"Vote Yes for a Safe Italy" or "Vote No to Defend the Constitution": Italian Constitutional Politics between Majoritarianism and Civil Resistance

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> *'In order to obtain a united Europe against terrorism, we need a strong country, with a Constitution that gives stability'.*[1]

In this way, Maria Elena Boschi, the Italian Minister for Constitutional Reform, recently justified the pending comprehensive reform of the Italian Constitution of 1948. Boschi's ambiguous observation – suggesting that a vote against the constitutional reform project in the upcoming referendum in October leaves Italy more vulnerable in the face of terrorism – is part of an intense public debate in Italy. The government's constitutional reform strongly pits the governmental majority against a variegated opposition, a political contention which has come to dominate a significant part of public debate in Italy in the last few months. Resistance to reform mobilizes parties in the political opposition (*Movimento Cinque Stelle, Lega Nord, Forza Italia*) as well as civil society (in particular, *il Comitato per il No* and *Libertà e Giustizia*). Both Prime Minister Matteo Renzi and Minister Boschi have attempted to set the stakes higher by directly relating their political fates to the outcome of the referendum (in case the 'No' vote wins, both have declared to step down). Renzi and his government further stimulate plebiscitarian dimensions by dichotomizing the vote between those that want to modernize Italy – a reform that will 'bring Italy into the future' – and the 'conservatives' that supposedly cling to a (corrupt) past. Both Renzi and Boschi regularly sustain that in case of a 'No' vote, chaos will rule (reminding one of 'après moi le déluge').[2] Public debate seems trapped in a Manichean game between yes-proponents that accuse the opposition of conservatism, and no-proponents that accuse the government of authoritarian leanings.

The reform (touching upon 47 articles of the 1948 Constitution), in the making since 2013 and the latest addition to an inconclusive 'season of constitutional reform' that started in the early 1990s, has now reached its final stage. The reform has been approved in dual readings in both houses of Parliament (the last reading was on 12 April 2016). This has cleared the way for a constitutional, confirmatory referendum in October 2016, which the Constitution foresees in case of the absence of a two-third majority in Parliament supporting the reform (article 138). The referendum is much contested, not least because it has been – in an unusual way – initiated by the government itself. Many argue that the original meaning of the revision rule is to give the opposition an opportunity to contest the reform, but the Renzi government has initiated a request for a constitutional referendum qua majority. In protest and in order to stimulate public discussion, both the parliamentary opposition as well as civil society forces have equally filed referendum requests, as they consider the government's move a 'plebiscitarian' strategy.[3]

Renzi's Grande Riforma

In the wake of the veritable political earthquake of the general elections in February 2013, a grand coalition or *governo di larghe intese* between the arch rivals of the preceding two decades, the centre-left and the centre-right, was formed. It was to drastically reform political institutions as extensive institutional reform was displayed as the only means to overcome the political as well as economic crisis that kept Italy in a grip. The

reforms of the grand coalition, headed by Enrico Letta, were to address the form of government, the bicameral parliamentary system, relations between the central state and the regions, and the costs and efficiency of political institutions. By December 2013, the government coalition of *larghe intese* was, however, reduced to one of *piccole intese* due to a split in the centre-right party of Berlusconi. This meant that the constitutional bill never reached the final fourth reading in Parliament. The reform sceptre was, however, taken up by a swiftly acting Matteo Renzi, who, in an internal coup of sorts in the Democratic Party, replaced prime-minister Letta in February 2014. The constitutional reform of Letta was de facto discontinued,[4] and Renzi started the reform process from scratch by means of a governmental bill on constitutional reform (*Atto Senato n. 1429*) in April 2014.

