

THE REFORM OF ITALIAN BICAMERALISM: THE FIRST STEP

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Abstract

At the beginning of August 2014 the Italian Senate approved a constitutional bill amending 46 articles of the Constitution. The two cornerstones of the reform are the transformation of Italian bicameralism - by means of the transformation of the Senate to a not directly elected constitutional body, designed principally as a place for dialogue between national and regional legislators - and the revision of the allocation of competences between the State and the Regions drawn up by the constitutional reform of 2001, making it more flexible and re-dimensioning the legislative autonomy of the Regions. This essay aims at illustrating and discussing this deep transformation of the Republican Constitution. First, it examines the elements of continuity and novelty compared to previous attempts to change the Italian Constitution in the last thirty years. As a second step, it examines critically the governmental plan and the changes introduced during the parliamentary examination, especially with regard to a) the method of election and the functions of the Senate, b) the implications on the balances among the powers of the State and between the central and local authorities. The article argues that the reform may still change, due to the need of further parliamentary examination and that it even remains to be seen if it will ever see the light of day. In any case, the current constitutional bill is undoubtedly one of the most significant attempts to reform the institutional architecture of the Republic and therefore should be carefully followed in his path.

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TABLE OF CONTENTS:

| | |
|---|----|
| 1. The “great reform”: procedural issues..... | 56 |
| 2. Constitutional reform today: a different design for Republican institutions?..... | 60 |
| 3. The goals of the reform and public debate..... | 63 |
| 4. The bicameral model and the status of senators..... | 66 |
| 5. The new Upper Chamber: a Regional Senate?..... | 68 |
| 6. The Senate’s involvement in legislation..... | 71 |
| 7. The reform of Bicameralism and the division of competences between State and Regions..... | 76 |
| 8. Differentiated Bicameralism, majoritarian democracy, and checks and balances..... | 78 |
| 9. In conclusion?..... | 81 |

1. *The “great reform”: procedural issues*

The “Great Reform” of the Italian Constitution¹ has been on

¹ The literature on constitutional reform in Italy is almost entirely in Italian. For foreign readers, please refer to the following papers: N. Bobbio, *La crise permanente*, *Pouvoirs* 8 (1981); J. La Palombara, *Democracy Italian Style* (1987); D. Hine, *Governing Italy: The Politics of Bargained Pluralism* (1993); G. Sartori, *Comparative Constitutional Engineering* (1994); M. Bull and M. Rhodes (eds.), *Crisis and transition in Italian Politics* (1997); C. Fusaro, *The Politics of Constitutional Reform in Italy: A Framework for Analysis*, 2 *South European Society and Politics* 3 (1998), at 45-74; P. Pasquino, *L'Italie vers la démocratie majoritaire*, *Pouvoirs* 85 (1998), at 63-73; M. Russell, *Reforming the House of Lords: Lessons from Overseas* (2000); G. Cahin, *L'évolution de la République italienne*, *Revue française de droit constitutionnel* 705-720 (2001); L. Pegoraro, *Centralité et déclin du parlement*, in 4 *Pouvoirs* 105-127 (2002); G. Pasquino, *The Italian Senate*, in 8 (3) *The Journal of Legislative Studies* 67-78 (2002); M. Bull, *Parliamentary Democracy in Italy*, in 57 (3) *Parliamentary Affairs* 550-67 (2004); L. Morlino, *Anchors and Democratic Change*, 38 (7) *Comparative Political Studies* 743-70 (2005); M. Bull, G Pasquino, *A long quest in vain: Institutional reforms in Italy*, 30 (4) *West European Politics* 670-91 (2007); M. Bull, M. Rhodes (eds.), *Italy: A Contested Polity*, 30 (4) *West European Politics* 657-943 (2007); M. Cotta, L. Verzichelli, *Political institutions in Italy* (2007); S. Vassallo, *Government under Berlusconi: The Functioning of the Core Institutions in Italy*, 30 (4) *West European Politics* 692-710 (2007); A. Floridia, *Gulliver Unbound. Possible Electoral Reforms and the 2008 Italian Elections: Towards an End to 'Fragmented Bipolarity'*, 13 (3) *Modern Italy* 317-332 (2008); M. Keating, *Second Round Reform. Devolution and constitutional reform in the United Kingdom, Spain and Italy*, LEQS Paper No. 15/2009; C. Fusaro, *Italy*, in D. Oliver, C. Fusaro, *How Constitutions Change. A Comparative Study* (2011), at 211-234; G. Baldini, *The Different Trajectories of Italian Electoral Reforms*, 34 (3) *West European Politics* 644-663 (2011); S. Ceccanti, *Changements constitutionnels en Italie*, in

the political and parliamentary agenda for the last ten or so legislatures².

The leader of the Italian Socialist Party Bettino Craxi, writing in “Avanti!” can be credited with starting the ball rolling on this subject when an article of his was published on 28th September 1979. For him, «a legislature which was born under unfavourable auspices, threatened by the risk of a purely destructive political vote, will be successful if it becomes the legislature of the Great Reform; not sporadic, sectorial and in certain cases badly-planned reforms, destined to end up being disappointing, but a reform which has a uniform logic, uniform principles and is uniform also in its basic orientation»³.

Since then, an increasingly widespread opinion has held that in the Constitution, and above all in its implementation, there are «more *checks and balances* than governmental power»⁴, and that since this affects the whole form of government, it is the latter,

Société de Législation comparée (ed.), *Les Mutations constitutionnelles. Actes de la journée d'étude du 5 avril 2013* (2013), at 169-184; C. Fusaro, *Bicameralism in Italy. 150 Years of Poor Design, Disappointing Performances, Aborted Reforms*, available at http://www.carlofusaro.it/in_english/Bicameralism_in_ITA_2013.pdf; S. Mangiameli (ed.), *Italian Regionalism: Between Unitary Traditions and Federal Processes. Investigating Italy's Form of State* (2014); F. Laffaille, *Chronique de droit politique italien*, *Revue française de droit constitutionnel* 487-493 (2014).

² On the peculiar nature of the Italian debate on constitutional reform, see. M. Olivetti, *Il referendum costituzionale del 2006 e la storia infinita (e incompiuta) delle riforme costituzionali in Italia*, *18 Cuestiones Constitucionales* 111 (2008), which underlines how this debate is characterised «as a debate on the “great reform” of the Constitution, or rather on a constitutional change which is far more incisive than a mere “maintenance” (whether the latter is directed towards making the text consistent and legible, or towards achieving important sectorial reform)», but at the same time without having the purpose of creating a new regime.

³ B. Craxi, *Ottava legislatura*, in *Avanti!*, 28th September 1979, 1, now published with the title *La Grande Riforma*, in G. Acquaviva, L. Covatta (eds.), *La “grande riforma” di Craxi* (2010), at 185-189.

