Federalizing a Regionalised State. Constitutional Change in Italy[1]

by
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1. The rise of constitutional politics

Italy changed the territorial structure of its state in a long process of constitutional change. While regional units have been established in 1970, later reforms gave way to the creation of a regionalized state, which meanwhile turned into a kind of a federal state. This process gathered momentum since the 1980s, but until present did not end with a final result. Still Italian federalism is an unfinished project, and recent reforms revealed a stop and go in constitutional policy.

Up to the end of the 1970s, the issue of constitutional reform remained on the sidelines of the Italian political debate and out of the spotlight of media attention and public opinion.

This was mainly due to three factors:

- the persistent, widespread bipartisan (or multi-partisan) support for a Constitutional Charter that had been approved at the end of 1947 by a very large majority of the Constitutional Assembly: in effect, the Constitution of 1948 was the product of a teamwork that involved all the anti-fascist political forces (even though they were already divided - in the spheres of foreign, social and economic policies - by a dramatic confrontation between the pro-Western parties led by the De Gasperi's *Democrazia Cristiana* and the pro-Soviet communist and socialist parties led by Togliatti and Nenni);
- the significant delays in implementing the new constitutional measures (the Constitutional Court began working in 1956 and the Italy's 15 ordinary Regions only in 1970): consequently, until the mid-1970s the political debate and the public opinion remained focused on the implementation of the new institutional measures introduced by the Constitution, which still had to be tested and clearly could not yet be assessed;
- the remarkable success of the government policies in the 1950s and 1960s, particularly in post-war reconstruction, consolidating Italy's NATO

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membership, starting up European integration and building a modern social market economy (with the economic boom of the 1960s and the development of a modern universal welfare state). Therefore, one of the key triggers of every constitutional reform, i.e. the need to create new institutional instruments to overcome the failure or inadequacy of existing public policies, was then completely absent.

During the 1980s, the issue of constitutional reform returned to the surface of the political debate. This was due to some relevant changes which occurred in the country's policies and economy, such as:

- the slackening of the galloping growth that characterised Italian economy in the 1950s and 60s, slackening due to the oil crisis, the public spending boom and rising public debt[2], the abnormal expansion of economic sectors shielded from competition and the market (public or private monopolies), and the increases in regulatory and bureaucratic costs;
- the increasing cost of welfare state, not followed by improvements in public services, owing to poor public sector efficiency;
- the Italian economic and productive model, characterized by low-tech manufacturing and business dwarfism (many micro and small businesses, few large companies), unsuited to adapt to changes in the global economic scenario (consolidation of a service-related and information economy, new technologies, increased international competition).

These developments in economy and their impact on public policies opened a debate that basically involved two positions:

- On the one hand some politicians and opinion makers believed that solving these problems should require a radical change in public policy (economic and social reforms, privatisation and market deregulation, investments in infrastructures and human resources, modernisation of public administration, reductions in tax pressure on businesses and employment, etc.) rather than institutional reforms;
- On the other hand, many argued that, on the contrary, the roots of the crisis were primarily in political instability and ineffective decision-making at national and local level. Therefore it should be first of all necessary to review the country's constitutional structure, strengthening the executive stability, accelerating the policy-making processes and improving the tools to implement public policies decisions.

The first position garnered support mainly from the left wing and amongst the liberals[3]. But the recipes proposed by the left wing and the liberals were partially discordant. The second position found its supporters in the centre and right wings and prevailed in the 1980s, focusing attention of public opinion on the Constitution. Institutional reforms were presented as

[2] The public debt to GDP ratio increased in Italy from 41% in 1970 to 97% in 1990.

[3] The liberal-democratic faction in Italy spans all the political parties, but is normally in the minority. Even if for short periods – e.g. in the second half of the 1990s – it gains a leading role, it did manage to rally cross-party majorities.

necessary and primary measures to achieve more stable national and local governments, backed by cohesive majorities and with more effective decision-making and implementing tools. However, the reforms proposed mainly concerned government institutions (such as electoral laws and parliament-government relations at the central and local level) rather than the territorial structure of the state. Reforming the powers and responsibilities of the Regions and local authorities was not yet considered as crucial, also because the Regions had only been established in 1970 and only in 1977 their powers and responsibilities had been defined.