The Renzi government itself produced a new proposal for constitutional reform in March 2014, advanced by Minister Boschi. This so-called *ddl Boschi* ('disegno di legge') focusses in particular on the reform of the bicameral system (most importantly the Senate), the reduction of the number of parliamentarians, and the revision of Title V regarding relations between the State and the regions. The reform of the Senate, the most contentious part of the reform, consists in its radical transformation, from an identical twin of the *Camera dei Deputati* into a semi-federal, regional house. The senators are to be reduced to 100 in number (rather than the current 315), and will not anymore be elected directly, but nominated on the basis of membership of the regional councils, the mayorship of a number of major municipalities, or selected by the President of the Republic. The new Senate loses many of its original prerogatives, including the vote of confidence, while retaining a voice in constitutional reform.

A modest, but not insignificant part of the reforms regards citizen participation and direct democracy (arts. 71 and 75). The *ddl Boschi* leaves the frequently used instrument of abrogative referendum largely intact, while introducing a novelty: in case of 800.000 signatures, the quorum will be 50% of the latest electoral turn-out, which potentially is in favour of promoters of a referendum.[5] The number of voters that can activate a popular legislative initiative (art. 71) has been increased to 150.000 voters (from 50.000), while deliberation in Parliament is guaranteed. An absolute novelty is the introduction of a propositional referendum, of which the details have however been left to a future constitutional law. The reforms regarding direct democracy have been positively greeted by some constitutionalists,[6] while others have depicted the reform as a 'fake gift to the citizens'[7] and have expressed various degrees of skepticism towards its effectiveness and lack of guarantee of the prevalence of popular sovereignty over the political majority.[8] In toto, the reform of direct democracy seems to be limited to dimensions of a high political visibility, without substantively touching the profound representative nature of Italian democracy.[9]

A discussion of constitutional reform should equally pay attention to ongoing reform of the electoral law, which is not part of the formal Constitution but significantly affects its meaning. In December 2013, the Constitutional Court declared unconstitutional two parts of the (then) existing electoral law (referred to as the Porcellum), the so-called closed lists of candidates and the electoral premium for the political majority. The new law adopted in May 2015, the Italicum, does not, however, fully eliminate the doubts of constitutionality as raised by the Court. The Italicum promotes the formation of absolute majorities in national elections, by means of an electoral premium in case a political party obtains more than 40% of the votes in the first round, or, in case of a second ballot, obtaining a majority of votes. The electoral reform feeds into the constitutional reform as its strongly reinforces the latter's majoritarian nature.

Civil resistance to Renzi's constitutional reform

The reform of the Renzi government follows a trajectory not dissimilar to that of the heavily criticized constitutional reform of the Berlusconi government in 2005. The emphasis is on lean institutions and a strong leader and government. The reform of the Senate is supposed to overcome a cumbersome and

duplicated system of *bicameralismo perfetto*, to reduce the costs of politics, and to introduce a regional, semi-federal component. It has, however, been criticized, also by the internal opposition in Renzi's party, the *Partito Democratico*, for reducing the democratic and representative nature of Italian Parliament inter alia by eliminating the direct election of senators.

Opposition to the reform is not limited to Parliament, and includes a rather robust constitutional resistance. Societal mobilization against constitutional reform emerged already in the mid-1990s with the so-called *Comitati Dossetti* and again with the Berlusconi reform in the mid-2000s. It is equally upfront in the current reform wave. A significant part of the political claims of the opposition regard the lack of involvement of citizens and civil society in the reform process and the impoverished standing of citizens in the democratic-institutional landscape created by the reforms. This is due to the strengthening of the executive at the cost of the Parliament, as well as the indirect election of the new Senate. The critique depicts the Renzi reform as a governmental imposition of a majoritarian, partial, and party-based view of constitutional change. The argument is that a large, inter-party consensus is absent, given that the main opposition parties are radically opposed (*Movimento Cinque Stelle* and *Lega Nord*), while the viewpoints of important exponents of civil society and the scholarly community have been ignored in the reform process.

The reform has seen a continuous polemic between Renzi and Boschi, on the one hand, and part of the scholarly, constitutional expert community, on the other (pejoratively referred to as *professoroni*). One of the constitutionalists, Gaetano Azzariti, speaks in an interview of a 'strategy of delegitimization of all critical reflection'. [10] Equally, from the side of the third sector and trade unions, critical comments regarding the reforms have been raised as well as concerns related to a lack of societal participation in the reforms.