⁴ G. Amato, *Il PSI e la riforma delle istituzioni*, in G. Acquaviva, L. Covatta (eds.), *La “grande riforma” di Craxi* (2010), at 39, who remarks that: «it is very interesting in terms of the changes in collective culture that in the late 70s, saying these things found an almost general consensus, as if the fear of the tyrant, as I called it in those years, had lessened considerably, and people felt the need for a democracy which, apart from being able to create consensus, was also able to decide».

considered as a whole, that must be reformed, not only some parts of it.

A twofold consequence has derived from this. First, both during the lengthiest legislatures and the most stable majorities and in the shortest and most tormented ones, there have been several bicameral parliamentary commissions⁵, government commissions made up of “wise men”⁶, presidential messages to Parliament⁷ and of course a huge quantity of reform projects⁸ which put forward proposals to reform entirely the second part of the Constitution or at least the sections related to the form of government and the territorial autonomy. Secondly, the inevitable difficulty in achieving the “great reform” has on many occasions forced the Italian Parliament to implement “special” procedures, partially failing to comply with what is stipulated in Article 138 of the Constitution.

So, while the bicameral Commission chaired by Aldo Bozzi was set up in 1983 by means of two unicameral orders of similar content, approved by the two Chambers without modifying the constitutional reform procedure, the “De Mita-Iotti” Commission, set up in July 1992, also approved with two motions by the Chamber and the Senate, was subsequently given referent powers from the constitutional law no. 1 of 6th June 1993. These

⁵ The Parliamentary Commission for institutional reforms of 1983, presided by the Right Hon. Bozzi, the Parliamentary Commission of 1992, chaired by the Right Hon. De Mita, then by the Right Hon. Iotti, and finally by the “D’Alema Commission”, established by constitutional law n. 1 of 1997.

⁶ The Committee for Institutional Reform, established by decree by Premier Berlusconi on 14th July 1994 and presided by Minister Speroni and the Commission, set up by Premier Letta by decree on 11th June 2013, presided by Minister Quagliariello.

⁷ The formal message, based on Article 87 of the Constitution, sent to the Houses on 26th June 1991 by President of the Republic Cossiga and object of discussion in the two branches of Parliament on 23rd -25th July 1991.

⁸ Among which, in the three legislatures preceding the current one, the constitutional bill bearing “Changes to Part II of the Constitution”, approved by absolute majority vote by the Chamber in the second reading in 2005 and not confirmed by the electors in the constitutional referendum in June 2006; the unified text approved by the Commission for Constitutional Affairs in the Chamber of Deputies on 17th October 2007 (the so-called “Violante Draft”); the constitutional bill S-24, approved in first reading by the Senate on 25th July 2012 and subsequently rejected during the examination in the Constitutional Affairs Commission in the Chamber.

provisions granted the Commission the task of formulating a complete project of constitutional revision regarding the second part of the Constitution and suspended the effects of procedures foreseen by the Constitution, as well as by parliamentary rules with regard to constitutional reform.

Similarly, constitutional law no. 1 of 1997, establishing the bicameral Commission for institutional reform (“D’Alema Commission”), entrusted the Commission with the task of formulating proposals to reform the second part of the Constitution, partially derogating from the procedural rules established by the Constitution. It also provided for an *ad hoc* regulation for parliamentary examination and the inclusion of a people’s referendum for the reform project.

The constitutional bill presented at the Senate on 10th June 2013 by the Letta Government (A.S. 813) followed a similar trend, but was blocked by the Chamber after being approved in the second voting by the Senate on 23rd October 2013. It aimed at introducing a derogation from the revision procedure established by Article 138 of the Constitution. Indeed, the referent phase was entrusted to a single bicameral body - the parliamentary committee for constitutional and electoral reforms - which was also empowered to examine all the projects for constitutional reform under the headings I, II, III and V in the second part of the Constitution, as well as those regarding the electoral system of the two Houses. There was, moreover, a precise time scale for the main phases of parliamentary works, that were expected to be completed within 18 months as of the coming into force of the bill. Finally, differently from Article 138, the *referendum* of confirmation could be requested even in the case the reform had been approved by a two-third majority vote in both Chambers⁹.

A third constant factor of these last decades is the apparently secondary role played by the Government in its various attempts to revise the second part of the Charter. Even with the significant exception of the reform approved by the centre-right majority in 2005 but which was endorsed by the referendum that took place the following year, the subject of the “Great Reform” has been considered a typically parliamentary

⁹ See A. Pace, *Il metodo (sbagliato) della riforma. Note critiche al d.d.l. cost. n. 813 Sen*, available at www.costituzionalismo.it, who is severely critical.

issue, both as regards the legislative initiative and the subsequent drafting of the text. Only the Letta Government, in 2013 had explicitly tied its own political destiny to the realisation of a programme of constitutional reform¹⁰.

2. Constitutional reform today: a different design for Republican institutions?

More recently, on 8th April 2014 the Renzi Government presented to the Senate an extensive constitutional bill¹¹, made up of 35 articles amending 44 articles of the current text. The two cornerstones of the reform bill are the transformation of Italian bicameralism - by means of a radical change in its set-up and electoral system - and the revision of the allocation of competences between State and Regions, as provided by the constitutional reform of 2001, the trend being to attribute concurrent legislative powers to the State. While the governmental project foresees further and “more precise” revision of the Constitution, it provides for three other important changes. It modifies the rules governing legislation by decree law and their conversion by Parliament,, in order to avoid the most blatant abuses. It strengthens the impact of the Government in the legislative process. Finally, it suppress the National Council of Economy and Labour.

¹⁰ In the case of the cabinet presided by Enrico Letta, the message read to Parliament by the President of the Republic Giorgio Napolitano on the day of his taking oath after re-election was of significant importance. This preceded by some days the nomination of the new Government. The Head of State encouraged Parliament to «make a clear, swift decision on the reform that Italian democracy and society needed without delay in order to survive and to advance», underlining in particular the “unforgivable” «lack of 2005 electoral reform» and the «no less pardonable ... fiasco in relation to albeit limited and targeted reforms of the second part of the Constitution, agreed upon with difficulty and then buried, and it was even never possible to break the taboo of equal bicameralism». The text of the presidential message is available at the website www.quirinale.it/elementi/Continua.aspx?tipo=Discorso&key=2688.

¹¹ Constitutional bill n. S-1429, presented to the Senate by the Premier (Renzi) and by the Minister for Constitutional Reform (Boschi), on 8th Aprile 2014: *Disposizioni per il superamento del bicameralismo paritario, la riduzione del numero dei parlamentari, il contenimento dei costi di funzionamento delle istituzioni, la soppressione del CNEL e la revisione del titolo V della parte seconda della Costituzione*.

A text of this kind can be easily collocated in the permanent constitutional reform process that distinguishes the last thirty-five years of the history of the Republic, but it presents novel elements different from those outlined here.

