Prize and Premiership

Edoardo Caterina

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Since the beginning of November, Italy has been discussing a constitutional reform that aims to radically change the Italian governmental system. Explaining the reasons and the roots of the bizarre constitutional reform bill passed by the Council of Ministers on 3 November to non-Italian readers is not easy. Introduced to the Chambers on 15 November, the bill shares its ambitions with the 2022 electoral programme of *Fratelli d'Italia*, the largest party in the coalition government. The bill aims to ensure governmental stability and to strengthen the executive's capacity to implement a programme for the full duration of the parliamentary term. The bill provides that the Prime Minister (more correctly: the President of the Council of Ministers) is elected by universal suffrage in a popular vote concurrent with the Chamber of Deputies and Senate elections. This move is often referred to in journalism as 'Premiership' (*Premierato*). The bill also lays down a detailed framework for electoral legislation: it stipulates that electoral law must be inspired by the principles of 'representativeness' (*rappresentatività*) and 'governability' (*governabilità*). Furthermore, it ensures a 'majority prize' (*premio di maggioranza*) of 55% of the seats to the party or coalition of parties supporting the elected President of the Council (for an in-depth discussion of the reform project in English see the contributions already published on this blog by Andrea De Petris, Carlo Fusaro and Stefano Civitarese Matteucci).

In this post, I would like to focus less on the characteristics of the alleged 'Premiership' and more on the attempt to incorporate detailed electoral rules into the constitution. First, a brief history of the 'majority prize' will help the reader to better understand the context in which this reform was born. This will be followed by a critique of the proposal to enshrine the 'majority prize' in the constitution. I argue that, as currently drafted, the reform bill risks leading to an unconstitutional constitutional amendment.

The Eternal Return of the 'Majority Prize'

100 years ago, on 18 November 1923, the infamous '*Legge Acerbo*' ('Acerbo Law') was passed, marking the start of an enduring Italian narrative: the saga of the 'majority prize' (*premio di maggioranza*). In 1923, the Acerbo Law was intended to pave the way for Mussolini's dictatorship by guaranteeing two-thirds of the seats in the Chamber of Deputies to the list (i.e., the National Fascist Party) that had secured a relative majority, provided it had garnered at least 25% of the valid votes.

Thirty years later, in 1953, the so-called *Legge Truffa* ('Swindle Law') emerged, offering a 'majority prize' of 65% of the seats to the coalition of lists that had surpassed 50% of the votes in the election of the Chamber of Deputies. The 'Swindle Law' was not born out of a desire to lead Italy back onto the path of authoritarianism, but rather to strengthen a Christian Democracy-led centrist government majority amid the Cold War. The attempt, as we know, was unsuccessful, and the concept of the 'majority prize' was shelved for forty years.

The idea resurfaced in 1993 for municipal elections, combined with the direct election of the mayor (Law No. 81 of 1993). In municipalities with more than 15,000 inhabitants, the candidate who secures more than 50 per cent of the votes is elected mayor, and the linked lists obtain 60 per cent of the seats in the municipal council. The 'majority prize' gradually extended from the municipal level to the regional and then national level, akin to a slow-spreading poison.

The 2005 national electoral law (the so-called *Porcellum*) revived the 'majority prize', guaranteeing 55% of the seats in the Chamber to the coalition with the most votes, without setting a minimum threshold.

If in 1923 the purpose was to deliver the country into the hands of a tyrant and in 1953 to guarantee a stable centrist government in the context of the Cold War, in 2005 the *Zeitgeist* was that of 'bipolarism', in a scenario of opposing centre-right and centre-left coalitions. However, this aspiration was debunked first by the 2013 elections, which marked the end of a 'bipolar' political setup, and then by the Constitutional Court's rulings in 2014 and 2017, which declared two different electoral laws unconstitutional due to their disproportionate 'majority prize'.

The only option left on the table by the Constitutional Court in this jurisprudence is the possibility for the legislature to provide for a 'majority prize' if a *reasonable* minimum threshold is reached. In other words, the Constitutional Court did not declare the 'majority prize' per se unconstitutional, but it did set some strict requirements for it to be permissible, primarily placing the onus on the electoral legislator to establish a reasonable minimum threshold of votes to qualify for the prize (the Court did not specify the exact meaning of 'reasonable', but commentators have assumed a possible threshold of 40 or 45%).