The key moments of this phase were[4]:

a) the setup of a Parliamentary Commission for institutional reforms, led by Aldo Bozzi (1983-1985), which submitted a project for the review of 44 articles of the Constitution;

b) numerous parliamentary debates[5], party congresses, conventions and conferences on constitutional reform, all tending to target the reinforcement of state and local government stability and powers;

c) the approval by a large majority of a number of laws[6] to strengthen the stability and powers of local governments (direct election of mayors, majority vote electoral laws, automatic wind-up of local councils after a vote of no confidence). This model was later extended to Regional governments (Constitutional Act N. 1/1999).

The Bozzi Commission proposals were never followed up. In this respect it should be remembered that the Italian Constitution (art. 138) requires special procedures to amend the Constitution[7] which makes it difficult to approve a controversial reform; moreover there was in Italy – until the start of the 1990s – a strong conviction that, in any event, constitutional reforms should be the result of a wide consensus among the parliamentary majority and the opposition (or at least most of it). .

2. From regionalization to federal reform

In the early nineties, the political and economic scenario changed yet again. The Italian economy loses competitiveness and the budget crisis got

[4] Of the following reforms, we are interested here only in those referred to under point c). Like the others, these aim to strengthen government stability and executive powers, but in effect they also represent a precondition for awarding greater powers and responsibilities to regional and local governments

[5] First and foremost in the Lower Chamber on 18 May 1988 and in the Senate on 19 May 1988.

[6] First of all, Acts N. 142/1990 and 81/1993.

[7] According to art. 138 of the Constitution, constitutional amendment laws need two consecutive approvals by each of the Chambers. For the second approval, absolute majority of both Members of Parliament and Senators is needed. When an absolute majority is reached, but not a two-thirds majority, the reform goes then to public referendum if requested by one fifth of Members of Parliament, by one fifth of Senators, by five Regional Councils or by 500,000 voters.

worse, with an annual deficit-GDP ratio exceeding 10% and a debt-GDP ratio increased from 97% in 1990 to 124% in 1994. Proof of widespread corruption and swindling came to light (culminating in the so-called "Tangentopoli", a clientelist relations between private and public actors as evidenced in the Milan public prosecutor's "Clean Hands" inquiry). The Italian North-South divide widened. local protest movements spread especially in the North fuelled by the conviction – technically unfounded but no less widespread – that strong tax pressure on business and employment was mainly due to the high cost of public aid for underdeveloped areas of the South. Public mistrust in politicians increased; and finally a strong crisis of representativeness and legitimacy of the institutions arose.

The tendency to overestimate the role of institutional reform became stronger, especially as for reforms strengthening majority cohesion and stability and executive powers (a reform of the "*government form*" in Italian constitutionalist jargon). This was confirmed by a public referendum in 1993. It abolished the proportional representation system in force for political elections since 1945, and led to a subsequent adoption of an electoral system largely based on the first-past-the-post plurality voting system (for the 75% of the parliamentary seats).

But at the same time we observe an increasing spread of the conviction that a more extensive and all-inclusive reform is required. It was deemed to aim at the overall institutional architecture, i.e., at a reform of the "*form of the State*" in Italian constitutionalist jargon. including:

- a redefinition of the mission of public institutions, with downsizing to the bare essentials (according to the principle of subsidiarity);
- a drastic cut of central powers, launching an institutional reform in the federal sense, with a strengthening of the autonomy and sovereignty of regional and local authorities and a wide reallocation of powers, responsibilities and resources;
- a radical reorganisation of public administrations, focused on public service quality according to the principles of liability, merit, assessment and user satisfaction.

Therefore a reform of the constitutional structure was set on the agenda. Through greater independence and self-governance of regional and local authorities, it was to lead to better public services, lower public spending and tax burdens, and give the public more direct control over the management of public resources.

Most observers agree that this shift in opinion has been mainly triggered by the electoral success of the *Lega Nord* (Northern League), a regionalist/independence-oriented party (which at first ran on a single-issue programme wavering between a federal reform and the secession of Northern Italy).