On one hand, this can be read as a further attempt to change the institutional framework designed by the Constituent Assembly, through a constitutional law that has an impact at the same time on a multiplicity of constitutional norms included in almost all the sections of the second part of the Constitution. In other words, it is not a simple work of “constitutional maintenance” or a sectorial reform, but, rather, a project of deep transformation of the Republican system, especially if it is linked to the electoral reform project approved in the first reading by the Chamber of Deputies on 12th March 2014.

On the other hand, there are elements of discontinuity which deserve to be highlighted. First of all, the choice to concentrate specifically on the reform of bicameralism and regionalism (even if in truth the reform impinges in no uncertain terms on the general balance between powers¹²) would seem to imply an abandonment of the paligenetic myth of the “Great Reform”, or rather of the idea that it is necessary to intervene simultaneously and as a whole on the form of government, the system of territorial autonomy and the system of checks and balances¹³.

A second and by all means no less significant feature of the

¹² As underlined by Giuseppe De Vergottini in the hearing before the Senate on 27th May 2014, «even if the question of the form of government does not appear to emerge directly, there is certainly some consequence. In certain cases even explicit: the provision giving priority registration to the agenda of the Cabinet (new art. 72) clearly indicates the intention to reinforce the Government in the Chamber of Deputies; the possibility to enact the clause of supremacy (art. 117, par. 4) places the Government in a strong position in relation to the Regions. But in general the clarification of the relationship of confidence that is bestowed on the single binomial Chamber of deputies/Government reinforces the latter (even more so if the electoral law were to move in the direction of decisive majority award attributable to the list or the coalition reaching at least 37% in the first ballot or if need be as winners of the second ballot; it should be noted, incidentally, that the ballot of the coalition can only work correctly in absence of perfect bicameralism)».

¹³ On the myth of the “big reform”, see P. Caretti, *L'ennesimo “revival” della Grande Riforma costituzionale in funzione paligenetica*, available at www.constituzionalismo.it/articoli/445/ (8th July 2013).

reform is the choice to follow the ordinary process of constitutional revision. This implies that no “special” procedure is necessary, coherently with what is established by Article 138 of the Constitution. It also implies abandoning the constitutional bill which has already been approved in a second reading in one branch of the Parliament, which foresaw the creation of a Parliamentary Committee for constitutional and electoral reforms.

Finally, an innovative feature is undoubtedly the central role that Government intends to play in the reform process. Quite apart from the obvious rhetorical exaggeration, it is not irrelevant that the Government has explicitly tied its political survival not on a generic aim to “make the reforms”, but on a specific course of institutional revision, outlined in terms of time scales and essential strategy in the keynote address in the Chamber, in order to obtain the vote of confidence by the House. The President of the Council of Ministers, Matteo Renzi, after having in meaningful way informed senators of his will to be the «last Prime Minister to request confidence from this House», highlighted the following features as being the cornerstone of the institutional reform: a) modernisation of the «current Senate, making impossible for it to hold the vote of no-confidence in a Government as well as the power to approve the budget and transforming the post of senator, nowadays the result of a direct election and the grant of an allowance, by the creation of a non-elected regional chamber, like the German model, made up of officials from the Regions, to be given more responsibility over time. There would subsequently be the opportunity of appointment for individuals from the world of academia and culture»; b) «the need to review the exclusive competences of State and Regions and to introduce the possibility for Regions to legislate on any matter that is not otherwise assigned specifically, while at the same time introducing a clause for the possibility for permitting to resort on State legislation on matters which are exclusively assigned to the Regions, when required, due to reasons of economic and legal unity of the system»¹⁴.

¹⁴ Senato della Repubblica, XVII Legislatura, type-written report of the hearing no. 197 of 24th February 2014, document from the Premier Matteo Renzi, available at www.senato.it/japp/bgt/showdoc/frame.jsp?tipodoc=Resaula&leg=17&id=00750049&part=doc_dc&stampa=si&toc=no.

Hence the option of the Government to present the Chamber with a text delimiting the aim and outlining the basic coordinates of the reform, despite the fact that the constitutional reform does not conform to the political orientation of the majority.

3. The goals of the reform and public debate

The Government's plan to reform the Constitution differs from earlier attempts in three important respects: a) the general significance of the reform is concerned (neither "great reform" nor "simple sectorial maintenance"), b) the method (recourse to procedure provided for in by art. 138 of the Constitution, even if with a bill with a broad and heterogeneous spectrum) and c) the role of the Executive (with full authority, at least in the phase of the legislative initiative).

As far as the goals of the reform are concerned, the constitutional bill intervenes primarily on the parts of the Charter where the political class and public opinion have over a considerable period of time come to the conclusion that a reform is essential, that is, the bicameral system and the division of competences drawn up by the constitutional reform of 2001.

In this last respect, there are some meaningful paragraphs from the annual address given by the President of the Constitutional Court on 27th February 2014. It is pointed out that the system of the division of functions «shows increasing signs of inadequacy, with reference to both the criteria of definitions of the subject matter and the tools linking the central State with autonomous territorial bodies» and the need within modern legal orders «for institutions involved in the political decision process, destined to satisfy the need for uniformity and autonomy (which already exists in procedure of the formation of state laws)». From here the Parliament was notified of the «two complementary requirements: on one hand it is crucial to simplify vigorously the criteria of the division of competences, while on the other it attempts to impose the reinforcement of an institutional forum in which to debate, with the aim to give back to politics a more effective means to govern clashes between central and regional government, without having to await any mending and patching

up by the Constitutional Court»¹⁵.

There was broad consensus for the need for a reform on these specific topics in the work of the co-called “wise men committee” which was set up in June 2013, when there was unanimous agreement for the need to get rid of the perfect bicameral system, through “unicameral confidence”, and to review the distribution of legislative powers between State and territorial autonomies, by making it more flexible. No shared hypotheses emerged, instead, with regard to the form of government and the electoral system¹⁶. There was also general consensus regarding further proposals for changes, which will be discussed during the current legislative process: the provision of a precise timing for the bills regarded as urgent by the Government, a rigorous control on the use of the emergency decree and the strengthening of the institutions of participation of the people¹⁷.

There is a general agreement about the need to change these parts of the Constitution¹⁸. This consensus is quite large

¹⁵ Report by President Gaetano Silvestri on constitutional jurisprudence of 2013, available at www.cortecostituzionale.it/documenti/relazioni_annuali/Silvestri_20140227.pdf, p. 2.

¹⁶ See report of the Commission for Constitutional Reform to the Premier of 17th September 2013, available at http://riformecostituzionali.gov.it/public/Relazione_Commissione_Riforme_Testo_def_10ottobre_copia.pdf.

¹⁷ A similar situation can be found in the hypothesis of reform planned thirty years ago; for example the so-called “institutional decalogue” presented by the then President of the Council of Minister Giovanni Spadolini in 1982, foresaw the provision for limits to the recourse of decree laws and the preferential lane for government bills.

