it happened to the strongest majority in history, the one produced by the vote in 2008 and led by Berlusconi’. 42

Polito was actually in favour of a semi-presidential system, but his argument fuelled the front against Constitutional Bill 813. How could a political caste, elected by less than half of the electorate, in reality self-appointed, even think to amend the Constitution? – asked Barbara Spinelli on Il Fatto Quotidiano.43 Moreover, this caste was going to be declared illegitimate as a consequence of the anti-constitutional nature of the 2005 electoral law. Thereafter, those elected with the scandalous law of 2005 could not be entitled to touch the Constitutional Chart – insisted Cofferati; 44 Also the fact that one political leader within the majority (Berlusconi) had been condemned to either house arrest or social work, while the opposition leader (Grillo) had never been elected and sat outside the Parliament, was a further element of complication.

This was the climate in which the second round of the parliamentary approval of the Constitutional Bill (ddl no. 813-B 45) started with a new vote in the Senate, on October 23, 2013. During the parliamentary debate, the PD and the representatives of the government defended the Bill and clarified some points: the changes to Art. 138 were an exception and not a permanent rule; the referendum would have empowered the electorate’s participation; the

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**Comitato** had only consulting and engrossing powers in front of the parliamentary committees and was not meant to substitute the Parliament; the online platform had been implemented and had made direct popular participation possible (yet, the platform had for the most part remained inoperative, while Grillo’s blog continued to score as the most visited site); constitutional law would have been transmitted to the Chambers, discussed and finally proposed to the electorate through *referendum* on an individual basis and *not* in the form of a common package. In other words, the government had been willing to deal with the minor issues raised by the opposition, but not with those of principle. The M5S and SEL confirmed their opposition against any exceptional violation of Art. 138. The PdL declared its support to the Bill, but lamented the lack of intention to also modify the articles of the Constitution concerning the Judiciary.\(^{46}\) Was that a move in order to send an implicit massage to Letta and Napolitano? Precisely those days, Berlusconi was struggling with the President of the Republic in order to obtain a most wanted, but impossible, amnesty and with its allies in government in order to save his mandate as senator, after the conviction for tax fraud in August 2013. However, the majority of 2/3 of the votes, once again, was reached, with 218 in favour, and 58 against. So the Bill (ddl C.1359-B\(^{47}\)) was passed again to the Chamber of Deputies, but there it was frozen.\(^{48}\)

**The euthanasia of Constitutional Bill 813**

Some major events during the last months of 2013 made it impossible for Letta to continue on the same path indicated by Constitutional Bill 813. On November 16, the PdL exploded and was divided into two political actors: New Democratic Centre (Nuovo Centro Democratico [NCD]) and Forza Italia (FI). The former, led by Angelino Alfano, remained in the governmental coalition, the latter, led by Silvio Berlusconi, left it. On November 27, the Senate expressed its open vote on the question whether the senator Silvio Berlusconi could keep his seat in the Italian Parliament after his conviction for tax fraud. PD, SEL and M5S


\(^{48}\) For a status of the parliamentary procedure, see: [http://parlamento17.openpolis.it/singolo_atto/14846](http://parlamento17.openpolis.it/singolo_atto/14846) (seen 28.12.2013).
guaranteed the majority for Berlusconi’s loss of his right. On December 4, the Constitutional Law declared the electoral law of 2005 unconstitutional. At the same time, it stated the impossibility to simply go back to the 1993 electoral law. For the first time in its republican history, the Italian political system was coping with a case of juridical vacuum, to which there was no provision in the Italian legal system.

On December 8, the young Mayor of Firenze Matteo Renzi won an overwhelming victory at the PD’s primaries and was elected secretary of the Democratic Party. One of his first declarations was an offer of political alliance to the M5S. Only three days later, on December 11, 2013, the Prime Minister Enrico Letta, in his speech in front of the Chamber of Deputies in occasion of a vote of confidence, announced the death of the Constitutional Bill 813. As explained by Letta, the reason behind the decision to stop the second and last parliamentary round was the choice made by Forza Italia to withdraw its support to the Bill.49 Without the numbers from FI, the Constitutional Bill could not obtain the 2/3 of the votes, a prerequisite to avoid a referendum. Letta suggested that the constitutional process could go on in respect of the rules stated in Art. 138 and invited the Parliament to focus on four issues, so far shared by all political forces: reduction of MPs, rationalisation of decentralisation with the abolition of provinces, abolition of symmetric bicameralism and institution of a federal chamber, reform of Title V.