Confined to a regional dimension covering mainly Lombardy throughout the 1980s (0.48% of votes at the 1987 elections), the League suddenly leaped to 8.65% at the 1992 national elections (obtaining 24.3% of votes in

Lombardy, 17.3% in Veneto and 17% in Piedmont). In 1994 the League confirmed its advance with 8.36% of votes, but most of all proved to be a determining factor for the electoral success of the coalition led by Silvio Berlusconi and for the building of his first government. In the meantime, the adoption of the first-past-the-post electoral system had in fact pushed the political and electoral weight of the League upwards thanks to its strong roots in the highly populated regions of Northern Italy. And it had driven the major political forces to assess which policies' concessions they could make to the League in order to keep the door open to an alliance crucial to electoral success.

But the favor for a federalist model, in fact, had much more ancient roots in Italy. As it does in Germany – unlike France, Spain and the UK – the unification of Italy dates back only to the second half of the 19th century, and even then many authoritative politicians (from Carlo Cattaneo to Giuseppe Mazzini) supported the federal model, as more consistent with a political and administrative tradition whose origins lie in the independence of the Mediaeval municipalities. The federal model had then many supporters in the Constitutional Assembly, especially among the Christian Democrats, but also from isolated socialist (Lussu) and communist (Laconi) constituents. Yet, finally a compromise between the unitary and the federal model prevailed which experts defined as a Regional State (vesting to Regional Governments legislative powers in various matters, but in accordance with basic principles set by national outline laws and in compliance of the national interest).

However the effective implementation of the regional reform envisaged in the Constitution met resistance and obstacles in the 1950s and 1960s. They delayed its entry in force by twenty years and imposed then a very strict interpretation of powers vested to the Regions. In practice, state acts continued to regulate in detail matters in which the Regions should have autonomous legislative powers, de facto downsizing regional law to secondary regulation; and the Regions' administrative measures were subject to in-depth preventive checks.

Therefore many hopes of improving public and government services, that had been vested in regional reform, remained unfulfilled, fuelling further disappointment and protests. But the underlying cause of the failure of regional reform was identified in this mutilation of the constitutional plans for a regional state. The ensuing protest roused a widespread demand for a real federal reform which gained ground even among the left-wing parties. In 1989, much earlier than the Northern League's consolidation, most of the regional conferences of the Italian Communist Party approved resolutions in favor of a federal reform of the State, overcoming the party's traditionally centralist approach.

This turnaround showed itself in the mission assigned to a new Parliamentary Commission for constitutional reform set up in 1992 by the two Houses (known as the De Mita-Iotti Commission). By constitutional

law[8], the Commission was then assigned the task of preparing proposals on electoral system reform and an organic bill for reforming the entire Part II of the Constitution. The "form of the State" reform was therefore included in the Commission's mandate, along with reviewing the form of government, the electoral laws and the constitutional guarantee system. In effect, the Commission easily reached an agreement on the reforms of the form of State and of the form of government: the final report on both issues (drafted by two Constitutional Law professors, both MPs - the socialist Labriola and myself as left-wing democrat) was approved by a wide majority and submitted to the Chambers on January 11th 1994. In contrast, the reforms of the constitutional guarantee system and of the Senate's composition met with a certain amount of dissent and were not included in the final report.

The approved project involved:

- an extensive reform of the relations between the State and the Regions, which reversed the criteria for assigning powers (with strict definition of the State's legislative powers and the devolution of all other legislative powers to the Regions)[9] and introduced new guarantee tools for regional autonomy ;
- a wide reform of the government structure following the "neo-Parliamentary" pattern, which envisaged a direct investiture of the Prime Minister by Parliament, gave to the Prime Minister exclusive power to appoint and remove ministers, and introduce the so-called "constructive no confidence vote" by the two Houses;
- the introduction of new rules on budgets, urgent decrees, de-legislation, regulatory powers of the Government, public administration organisation;
- a big increase of the Houses' powers of inquiry.

[8] Const. Act N. 1/1993.