¹⁸ The results, published in November 2013, of a public consultation on constitutional reforms promoted by the Government Letta showed a broad consensus in favor of a radical reform of the institutional framework and in particular of the bicameral system. Fewer than 10 percent of the participants were in favor of the maintaining of the current model while the majority were in favor of the unicameral system or of a Senate representative of the local authorities (www.riformecostituzionali.partecipa.gov.it/). These results were largely confirmed by several surveys subsequent to the constitutional bill presented by the Renzi Government. For example, a survey of the Institute of Demopolis dated 1st April 2014 revealed that 76 percent of citizens were in favor of overcoming the perfect bicameralism, while according to an opinion poll of the IPR Marketing of the end of June 2014, only 6 percent considered it appropriate to maintain the current bicameral system.

among political parties and citizens, with regard to the basic plan which inspires the general institutional reform promoted by the Government: to achieve - through the constitutional reform and the adoption of an electoral system that ensures an absolute majority of seats in the elected Chamber to the winning coalition - the rationalisation of the forms of parliamentary government, which reinforces the stability of the Cabinet and guarantees an acceleration of the decision-making processes, first and foremost by means of a revision of the legislative procedure.

The change in the division of powers towards a model that emphasises the central role of the “Governing Power”¹⁹ is not a novelty in the long drawn-out and still incomplete reform process of the institutional framework of Italy. Although the governmental plan is moving distinctly in this direction, it does not neglect - as will be seen later - the need to introduce some antidote against the risk of tyranny of the majority.

The attention - might we say almost the “obsession”²⁰ - for the speed of decision-making is a “child of our times”. The governmental text does not limit itself to the provision of an asymmetrical bicameralism, in the original version not very different from a real unicameralism. The Senate’s participation is for most laws merely possible. As will be mentioned, the governmental text foresees extremely limited terms within which the Assembly may debate amendments to the bills approved by the Chamber (Article 70 (3)). Moreover, yet again in order to speed up the legislative process, it introduces a preferential course of

¹⁹ On the concept of “Governing Power”, see G. Bognetti, *La divisione dei poteri* (1994), at 91.

²⁰ Against such a simplistic view of the relationship between the speediness of the decisional process and the efficiency of democratic systems the words of Massimo Luciani are recalled: «If we still believe (as I personally do) that parliamentarianism is a technique useful to debate between different political opinions, which has to tend towards the identification of a compromised falling point, or if the less we believe that parliamentary confrontation, quite apart from its effective ability to generate compromise, helps the majority to understand the limitations of consensus towards their own legislative options and thus, the risks of their subsequent non-realisation or ineffectiveness, the time-scales of those debates are more of a resource than a hindrance»; M. Luciani, *La riforma del bicameralismo, oggi*, Speech given at the II Seminar of the Italian Association of Constitutionalists “Constitutionalists and the Reforms”, held at the Università degli Studi di Milano on 28th April 2014, available www.associazionedeiconstituzionalisti.it (2nd May 2014), p. 3.

action which is particularly broad for the bills indicated as essential by the Government for the implementation of the programme: for these bills, the Government may request priority inclusion in the agenda, that the final vote takes place within sixty days of the request and once that time has elapsed, the parliamentary vote is “blocked” with no possibility of presenting amendments to the text proposed or accepted by the Government (art. 72, comma 6, which introduces the so-called “certain date vote”).

The specific solutions put forward in the government bill²¹ have been the subject of heated debate. This bill has undergone considerable modifications in Parliament. When

the Senate approved it in first reading (on August 8, 2014), with 183 favorable votes and four abstentions, it endorsed several amendments approved by the Constitutional Affairs Committee or directly by the Assembly. In particular, the Senate modified the basic text as regards the distinguishing aspect of the reform, that is the set up and functions of the Senate, by outlining a balance between the two Houses with less of an imbalance in favour of the representative Assembly. From this perspective, the references of this paper will refer to the text approved by the Senate, pointing out the aspects of greatest distance with the original bill.

4. The bicameral model and the status of senators

The main goal of the government plan to reform the Constitution is, as noted earlier, to move away from the model of the equal bicameral system adopted by the Founding Fathers. According to this plan, the Senate will be transformed into a constitutional body acting as «a link between the State and the group of local authorities and as a guarantor for the balance of the institutional system»²².

This goal can be achieved, first and foremost, by granting solely to the members of the Chamber of Deputies the function of representing the nation, while the Upper Chamber - given the name in the original project of “The Senate of Local Authorities” and now again “Senate of the Republic” - is entrusted with the task

²¹ Government bill No S 1429, presented to Parliament on 8th April 2014 (it is the so-called “Renzi-Boschi” document).

²² Report that illustrates the government bill No S 1429 (Author’s translation),

of representing the local (regional, municipal) institutions (art. 55). Accordingly, it is only the Chamber of Deputies that has the general political representation, the function of political direction and control on the executive power and the relationship of confidence with the executive.

An institutional change of this kind has significant consequences on the status of senators. The text - both in its original version and in the one amended by the Senate - provides that the members of both the Houses may not be bound by any mandatory instructions, considering the nature of the Senate as a body which is representative of the local institutions in its entirety, rather than conceived as an expression of the individual local governments, as in the German model²³. A choice of this kind was natural for the Senate depicted in the text presented to the Chambers, where a balance of representation between Regions and local councils was predicted and a significant number of “wise men” nominated by the President. This would seem to be less predictable in the event that the Senate were made up almost exclusively of elected members of the regional councils, as the bill approved by Senate provides. In this case, it might have been more consistent if the model of territorial representation followed the hypothesis that «the delegation from every region..... expresses its vote as a unit, pondering its importance depending on the number of members, so that the final result reflects the general interest of the people of that region, party-political leanings prevailing, also by encouraging internal deliberations»²⁴.

The theoretical difficulties in defining the constitutional position of the Upper Chamber also emerge with regard to the issue of immunity. What is controversial is not the choice to keep the guarantee of immunity for all parliamentarians with respect to

²³ In this perspective, it has been observed that the maintenance of the prohibition of mandatory instructions also for senators would constitute a break in our constitutional history insofar as there would be a default «in the reference, historically decisive to the relationship between national representation and free parliamentary mandate»; C. Martinelli, *Le immunità dei senatori e la natura del nuovo Senato*, in www.confronticostituzionali.eu (24th June 2014).

²⁴ V. Onida, *Senato come assemblea delle autonomie. Non tutte le Regioni hanno lo stesso peso*, in *Il Corriere della Sera*, 18th March 2014, p. 34. Similarly R. Bin, *Coerenze e incoerenze del disegno di legge di riforma costituzionale: considerazioni e proposte*, available at www.forumcostituzionale.it (22nd April 2014).

the opinions expressed or votes cast in the performance of their function. What is at issue is, rather, whether the prerogatives provided by Article 68 (2) and (3) of the Constitution, in defence of personal liberty and confidentiality of communications, should be extended to the members of the reformed Senate. The initial choice to reserve such prerogatives solely to the members of the Chamber of Deputies, quite apart from the reasons of political opportunity that may have inspired it, seemed to be in line with the idea of a Senate which represents regional and local institutions and is thus composed by members of local and regional authorities. The decision taken by the Senate to restore the guarantees of immunity is instead based on a very different premise, that is to say that the new Upper Chamber will truly be a “branch of Parliament”. As a result of this, Deputies and Senators must enjoy equal guarantees. Nevertheless, the equality of treatment between parliamentarians ends up creating a differentiation in the system of immunity regarding regional councillors and mayors between those that are senators and those that are not.