On December 16, Giorgio Napolitano addressed the representatives from institutions, political parties and civil society. In his speech, he renewed his invitation to the Parliament to realize the few constitutional reforms requested by Letta. Once again, the President used harsh words to describe the deep crisis of Italian politics and society, referring to ‘corruption and habit to insult, within political institutions, also at local level, and in the state apparatus, as well as to a diffuse tendency to tax evasion’.50 With regard to the electoral law, he accused the Parliament of unforgivable passivity, rigidity from the part of political actors, continuous conflict, and ‘inexcusable treading of water’, not only in the previous legislature (2008-2013), as he already had pointed out in his speech in April, but also in the first months of the current one.


And once again, he invited all political forces, within and outside the government, to cooperate towards at least a minimal agreement on reforms. Napolitano explicitly addressed both M5S and Forza Italia. The two parties answered by promoting a boycott of the President’s speech in occasion New Year’s Eve, an act that was followed by the Norther League.

**Christmas epilogue**

What are the factors that brought the Letta cabinet to give up the Bill? A misleading propaganda on the part of Beppe Grillo, his party fellows and associations of civil society tried to convince the public opinion on the fact that popular resistance had succeeded in stopping an unacceptable violation of the Italian Constitution. In reality, Letta’s law proposal, in itself legally unquestionable, did not fail because of the opposition in Parliament or because of the protests from society. It would be difficult to argue that the opposition against the Bill, by the M5S and SEL deputies and senators in Parliament, by the newspaper *Il Fatto Quotidiano* and by a section of the public opinion, had any relevant effect on the government’s policy. After all, at the voting in the Senate in October 23, right after the procession in Rome, the necessary quorum of 2/3 was easily reached. What made Letta’s cabinet fail was the split in the PdL and the sudden withdrawal of support in the Chamber of Deputies from the new-old party of Silvio Berlusconi. It is legitimate to link the withdrawal to an important fact occurring in November, i.e. the voting in the Senate that deprived Berlusconi of his mandate and saw the entire PD in common front with the M5S. From that moment on, the most radical elements of Forza Italia won more space and started to dictate a line of conflict against both Letta and Napolitano. Both were accused of having committed a coup against the ‘historical leader of the Italian right’\(^{51}\). At the same time, the election of the popular Matteo Renzi as leader of the PD, and the possibility that he could arrange a new coalition with the M5S or that he could position the PD as the largest one in Italy, gave them reasons to close the ranks and try to go to new election as soon as possible, with the electoral law from 1993.

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From this point of view, the death of Bill 813 must be read according to the very same patterns that contributed to the death of three previous bicameral (1983-85, 1992-94, 1997). Analysts would agree that the main reason for the failure of several reform processes in Italy is that the parties – all of them, i.e. the political class or elite as a whole – have given priority to short-term interests such as staying in power instead of long-term national interests such as the need for a more stable cabinets and more effective rules of decision-making. Especially the small parties exploited all chances to act as ‘veto players’ and blocked or reversed the results of any possible agreement. In other cases, the debate on constitutional reforms was used by oppositional parties to blackmail the government. These patterns are evident, in my opinion, when we analyse the attitude of the PdL’s current that re-organized itself under the leadership of Silvio Berlusconi. One would say: that was the last shot of a dying caiman. Not at all original, by the way. In 1997, after a lively debate, the D’Alema-Berlusconi Commission finally drafted a constitutional reform inspired by the French Fifth Republic model. The draft was quite radical, especially the parts that dealt with the popular election of the President of the Republic and the movement from regionalism to federalism, and it seemed that it would especially please the opposition parties on the right (FI and LN). However, Berlusconi suddenly withdrew from the Commission. The controversial issue, at that time too, was D’Alema’s denial to include a reform of the jurisdictional power in the draft. The draft on institutional reform went to Parliament, but it proved impossible to reach a parliamentary majority. So the debate was abandoned.

If we choose to read the debate on Constitutional Bill 813 through this key of interpretation, there is indeed nothing special to mention, compared to previous attempts to revise the Italian Constitution. However, if we focus on the role played by the President of the Republic Giorgio Napolitano, the analysis opens up to other perspectives. I argue that what was really new and source of concern in the fifth attempt to revise the Italian Constitution – for the period February-December 2013 – was the dramatic escalation of institutional conflict between the President and the major opposition party in Parliament, the party headed by Grillo and Casaleggio.