[9] The central state retained power over functions considered essential to guaranteeing its unity and sovereignty, i.e. its responsibilities for foreign, military, justice and finance policy. It also retained the right to define the essential contents of individual freedom and civil, ethical, social, economic and political rights based on provisions in Part I of the Constitution. The Regions were to have legal and administrative responsibility for all other matters.

The strict list of state-regulated matters can be summarised as related to the following sectors: foreign policy and international relations; national defence and public security; individual civil rights; justice policy; monetary policy; State accounting and finance; general economic planning and rebalancing; industrial, energy, transport and national communications policy; environmental protection and public hygiene; scientific and technology research and the protection of artistic, literary and intellectual property; welfare and general law on ensuring safety in the workplace; general education and higher education laws and planning; general rules on administrative organisation and procedures; electoral matters; profession-related laws; statistics, weights and measures; arms and explosives; post office and telecommunications matters; sport-related laws of national interest.

As for the "form of government", it was the clear intention to introduce many of the parliamentary democracy streamlining tools, as successfully tested in the German Federal Republic. But also for the "form of the State", though cautiously repeating its definition as a Regional state, the model proposed by the Commission was. in fact very similar to cooperative federalism as it exist in Germany.

Unfortunately, Parliament did not have enough time to examine and approve the De Mita-Iotti Commission's bill, because of the two Houses' dissolution of January 16th, 1994, three years earlier than the end of five planned by the Constitution.

The 1994 elections produced many relevant political innovations. Among the traditional political forces, only the left-wing Democratic Party – born of the transformation of the strongest communist party in Western Europe – continued to have a significant representation in Parliament. The Socialists all but disappeared, the ex-Christian democratic People's Party was strongly downsized, and a very narrow majority was obtained by a hitherto unheard-of centre-right coalition formed by a new party (*Forza Italia*, founded just a few months earlier by Silvio Berlusconi), the Northern League and a national-conservative party born of the transformation of the neo-fascist Movimento Sociale Italiano

The governing coalition was improvised and very disparate in terms of its political-program. However, for the first time, the majority was formed by political forces that had not contributed to the drafting and approval of the 1947 Constitution, and were therefore more willing to support a programme of radical constitutional reform, rather than merely updating, tweaking and integrating a constitutional charter considered basically sound. Yet, at the time, the centre-right coalition was also split on matters of institutional culture. The "Northern League" lead by Umberto Bossi was anti-centralist and anti-state, undecided between the idea of a federal state and the idea of a confederation of independent regions. Fini's post-fascists were centralist, pro-state and historically supporter of a presidential reform. Last but not least, the supporters of *Forza Italia*, i.e. the new party founded by the tycoon Silvio Berlusconi were wavering between liberalism in principle, pro-state for their own interests, an agnostic pragmatism, and a kind of populist peronism, So the coalition failed to enact any constitutional reform and collapsed within a few months, giving way to a technical government supported by the center-left opposition and by the League.

This new government, led by Lamberto Dini, former Bank of Italy's vice-governor, had no significant reform programme of its own. In effect, it depended on a working parliamentary majority based, besides the League, on centre-left parties loyal to the 1948 Constitution.

A bipartisan attempt to open a new season of constitutional reform was made at the beginning of 1996. An agreement between the leaders of the three main parties (Berlusconi, D'Alema and Fini) led to the establishment of an informal Committee of "four wise men", experts in constitutional law but also prominent Members of Parliament, two belonging to the centre-right (Giuliano Urbani and Domenico Fisichella) and two to the centre-left (Cesare Salvi and myself). The draft this Committee prepared followed the guidelines of the De Mita-Iotti Commission project, and was therefore based on the German model ("neo-Parliamentary" pattern, with a strong leadership of a Prime Minister having exclusive power to appoint and remove ministers, and a "constructive no confidence vote" by the Parliament). It was appreciated by D'Alema and Berlusconi, but was rejected by Fini, loyal to the presidential model.

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A later attempt to form a new government led by Antonio Maccanico, with a programme including a constitutional reform aiming at the French semi-presidential model, failed even before the start of a real debate on these new lines of constitutional reform So after just two years Italy was again faced with an early general election.