Even the clearly populist-oriented decision to deprive senators of the right of indemnity provided for by Article 69 of the Constitution, granting them emoluments only for the local position held by them, is consistent with the very asymmetrical bicameral system outlined in the original text; it is, however far less logical in its strengthening of competences in the Upper Chamber as agreed in the amended text.

5. The new Upper Chamber: a Regional Senate?

The part of the draft constitutional bill that has been more amended is the one that concerns the set-up and the system of election of the Senate (articles 57-59).

In the original plan the “Senate of the local authorities” had a hundred and twenty-two members, representing the local institutions. The twenty-one presidents of Regions or autonomous provinces and the twenty-one mayors of the capital cities were members by right. Moreover, forty regional councillors elected by the regional assemblies were also part of it, along with forty mayors elected by an electoral board composed by the mayors of the Region. Equal representation was established in all the Regions, from Valle d’Aosta to Lombardy and an equal presence

of regional representatives and mayors. Furthermore, the President of the Republic could appoint up to twenty-one “illustrious citizens” who would hold office for seven years.

The new text approved by the Senate establishes a “Senate of the Republic”²⁵, whose composition differs radically from that just illustrated. The choice of an indirect election of the Senate remains but the assembly is envisaged as much more homogeneous, reflecting the regional communities. There would be a hundred senators, ninety-five of which would be representatives of local institutions and only five nominated by the President of the Republic, including life senators still in office (but not the former Heads of State, who are life senators by right). The ninety-five senators would be elected by regional councils with proportional representation, seventy-four of which among their own members and twenty-one among the mayors. The division of the constituencies is not equal insofar as the less populated Regions and the provinces of Trento and Bolzano are over-represented as they have the right to at least two senators, one of which is a mayor, while the bigger Regions should have at the most seven or eight.

If we compare the new text with the initial one, it soon becomes evident that there are not just changes in the “dosage” among the different components of the Senate, but a change in the “philosophy” which underpins the government bill. For sure, the role that it left to the Senate was not limited to a link between the State and the Regions and the safeguarding of their competences. Even in the context of a Senate which considered as a whole would be weaker than that which we have inherited from the Constitution, the Upper Chamber would have been entrusted with the task of guaranteeing the correct functioning of Italian

²⁵The text takes up again the actual title “Senato della Repubblica”, embracing a suggestion by Massimo Luciani who claims - starting from the current article 114 of the Constitution according to which “ The Republic is composed of the Municipalities, the Provinces, the Metropolitan Cities, the Regions and the State” - that «Since all the territorial entities of the political community are united in the Republic, from the smallest to the State itself, to keep the old title would mean to highlight that the essential function of a Senate while elected directly but being “regionally based” could end up being not so much the agency (“rappresentanza”) as the representation (“rappresentazione”) of the regional interests at the level of state institutions (M. Luciani, *La riforma del bicameralismo, oggi*, cited at 19, 10).

institutions, a task that is suitable for a body of “mixed” set-up. The participation on equal footing with the other House in any further constitutional reform, the power to appoint two constitutional judges, the participation in the election of the President of the Republic and of a third of the elective members of the High Council of the Judiciary, the possibility to oblige the Chamber to re-examine bills already approved, no matter the issue: all this serves to define a second Chamber with a role of “guarantor” whose primary job is to healthily curb the executive power, especially in the context of a growing majoritarian trend.

In this light, it did not appear unreasonable to keep equal representation of Regions and municipalities within the Senate, «reflecting the structural features of the Italian local system, its strength being the communal identity»²⁶. Above all, despite widespread criticism²⁷, it was reasonable to include a “deserving aristocracy” and thus the presence among senators of a significant number of individuals chosen on the basis of their high level of culture and skills that should integrate local representation and at particular times encourage choices which are more carefully considered²⁸.

The reasoning behind a “mixed” set-up has more impact in the case that Parliament decides to give more power to the Senate in the legislative process, to give it back the power of enquiry at least regarding matters of local autonomy and bestow on it other functions of control and guarantee, such as the evaluation of the activities of public administration and public policies, the control of the execution of State laws and the advice on appointments made by the executive branch.

In this perspective, it is hard to understand the choice made by the Senate, in favour of a composition that drastically reduces the component of the local council and the senators nominated by

²⁶ F. Bassanini, *Prime riflessioni sulla bozza di riforma del bicameralismo e del Titolo V del Governo Renzi*, 6 *Astrid Rassegna* (2014), at 5.

²⁷ Many objections have been raised to the idea of a Senate made up of a quota of “experts” without a democratic legitimation and even more to the proposal to grant one single person, be it the President of the Republic, the power to nominate twenty-one senators and therefore to influence the direction of the new Chamber; for all, M. Luciani, *La riforma del bicameralismo, oggi*, cited at 19, 6-7.

²⁸ In this sense, C. Melzi d’Eril - G.E. Vigevani, *Per un Senato previdente*, in *Il Sole 24 Ore*, April 13th 2014, at 37.

the President. A chamber represented almost exclusively by the Regions determines, in fact, a redefinition of the constitutional role of the Senate, which is designed principally as a place for dialogue between national and regional legislators and less as a “counter-power”, with the job to contain political power within the confines provided for by the Constitution.

At this point there is a risk of having a Senate that would end up playing its role on the central-peripheral axis and, as observed by Gustavo Zagrebelsky, a former President of the Italian Constitutional Court: «it would be an internal expression of a single political system which needs to solve internally questions of essentially administrative nature, [...] a body of negotiation of financial resources and portions of public functions in a sort of *do ut des* which today can be found in the two “Joint Committees” (“Conferenze paritetiche”)»²⁹

6. *The Senate's involvement in legislation*

The “new” Senate is expected to carry out very different, much more limited functions than it does today, once it is no longer elected by the people and assumes the function of representation of regional and local authorities.

As far as legislation is concerned, the governmental bill and, albeit to a lesser extent, the text adopted by the Senate, on the whole confers the Upper House with a marginal role, even in matters regarding the interests of the local institutions which the House is called upon to represent.

It provides for the preservation of equal bicameral procedure only for constitutional laws or constitutional reforms and, subsequent to the changes made during the work of Parliament, for the matters referred to in Articles 29 and 32, second paragraph, of the Constitution) ⁽³⁰⁾ and for laws regarding the protection of linguistic minorities, the implementation of constitutional regulations on matters of referendums and the

²⁹ Such was the letter sent to the President of the Constitutional Affairs Commission of the Senate on 4th May 2014, on occasion of the hearings regarding the constitutional bill no. S-1429, available at www.senato.it/Leg17/1122?indagine=43.