The conflict between Grillo and Napolitano had deeper roots than the only disagreement on Constitutional Bill 813, though the debate along 2013 focused on the latter. If it had not been

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so, the M5S would have let his guard down as soon as the Bill had disappeared from the governmental agenda. As a matter of fact, the wide front of oppositional voices against Letta and Napolitano, from academic milieus to the press, reduced their attacks as soon as it was clear that Art. 138 was safe. On the contrary, criticism against Napolitano grew more aggressive in the M5S, showing how the resistance to Constitutional Bill from the part of the party was clearly political and not dependent of legal matters. As expressed by Beppe Grillo in his speech on December 31, live on the web and simultaneously with the President’s speech, his party intended to remain standing in frontal opposition against the entire party establishment and against a President who had attempted to ‘violate’ the Constitution. At the end of December, Grillo could even use the verdict by the Constitutional Court to empower his argument: because the electoral law was unconstitutional, so the Parliament elected in February, the President elected in April and the large coalition government that had followed, were all illegitimate. The leader of the M5S called for a new election with the 1993 electoral system, and threatened again with an impeachment against Napolitano. The latter was invited to resign his mandate. Moreover, Grillo went so far as to claim that the Constitutional Court, made of appointed (by the President and by the established parties) judges, who had taken six years to abolish the 2005 electoral law, in spite of evident constitutional flaws and in spite of massive criticism from the public opinion, had clearly demonstrated its political nature and inefficiency. Thus, one could raise question on the legitimacy of the Constitutional Court itself. Grillo, like Berlusconi, had obviously political reasons to wish new election in due time, before the popularity of Renzi could erode consensus to his party. So we can say that his uncompromising opposition to the President was instrumental to his wish to maximize the party’s weight on the Italian political stage.

Until the end of 2013, the Gaullist President Giorgio Napolitano stood in front of, and counterbalanced the anti-establishment party M5S. Based on the results of the February election, which in practice saw three equal winners and therefore no real winner, Napolitano remained convinced that the Parliament resulted from that election had the duty to sit in charge at least until a new electoral law and irrevocable reforms had been approved. New election with the 1993 electoral law, provided that it was approved by the Constitutional Court, would only have produced political stalemate or the same instability. Furthermore,

taking into consideration that the Constitutional Court could have deny a simple return back to the 1993 electoral system, Napolitano could not accept the idea of a Parliament abdicating its role as legislator. As he put it:

The dignity of the Parliament and of the same political forces is protected by not leaving the field to another institution. This would have a supreme authority, but it would not be in charge of giving legislative solutions to issues that are essential for the functioning of the democratic state. It is unacceptable that the Parliament shipwrecks again, in this regard, in a sea made of contradictions and inconclusiveness.54

The Constitutional Court would have been the only supreme authority in Italy that could remain in charge, should the Parliament, the Government and the President have been dismissed as a consequence of the 2005 electoral law’s illegitimacy and without the possibility to go back to the 1993 electoral system. The fifteen judges of the Court would in this case have had the responsibility of writing a new electoral law before calling new election. The consequences, both political and economic, of such a situation were difficult to imagine, since it would had been the first case in history of total abdication of a liberal democracy. The President is the only authority, according to the Italian Constitution, who can dissolve the Parliament. Napolitano’s resistance to do so in 2013 was justified by the need to preserve the continuity of the state and to prevent the country from falling into chaos.55

The two positions represented by Grillo and Napolitano were irreconcilable, though both rooted in the Italian Constitution. While Grillo was seeking a total destabilisation of the system in order to restore the constitutional order and the functioning of parliamentarism, unwillingly helped by Silvio Berlusconi’s hard-liners in Forza Italia, Napolitano warned of ‘destructive tendencies in the Italian political discourse and in the public debate’56. Supported by the majority of the political forces in Parliament, he called for urgent electoral and


constitutional reforms in order to save and reinforce the very same parliamentarism, and in order to avoid, once again, ‘institutional paralysis’\(^{57}\).

**Final remarks** (*to be concluded after debate in Glasgow*)

The analysis of the Italian debate around the Constitutional Bill 813, taken up as case study limited to 2013, enables us to draw some conclusions. In the specific case, I argue that Letta and Napolitano chose a very provocative strategy in order to accelerate the constitutional reform process. Yet, nothing tells for that the outcome would have been different whether the Parliament had started to evaluate amendments to the Constitution according to usual procedures. Important features typical of parliamentary system would have been present anyway, i.e. the tendency from the part of political parties to maximise their position and their power in Parliament at all times. The rigidity of the Italian Constitution and symmetric bicameralism certainly contribute to emphasize this aspect insofar that long intervals between each parliamentary vote favours party bargaining. Napolitano’s initiative was a necessary attempt to push the Italian parties to take responsibility in a situation of deep economic and political crisis. There are no reasons to believe that a different and minimalistic approach by Letta and Napolitano – by for instance promoting few amendments to the Constitution according to Art. 138’s rules – would have made the process easier. As long as any amendment on the table goes into the direction of rationalizing the parliamentary system and therefore limiting the parties’ leeway, we rather have reasons to believe that the very same parties always will resist.

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