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3. Reform attempts of the Prodi government

The 1996 elections brought the centre-left parties (gathered together in the *Ulivo* coalition) back to power. The new majority, led by Romano Prodi, rejected any upheaval of Constitution, considering its principles and values still valid and current, but was convinced that some updating and modernisation of the 1948 Charter were nevertheless needed.

The electoral programme of the *Ulivo* coalition in fact included significant institutional reforms to modernise the form of government and the form of state, for the most part reiterating the proposals of the bicameral De Mita-Iotti Commission. But the *Ulivo* coalition had not an independent parliamentary majority in the Chamber of Deputies.. The Prodi government held firm because of external support by *Rifondazione Comunista*, an extreme left party strongly opposed to any strengthening of the executive power and to any federal reform. So a highly complex political problem arose: The parliamentary influence of *Rifondazione Comunista* was slight, and therefore not sufficient for avoiding a constitutional reform eventually supported by a wide bipartisan majority; but *Rifondazione Comunista* could have provoked, in this case, a government crisis by withdrawing its decisive external support to the government.

A temporary solution was found by adopting a sort of double-track process. The power to set up a reform bill was vested to a new Parliamentary Commission totally independent from the Government and chaired by the

leader of the main majority party (the former communist Massimo D'Alema). The Cabinet's action in the institutional issues was focused, on the contrary, on reform's bills not requiring amendments to the Constitution: these bills could have had a quite large impact, given the flexibility of many of the constitutional provisions.

For doing so, the Prodi government opted for an innovative and brave path, by asking Parliament to merely approve some enabling acts establishing only the general outlines of the reform programme. Two acts approved at the beginning of 1997 and commonly known as the I and II "*Bassanini*" Acts, enabled the Government to enact from 1998 to 2001 many legislative delegated decrees, providing 1) a general reallocation of administrative powers among central, regional and local governments according to the subsidiarity and decentralization principles; 2) a strong reduction of central government's control on regional and local governments; 3) a significant increase of regional and local organisational autonomy; 4) a strong downsizing of central administrative organization following the reduction of national functions (e.g., by cutting the number of ministries from 18 to 12); 5) a general programme aiming at reducing regulatory onus and red tape, the beginning of a process of systematic simplification of administrative procedures and the introduction of the analysis of the impact of regulation; 6) the start up of a far-reaching public administration reform envisaging temporary office for public managers, performance review and appraisal, executive liability for results, and linking public managers' remuneration to performance.

All the related delegated decrees were unanimously agreed by Government, Regions and representatives of Local and Provincial governments. The result was: a strong increase of the sectors and services assigned to regional and local administrative responsibility, for the first time including industrial and labour policies; an effective strengthening of regional and local regulatory power in the same sectors; the introduction of vertical and horizontal subsidiarity principles; the allocation of new financial resources to the regional and local governments (though still insufficient to cover all the cost of transferred functions). In this way, it was introduced in Italy - as, many scholars wrote using a technically incorrect but effective term - a sort of *administrative federalism by keeping the constitution unchanged (, i.e. without amending constitutional law)*. After this reform, actually, the administrative and political powers of the Italian Regions are quite similar to those of the German *Länder*.

However the Bassanini reforms could not replace a constitutional reform, still necessary for vesting greater legislative powers to regional and local authorities, to adjust their financial resources, to consolidate the new

distribution of administrative functions established by law[10], and to adapt the constitutional organisation to the new structure of the state (with the transformation of the Senate, now a duplicate of the Lower Chamber, into a federal Senate). So a new bicameral Commission on institutional reform was set up by a Constitutional Act (no. 1 of 24 January 1997), with the task of "preparing reform projects of the Part II of the Constitution, particularly concerning the state structure ("form of the State"), the government organization ("form of government"), the bicameral system and the guarantees system". Moreover, the commission should try to obtain the support of a wide bipartisan majority within the Commission and later in the two Assemblies for such a project.

The proposals submitted to the Commission were generally more radical than those approved by the two previous Commissions. As for the form of state, they explicitly adopted the federal model. Regarding the form of government, they worked on two alternative scenarios – the first based on the French semi-presidential model, the second based on a parliamentary model tailored to include direct public election of the Premier and a strong strengthening of his powers (so strong that the proposal provoked widespread fears for a "premier dictatorship")[11].