³⁰ This concerns family law, marriage and health treatment: see Article 55 (2) of the text approved by the Senate.

authorisation for the ratification of European Union treaties. It also provides for those laws regarding the regulation of local bodies, for the State legislation concerning the fundamental principles in matters of the electoral system and the ineligibility and incompatibility of regional bodies, as well as in other cases provided by the Constitution.

Not included among the bicameral laws are the electoral systems of the Chamber and the Senate, since the Commission of Constitutional Affairs rejected an amendment to this regard. This choice has been controversial, insofar as the provision for ordinary procedure does not give any stability to the electoral law, which could be easily modified by the political majority. The particular importance of electoral legislation is, nonetheless, acknowledged in another amendment approved during the parliamentary process, where it is foreseen that the laws that govern the election of the members of the Chamber and the Senate may be subjected to preventive judgement of constitutional legitimacy on the part of the Constitutional Court before their enactment, on the request of a consistent parliamentary minority (Article 73 (2))³¹.

Apart from the relatively few examples where legislation is carried out collectively by the two Houses, the laws (Article 70 (2) «are approved by the Chamber of Deputies»). In this way, the importance of this Assembly is endorsed, in line with the choice to bestow the self-same Chamber with the responsibility as the sole trustee of national representation, entitlement of the confidence relationship and public policy. The participation of the Senate as regards legislation is clearly reduced³².

³¹ In the same perspective of the involvement of the Constitutional Court in the control of the uniformity of the elections, the legislator would have done well to introduce some changes in the institution of the control of the credentials of its members (art. 66 of the Constitution), by granting the Court the exclusive task on the subject or at least a role of judge of second instance to parliamentary decision; for a suggestion on this, see the report by Giuditta Brunelli published in the in-depth analysis attached to the report of the Commission for Constitutional Reform of 24th October 2013, available at <http://riformecostituzionali.gov.it/documenti-della-commissione/relazione-finale.html>.

³² See B. Pezzini, *La riforma del bicameralismo*, Report given at the II Seminar of the Association of Italian Constitutionalists “Constitutionalists and Reforms”, held at the Università degli Studi di Milano on 28th April 2014, available at www.associazionedeicostituzionalisti.it (2nd May 2014), p. 8.

More precisely, the final decision lies with the Chamber of Deputies, but the Senate may intervene both in the initial phase of legislation and after the approval of a bill on the part of the elected Assembly, assuming the function of “cooling down”³³, being able to propose changes or suggestions that the Chamber may accept or reject.

Indeed, as far as the power of initiative is concerned, each senator (like each MP) has the power to present a bill in the Chamber of Deputies on any matter, even if it is not of regional interest (Article 71 (1)).

If this initiative is exercised by the Senate by an absolute majority, the Chamber shall make its pronouncement within six months from the resolution of the other branch of Parliament. As regards the approval phase of the bill, the reform project establishes that the Senate may intervene in all legislative processes with the role of “Chamber of Contemplation” but it has no power of veto, except in the few issues left in the sphere of equal bicameralism.

The legislative procedure established for the possible passage to the Senate is not particularly complex and, as already noted, is characterised by its acceleration in the decision-making process: each bill examined and approved by the Chamber of Deputies is necessarily passed on to the Senate; the examination on their part is not automatic but takes place if one third of its members requests it within ten days. In this case the Senate may deliberate proposals for change in the following thirty days, after which the Chamber of Deputies makes its pronouncement (Article 70 (3)).

With a Senate which is the expression of local authorities, if bills concern issues of particular importance as far as the systems of regional or local autonomies are concerned, the amendatory proposals by the Senate may be disregarded by the Chamber through a final majority vote of the members (Article 70 (4)), something which is not easily achieved even with the electoral system under examination by Parliament at the moment, which would guarantee a winning coalition with a slightly greater number of seats than an absolute majority.

³³ For further remarks, see A. Morrone, *Cento, non più di cento*, available at www.rivistailmulino.it (23rd June 2014), at 1.

The same “reinforced” procedure applies to the law laid down in Article 81 (6), which defines the content of the budget law and the one which establishes the forms and deadlines for the fulfillment of the obligations arising from Italy to EU. Similarly, for the budget law, regarding the matters provided for by the fourth paragraph of the Article 70, in the eventuality that the Italian Senate were to decide with an absolute majority of its members, if the Chamber is not in agreement it must also vote with an absolute majority (Article 70 (5)).

The new Senate would be vested with a highly important role, i.e. to act as a link with the institutional bodies of the European Union³⁴: it would take part in direct decision-making both from the outset of the law-making process and in the carrying out of the European Union acts (Article 55 (5)).

In the perspective of a Senate guarantor of the proper functioning of the public machine, it carries out the tasks of verifying the implementation of the State legislation and the evaluation of public administration and public policy and helps to give advice on the appointments which belong to the competence of the Government (Article 55 (5)).

In accordance with this idea of the “Assembly of Contemplation”³⁵, to borrow a famous quotation from Walter Bagehot³⁶ who so cleverly summarised the powers of the sovereign, the latter has, above all, the power *to be consulted, to encourage and to warn* - the Senate may set up enquiries on matters of public interest concerning territorial autonomies, carry out fact-finding activities, as well as make comments on acts or documents even while they are being examined in the Chamber of Deputies.

The bill, it has been said, places the Senate in a clearly subordinate position to the elected Chamber. Sometimes it even seems to oust it from the decision-making process: one case in

³⁴ On the potential of such a clause in the different phases of the formation of the law of the Union, turn to F. Clementi, *Non un Senato “federale”, ma un Senato “federatore”. Prime note sul disegno di legge di riforma costituzionale del Governo Renzi*, available at www.confronticostituzionali.eu (22 aprile 2014).

³⁵ Against, nevertheless, G. Salerno, *Il progetto di riforma costituzionale del Governo Renzi: qualche osservazione preliminare*, available at Federalismi.it, 8/2014, at 9, according to whom the new Senate «would have a somewhat indefinite role: it would not be an Assembly of Contemplation, only being able to postpone by a month the predominance of the will of the Chamber of Deputies».

³⁶ W. Bagehot, *The English Constitution* (1867), at 75.

point is the power to declare a state of war, which the text attributes as sole responsibility of the Chamber of Deputies along with, according to a reasonable interpretation³⁷, laws of amnesty and pardon and authorisation for ratification of international treaties, with the exception of the Treaties relating to Italian membership at the European Union (and, according to the original text, even the laws of the legislative delegation). Indeed, the text itself and some indications which emerge from the accompanying reports would seem to exclude the Senate from any intervention regarding these matters³⁸. The reasoning behind this exclusion may be found in the opinion that such laws are basic acts of pure politics which are collocated closely within the realm of Chamber-Government confidence.