Political and societal protest against the ongoing constitutional reforms has been taking two main forms. The first major stance in civil society, often referred to as a conservative (i.e., preservationist) or reformist stance, endorses the preservation of (the spirit of) the 1948 Constitution, and its actualization, even if it is not necessarily averse to 'constitutional maintenance'. The conservative stance predominantly promotes the protection of the representative, parliamentary system.

A key proponent of the 'conservative stance' is the high profile civic association *Libertà e Giustizia* (LeG), whose president currently is Nadia Urbinati. LeG endorses public knowledge of the 1948 Constitution and emphasizes a priority for the actual implementation of existing constitutional norms, rather than recourse to constitutional engineering. The latter is particularly denounced when pursued by what are allegedly un-elected, unconstitutional political actors that have governed Italy since the downfall of Silvio Berlusconi in 2011 (Mario Monti, Enrico Letta, and currently Matteo Renzi).

According to LeG, the formal procedural trajectory for constitutional change is being violated. Well-known constitutionalists such as Gustavo Zagrebelsky and Stefano Rodotà hold that the current reforms are ill-informed and a *pasticcio* (a 'mess'), and that such extensive reforms require a comprehensive and pluralist social input and consensus. The current reform needs to be resisted: '[t]hree objectives become essential: to oppose any plebiscitarian deviation and multiplications of forms of concentration of power; to reinstate the central role of rights, in particular social ones; to rediscover and strengthen the institutional initiative of citizens'.[11]

In the run up to the referendum of October 2016, the recently formed *Comitato per il No*, closely related to LeG, has deposited a referendum request at the Court of Cassation in April 2016, even if the request had already been made both by the parliamentary majority and opposition.[12] The reason is that 'one cannot leave the choice to vote for a vast modification of the Constitution to formal political institutions, turning it into a plebiscite in favour or against Renzi. The request of the citizens corrects the plebiscitarian distortion, which is unacceptable because it obstructs the discussion of the merit of a disastrous reform with

wide implications, that has to be rejected whatever destiny for the government'.[13]

A second important stance of constitutional resistance is an innovative stance in that it departs from a critique of (important parts of) the 1948 Constitution as such and seeks a new constituent moment. The innovative stance emphasizes participatory and deliberative models of democracy. Key proponents can be found on the radical left, particularly in the variegated movement for the *beni comuni* or 'the Commons', but also within the *Movimento Cinque Stelle*. Both conservative and innovative attitudes are prominently present in the Italian public debate, and often form conflicting views within specific movements themselves.

A position which combines constitutional conservation with innovation can be identified in the *Movimento Cinque Stelle* (M5S). The arguments used by the M5S are – at least in part – not dissimilar to the ones used by LeG. M5S is a particularly outspoken adversary of the 2012-15 reforms. Key justifications for both the protection of the 1948 Constitution and for a different type of constitutional reforms are, according to the Movement, first, the idea that the 1948 Constitution is unjustly blamed for the malfunctioning of politics; second, the view that comprehensive constitutional reform is necessary but can only be pursued by means of an inclusive, consensualist approach (in contrast to the majoritarian or partisan approach of the Renzi government); and, third, the idea that comprehensive constitutional change necessarily needs to include the voice of citizens and civil society, in particular because of the malfunctioning of representative democracy and the party system.