The Origins of a Bizarre Project

In 2023, the 'majority prize' concept is once again in the spotlight, but this time it is not in the electoral law —it's embedded in a constitutional reform bill, paired with plans for the direct election of the President of the Council. This unique model, unparalleled globally, draws its inspiration primarily from two factors: the enduring historical presence of the 'majority prize', and the governmental structure at the local level in municipalities and regions, which includes the direct election of the mayor and the president of the regional executive (as Carlo Fusaro also pointed out in his post).

A third factor contributing to this model must be added: the rejection of another constitutional reform proposal, aimed at introducing a semi-presidential system. The idea of transforming Italy into a semi-presidential republic was both part of the electoral programme of *Fratelli d'Italia* and a constitutional reform bill presented by Giorgia Meloni in the last legislature (A.C. 716). However, the original presidentialist reform project was abandoned due to strong resistance not only from the opposition but also from certain factions within the government coalition. This led to the creation of an unconventional proposal, suggesting a system that is certainly unfamiliar to the constitutional experiences of all established democracies.

Almost all Italian constitutional law scholars who have voiced their opinions have expressed severe criticism ('a joke' – R. Bin; 'the antechamber of autocracy' – G. Azzariti; 'ambiguous and confusing' – F. Clementi; 'of disconcerting recklessness' – M. Luciani). Also on this blog, Andrea De Petris, Carlo Fusaro and Stefano Civitarese Matteucci have highlighted the weaknesses of the project. There are numerous issues that warrant attention. In this context, I would like to highlight two key points.

An Unconstitutional Constitutional Amendment?

The reform, particularly where it concerns principles of electoral law, clearly seeks to overcome the constitutional case law through constitutional amendment. Recognizing the impossibility of a 'threshold-free majority prize' within the existing constitution, it opts for constitutional reform. However, this radical approach encounters the same constraints as constitutional amendments. It is not difficult to argue that this is a case of an unconstitutional constitutional amendment ('a textbook case' according to F. Bilancia).

It is beyond dispute that the democratic principle constitutes a 'supreme principle', a constitutional provision that, according to Italian constitutional law categories, cannot be altered via constitutional amendment. It is no coincidence that the Constitutional Court in 2014 and 2017 declared the disproportionate 'majority prize' unconstitutional for violating not only the freedom and equality of the vote, but also the very principle of popular sovereignty. At the core of the democratic principle is the *rule of the majority*. As currently written, the proposed constitutional reform could potentially allow a narrow minority to govern the majority.

Consider a scenario like the Italian 2018 elections, where the centre-right coalition secured 37% of the vote, the 5 Star Movement 33% and the centre-left 23%. With the 'majority prize', the centre-right would obtain 55% of the seats, even though the other two major parties together obtained almost 50% more votes. This is precisely the aim of the reform, not merely a potential unintended consequence: the rationale is indeed to construct a *majority-assuring* system, where 'whoever comes first takes it all', regardless of the cost. But democracy is not a horse race, and such a system is not constitutionally viable.

In this regard, there is no need to refer to the strict German constitutional case law on vote equality (the Italian Constitutional Court has expressly rejected the understanding of vote equality as 'equality of output value' – *Erfolgswertgleichheit*); the democratic principle of popular sovereignty and the related need for parliament to be representative are sufficient. The Constitutional Court has clearly affirmed that the substance of the principle of representativeness is inviolable and cannot be compromised when weighed against the interest in stable government. The introduction of the constitutional principle of 'governability' cannot alter this assessment, as we are dealing with 'supreme principles', and ultimately, the very democratic nature of the system is at stake.

«…Yet There is Method In't»

The second point I would like to focus on and conclude with concerns the very concept underlying this reform. Meloni's constitutional reform bill is not an eccentric and isolated initiative but is part of a trend that has run through Italy over the last two decades. The common thread is the desire to bolster an already potent executive through direct democratic legitimation, while simultaneously weakening an already marginalized parliament. This is done under the illusion that stability can be achieved exclusively with constitutional engineering devices, when it is clear that instability primarily stems from a political system built on vanishing political parties.

What Meloni said to promote the reform project is very telling: 'Do you want to decide for yourselves or let the parties decide for you?'. As already pointed out by Andrea De Petris, behind the shaky structure of the bill lies the disturbing conception of a democracy by acclamation, of a direct relationship between the masses and a charismatic leader, of annoyance with the role of parliament and the parties. It is in fact the parties – or what remains of them – that are the main victims of this design, even more so than the President of the Republic. These victims, who do not elicit much sympathy from Italian public opinion, are worth defending, at least this time around.

ABOUT THE AUTHOR

Edoardo Caterina
Edoardo Caterina is an Adjunct Professor in Constitutional law at Università degli Studi di Firenze.

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