Such a text would certainly imply a change of not irrelevant significance: it would introduce into the Italian system veritable “unicameral laws” that the Senate would not even have the power to debate or propose changes. Objections have been made that such provisions «may be interpreted as being a pure and simple adaptation of the same text of reserving the exclusive right to the Chamber to “approve laws”, as provided by the new Article art. 70 (2), of the Constitution», also when considering - before the amendments approved by the Senate - the «clearly absurd insertion in the category of the “unicameral” laws and also of the laws of legislative delegation»³⁹ (especially if the delegation concerns issues -very few- which are legislated collectively by the two Chambers).

The second theory seems more convincing, in that for all the laws which are not legislated by the two Houses, the Senate may intervene in the formative procedure but the Chamber of

³⁷ G. Salerno, *Il progetto di riforma costituzionale del Governo Renzi: qualche osservazione preliminare*, cited at 34, p. 8.

³⁸ The draft constitutional bill provides that «Amnesty and pardon may be granted by a law which has received a two thirds majority in the Chamber of deputies» (Article 79 (1) and «the Chamber of deputies shall authorise by law the ratification of international treaties ..» (Article 80). The accompanying governmental report to the bill is clear in affirming its intention to reserve legislative competence on this subject to the Chamber of Deputies.

³⁹ G. Puccini, *La riforma del bicameralismo in Italia nella XVII legislatura: dalla relazione dei “Saggi” alla proposta Renzi*, available at http://www.astrid-online.it/Dossier-r/Studi-ric/Puccini_ASTRID-rif-cost-7-maggio-2014.pdf (6 maggio 2014), p. 30, note 76.

Deputies has the sole responsibility for the formal act. So, it would seem correct to believe that the law of authorisation of the ratification of treaties must follow the procedure prescribed by Article 70 (and the following ones). of the new text. There are more doubts as regards amnesty and pardon; indeed, it does not seem reasonable that the Senate may propose changes (with a simple majority) of a text deliberated in the Chamber by a two-third majority vote of members, and then it is not clear how large the majority should be in the Chamber in its non-agreement of the amendments proposed by the Senate. There is still the chance for clarification by the legislator during the parliamentary examination.

7. The reform of Bicameralism and the division of competences between State and Regions

The reform of perfect bicameralism lies at the very heart of all the other changes proposed in the constitutional reform bill - it is the first domino in the project of institutional innovation. The radical reform of the title V of the second part of the Constitution and in particular of the criteria regulating the division of legislative competences between State and Regions is inextricably linked to the creation of a Senate representing regional authorities.

The move from a «system of rigid spheres of authority “governed” by the Constitutional Court» to «a system of flexible spheres of authority “governed” by the involvement of the Senate»⁴⁰ has a sort of precondition, that is to say the existence of an institutional juncture between centre and periphery, like the Upper Chamber foreseen in the reform project. The participation of local authorities in the legislative procedure at national level is the political price of re-dimensioning the legislative and administrative autonomy of the ordinary Regions⁴¹ and of the

⁴⁰ Hearing of Professor Augusto Barbera before the Constitutional Affairs Committee of the Senate of 27th May 2014, p. 7. In this text on page 2, Barbera highlights that «the main advantage of the government text is that of having linked the bicameral system reform to that in Article V».

⁴¹ For the Regions having a special legal status the governmental text does not provide for any immediate change, but only a postponement for future modifications of the respective fundamental rules, on the basis of agreements with such Regions.

return of many legislative and regulatory duties to the State⁴². The constitutional bill does indeed eliminate concurrent legislation and returns to the exclusive legislative power of the State a significant number of matters assigned to the Regions by the constitutional reform of 2001 (Article 117 (2); in particular it deals with matters concerning inseparable interests of national importance such as «strategic infrastructures, transport and navigation networks» and «communications». Exclusive legislative powers would remain the domain of the Regions in the issues listed in Article 117 (3) as well as in all the matters that are not expressly covered by State legislation. However, the reform introduces as a closing rule of the system, a » -taken from the model in Article 72,2 in the Basic Law for the Federal Republic of Germany - under which on proposal of the Government, state law may intervene in issues which are not necessarily its responsibility, when the safeguarding of Italian juridical or economic interest or the defence of national interest are in question (Article 117 (4). As far as regulatory powers are concerned, the principle of symmetry between regulatory and legislative jurisdiction of the State and the Regions remains, except in the case of delegation from the State to the Regions. The abolition of any reference in the constitutional text to the provinces is an obvious sign of a reduction of local autonomy.

Therefore, there is without any doubt an about-turn insofar as «there is an obvious centripetal trend in the dynamics of decentralisation»⁴³. The prestige that the Senate is able to obtain will be decisive in building a balanced relationship between centre and periphery. To this regard, the criteria for the set-up of the new assembly does not seem to ensure the necessary authoritativeness to carry out effectively its role of mitigation in the strong push for centralisation, born of the severe crisis of Italian regionalism.

⁴² This is reflected also in the measures taken to comply with the anomalies emerged during the last years and which have limited regional autonomy. It limits the incomes of regional bodies and forbids exchange of reimbursement or transfer to groups in the regional councils.

⁴³ B. Pezzini, *La riforma del bicameralismo*, cited at 31, 4.

8. Differentiated Bicameralism, majoritarian democracy, and checks and balances.

The text under examination in the Parliament provides for further changes that have a bearing on the election and the powers of the President of the Republic, the institutions of direct democracy, the source of law system as well as on the existence of a body of constitutional relevance, the National Council for Economics and Labour designed by Article 99 of the Constitution that the bill aims, not without justification, to abolish.

Interventions of this kind, on first reading lacking organicity, seem to acquire a certain method when considered in the light of the option favouring a bicameral system with a Senate representing local authorities.

On the one hand, indeed, the move towards a majoritarian form of government - the result of the setting of the policies within the Chamber of Deputies-Government sphere and the strengthening of the executive power in Parliament - has led to the search for suitable checks and balances.

On the other hand, the choice to make the second Chamber a representative body for territorial institutions has prevented the path for a “Senate of Guarantees”, to which the function of limiting the power of the majority is assigned and of guaranteeing the autonomy and pluralism of the bodies out of the sphere of government politics.

In other words, this Senate which is an expression of regional institutions and to a considerably less extent of the Councils, does not have effective legitimacy to act outside the matters regarding the relationships between the State and local authorities.

So, the question arises whether a body made up of regional councillors and mayors appointed by the Regions can be entrusted with a power to decide about constitutional reforms which is equal to that of the elected Chamber and can appoint two constitutional judges. Nor is it clear how senators will take part in the election of members of the High Council of the Judiciary. It would have been extremely difficult to grant the power to preventively submit a law to the Constitutional Court or to nominate members of independent administrative authorities, as it has also been proposed.

In this respect, in the course of parliamentary examination some corrective measures have been introduced to reduce the risks of an overflow of the majority and to endorse the value of the institutions of direct democracy, even as regards counteracting the power of the majority.