The M5S criticizes (Italian) representative democracy for being based on a *partitocrazia*, in which parties compete for power and resources, while ignoring the common good or the needs of ordinary citizens. It contrasts a corrupted representative model with forms of direct democracy. The 1948 Constitution in this regard is understood as part of the problem, in that it has institutionalized a certain distrust of the people. The M5S is one of the very few political forces in Italy that explicitly calls for citizen participation in constitutional reform and has shown significant interest in the recent reforms in Iceland and Ireland (e.g. the latter case was explicitly discussed in one of M5S's legislative bills, ddl n. 3124, 2015). According to the M5S, 'we do not want citizens to be put in front of the choice "take it or leave it", as would happen with the confirmative referendum in your reform. To the contrary, we want the citizens to be called with the right awareness and responsibility, point by point'.[14]

The October referendum will prove whether constitutional resistance is able to mobilize sufficient civic disapproval of the current reform and whether its democratic and participatory demands will become part of actual constitutional reform in the future. Whatever the outcome of the referendum, it seems, however, unlikely that the Italian season of constitutional reform is going to end anytime soon.

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1. http://www.ilfattoquotidiano.it/premium/articoli/la-boschi-sfrutta-il-terrore-votate-si-per-unitalia-sicura/.

2. Cf. Stefano Rodotà, http://temi.repubblica.it/micromega-online/rodota-referendum-se-renzi-falsifica-anche-la-storia-2/.

3. Cf. Gianfranco Pasquino (2015) *Cittadini senza scettro: le riforme sbagliate*. EGEA.

4. David Ragazzoni and Nadia Urbinati (2016) *La vera Seconda Repubblica. L'ideologia e la macchina.* Raffaello Cortina Editore, pp. 166, 169-70.

5. Saulle Panizza (2015) 'La revisione costituzionale nell esperienza della XVII legislatura, con particolare riferimento ai profili procedimentali e alla tecnica normativa', in: Vincenzo Baldini (ed.) *La Costituzione e la sua revisione*. Pisa University Press, pp. 9-42, 39.

6. Enzo Cheli (2016) 'Luci e ombre di una riforma costituzionale', in: *il Mulino* 65(1): 21-26.

7. Carlo Di Marco (2015) 'Partecipazione popolare e riforma costituzionale. Una relazione agli antipodi', available at: http://www.libertaegiustizia.it/2015/10/28/partecipazione-

popolare-e-riforma-costituzionale-una-relazione-agli-antipodi/.

8. Alberto Lucarelli (2016) 'Riforme, la 'nuova' Costituzione? Iter kafkiani e un discutibile concetto di democrazia diretta', available at: http://www.ilfattoquotidiano.it/2016/01/12/riforme-la-nuova-costituzione-iter-kafkiani-e-un-discutibile-concetto-di-democrazia-diretta/2366974/.

9. Pasquale Costanza (2016) 'Quale partecipazione poplare nel d.d.l. di riforma costituzionale (c.d. Renzi-Boschi)', in: di P. Costanzo, A. Giovannelli, L. Trucco (eds),*Forum sul D.D.L. Costituzionale Renzi-Boschi: Dieci studiosi a confronto*, G. Giappichelli Editore, pp. 15-26.

10. Mentioned in: Marco Plutino (2015) 'Equilibri e squilibri costituzionale tra la tentata revisione costituzionale del 2005 e il d.d.l. costituzionale "Boschi" ', in: Vincenzo Baldini (ed.) *La Costituzione e la sua revisione*. Pisa University Press, pp. 117-172, pp. 149-50.

11. Stefano Rodotà (2016) 'Contro l'apatia e il disincanto', in: Gaetano Azzarati et al. (eds) *La Costitutìzione bene comune*. EDIESSE, pp. 63-72, 69.

12. [1] The campaigners for 'no' find a significant ally in the newspaper *Il Fatto Quotidiano*, which since the summer of 2013 has held a campaign against the reforms.

13. Massimo Villone, Domenico Gallo e Alfiero Grandi, 'Perché No alla legge costituzionale Renzi-Boschi e all' Italicum: 30 ragioni', 31 May, 2016, available at: (http://www.libertaegiustizia.it/2016/05/31/perche-no-alla-legge-costituzionale-renzi-boschi-e-allitalicum-30-ragioni/ (accessed on 11 July, 2016).

14. Danilo Toninelli, Camera dei Deputati, Seduta n. 350, resoconto stenografico, 16 December 2014, p. 72.

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