Checks and balances are also necessary, first and foremost with regard to the rules concerning the election and the powers of the President of the Republic. It was agreed during the examination in the Constitutional Affairs Commission that the quorum for the election of the Head of State should be raised: up to the fourth ballot it is necessary to have a two-third majority of the “big electors”⁴⁴, and from the fifth to the eighth three-fifths; only from the ninth ballot an absolute majority is required (Article 83 (3)).

As far as the functions are concerned, the text established for the deferment of thirty days of the deadline for the transposition into law of a decree law, if the Head of State requests that the Chambers deliberate again. Thanks to this innovation the President may return a conversion law to the Chambers without this power being transformed into a veto, as happens today. Recalling Augusto Barbera’s suggestion⁴⁵, the Head of State is granted the power to reject any law selectively, and to ask for a new deliberation even if it is limited to specific items. The plan on the whole would seem to strengthen the power of deferment, making it a tool of surgical checking of the law as opposed to the current extraordinary measure and maybe it would act as a “formal dialogue” between the legislator and the President.

The regulations that aim to “reinvigorate” the institutions of popular participation provided by the Constitution would serve to counterbalance the “tyranny of the majority”, especially after the amendments passed during the parliamentary debates, which resolved some contradictory aspects of the text approved by the Commission.

On the subject of popular legislative initiative, the number of signatures for the presentation of a new bill has been raised to

⁴⁴The election is attributable only to members of the two Houses; indeed, Parliament in ordinary session is no longer integrated by regional delegates, given the new composition of the Senate.

⁴⁵ A. Barbera, hearing before the Constitutional Affairs Committee of the Senate on 27th May 2014, p. 2.

150,000, but the guarantee that it will be discussed and subject to a final vote by the Chamber, in accordance with parliamentary rules has been introduced (Article 71 (2)).

Even the new features of referendum are of the utmost importance. As far as the most typical referendum, that is used to abrogate legislation, the Senate introduced one change, but really significant. It provided that, if the proposal of popular referendum is signed by at least 800,000 electors, the threshold for the validity of the referendum (*quorum*) is no longer assessed with regard to the number of those who have the right to vote but to the number of those who took part in the last general election. In this way, the text introduces the principle of “equality of arms” between supporters and opponents of a referendum, lowering and making more flexible the threshold. Those who are aware of what has happened politically over the last decades will have no difficulty in understanding the historical importance of such an innovation: it weakens the use of the tactic almost always successfully employed by the opponents of the abrogation of a law, consisting in encouraging abstention rather than a vote against the proposal, as happened in almost all the referendums that have taken place since 1991 up to the present days.

In sum, an institutional policy emerges from the text adopted by the Senate. This policy strengthens participatory tools and brings the abrogative referendum back to its original function as a tool of opposition, available to minority groups which differ from the parliamentary opposition; it should thus be a guarantee against the legislative power.

It can be glimpsed, also, an opening, albeit conservative, toward the use of referendum in a “proactive” function: Article 71, last paragraph, introduces a *renvoi* to a constitutional law, having the task of establishing “conditions and effects of popular law-making and consultative referendum, as well as other forms of consultation, including social groups”.

Other amendments introduced by the Senate can be seen as rebalancing elements in the majority dynamics that innervate the government plan for reform. The provision to bestow to the Rules of procedure of the Chambers the safeguarding of the rights of parliamentary minorities is also moving in this direction. The underlying idea is to ensure an appropriate constitutional basis for the “statute of the oppositions”. Similarly, the procedure of

priority examination, with a vote on a defined date, as mentioned in paragraph 3, is precluded for in the case of bills on constitutional matter and on the other “bicameral” bills, on electoral matter, on ratification of international treaties and in case of the bills for which the Constitution provides a qualified majority. For these bills, the ordinary procedure must be followed.

It is precisely the introduction of the “certain date vote” aimed at guaranteeing a faster process for the Government in the approval of bills which are held to be essential for the carrying out of its programme that has created the opportunity to intervene in the constitutional rules on decrees having force of law in order to contain the use of this source of law within reasonable physiological limits. So, it is the Constitution - and not only an ordinary law - to provide that decrees law cannot regulate constitutional and electoral matters, delegating delegation, ratification of international treaties and the approval of budgets and accounts, nor can they reiterate provisions adopted by decrees which have not been converted or regulate the legal relations arisen from the rejected measure. They cannot also reapprove laws containing norms which have been declared unconstitutional because of defects which do not regard the process. Besides this, giving importance to the principles outlined in constitutional jurisprudence that the decrees must contain measures of immediate application and specific content, they must be homogeneous and correspond to the title, and other provisions not pertinent to the object or the aims of the decree law may not be approved in the course of examination of the conversion bills.

9. In conclusion?

It is a vain exercise to draw conclusions on a bill which is still in the processing phase as well as being the object of big changes and which is most likely destined to be further modified in quite a significant way during the examination by the Chamber of Deputy. It even remains to be seen if it will ever see the light of day.

Some remarks may be put forward in synthesis, above all regarding the novelties provided in the text approved on 8th August 2014 by the Senate.

The first point that emerges is that this latter text is of

broader scope, made up of 40 articles instead of 35, amending 46 articles of the Italian Constitution, and it intervenes in further issues of great importance, such as the method of election and the powers of the President of the Republic, the abrogative and law-making referendum and the function of the Constitutional Court. In spite of this enlargement of scope, there would seem to be a confirmation in the difference between the reform process which is underway and the attempts for a “Great Reform” that ensued over the last decades.

The second aspect that needs to be highlighted is that the Senate has weakened some forms of extremism in the original text by introducing some corrective measures which might limit the excesses of a majority government. It has not, however, overturned the basic line held by the Executive, «generally aimed at reshaping the possibility for the Government to carry out the political and legislative activities by making available specific tools for control and management of parliamentary activity»⁴⁶. There is still the plan to replace “extraordinary powers” used by Governments in all eras of the Republic (recourse to the confidence vote, maxi-amendments, decrees law) with ordinary powers (in particular, the “certain date vote”) and it still remains to be seen what the global impact on the system of checks and balances provided for in the Charter of 1947 might be.

Just as important is the radical change in the election of the Upper House. The text written by the Commission and voted by the Senate confirms the choice of second degree election of senators but rejects the option favouring a “mixed” set-up, which characterised the initial text and is oriented towards a Senate of regional nomination.

A little-known course was abandoned, which aimed at reconciling representation of the local authorities with the presence of individuals with specific expertise, and a better-known path was followed, that of the second house made up predominantly of regional councillors. This latter option, however is not without its drawbacks looking both at foreign examples and also at the crisis in the legitimation of regional institutions and also at the specific solution adopted, which provides the anomaly of regional nomination of municipal “representatives”. Perhaps

⁴⁶ B. Pezzini, *La riforma del bicameralismo*, cited at 31, 3.

decades of discussion on reform of the bicameralism could have brought about a slightly less bizarre hypothesis than that presented by the Government, but more innovative, ambitious and persuasive than the one formulated by the Senate.