The decision to adopt the federal model was not directly influenced by the Northern League, because the League's Members of Parliament deserted the works of the Commission for many months, as a sign of protest against the election for President of the Commission of the leader of the left-wing democratic party, the former communist Massimo D'Alema. While the League was away, the debate inside the Commission was focused on the different patterns of federal state. The outcome was that the cooperative model, closer to the German than the American one, prevailed with a wide majority. But the proposal strongly emphasized the role and powers of local authorities, particularly the municipal ones, consistently with the Italian tradition dating back to Middle Ages, according to which local identity has much stronger roots than regional and national ones. Some elements were very noteworthy: 1) the recognition of the equality and the same constitutional dignity of the central, regional and local governments; 2) the strong importance given to the subsidiarity principle (both vertical and

[10] If the administrative federalism in fact has represented an important anticipation of to the federal reform of the State, it had nevertheless a strong structural limit: implemented under ordinary legislative procedure, it could be repealed at any time by a new ordinary act approved with a simple parliamentary majority. It was clear that only a constitutional reform could overcome this limit.

[11] This solution was presented by its supporters as an Italian version of the "Westminster model" used in the UK. Its denigrators instead claimed that it was effectively related to the model unsuccessfully tested in Israel at the end of the 1990s.

horizontal subsidiarity[12]); 3) the constitutionalisation of the redistribution of administrative powers pursuant to Bassanini laws; 4) the suppression of central power of preventive legitimacy check on regional laws; 5) the assignment of general legislative responsibilities to Regions, while the central state kept the exclusive legislative competence only in some areas – primarily its "regalian" functions (defence, security, justice and foreign affairs)[13]; 6) the supremacy of central law when necessary to protect "indispensable/essential national interests".

[12] See the first two paragraphs of the art. 56 of the Commission's draft: "The functions that cannot be adequately performed anymore by private individuals shall be split up among local authorities (Municipalities and Provinces), Regions and the State, according to the principle of subsidiarity and differentiation, in compliance with functional autonomies as recognized by law. Control of the functions shall be the responsibility of authorities closest to the public interest, in accordance with the criterion of standardisation and suitability of organisational structure with respect to such functions. Municipalities shall be assigned regulatory and administrative functions in general, also in relation to matters on which the State or Regions have legislative powers, except for functions specifically assigned to Provinces, Regions or State under the terms of the Constitution, constitutional laws or ordinary law, without function duplication and with the identification of related responsibilities".

[13] See the first two paragraphs of art. 59 of the project: "The State shall have legislative powers in reference to: *a)* foreign policy and international relations; nationality, immigration and legal status of foreigners; European Parliamentary elections; defence and Armed Forces; monetary affairs, protection of savings and financial markets; *b)* State constitutional and institutional bodies and related electoral laws; State referendums; budget, tax law and related accounting regulations; State principles of organisation and administration; coordination of information, statistics and electronic nature of State, regional and local administration data; public order and personal safety; civil and criminal law, legal authorities and related jurisdiction; electoral laws and legislation governing local and provincial government bodies; *c)* general rules on production and trading of goods and services; general regulations on education and higher education, related qualifications and their professional use; general law on science and technology research; setting minimum common levels for services regarding civil rights and health protection; general measures on health treatment; general laws on occupational safety and protection; environmental and ecosystem protection; cultural and environmental heritage protection; large transport networks; postal services; energy production, transport and national distribution; national law on communications; general law on civil protection; national law on sport-related matters; decisions on compulsorily standard requirements and technical parameters to be adopted throughout the country; the manufacture and sale of drugs, narcotics and poisons; dietary matters and the control of food substances. The State shall also be responsible for legislative powers assigned as a result of other constitutional measures and for the protection of prominent and imperative national interests. The State may issue laws delegating regulatory functions to the Regions on matters referred to under the first paragraph. Each to the extent of their jurisdiction, the State and Regions shall issue laws governing the promotion and organisation of cultural activities. Regional governments shall have legislative power in all matters not expressly attributed to State legislative powers.

The D'Alema Commission's draft was approved by a large majority on 30 June 1997. During the following months, each Member of Parliament had the right to submit amendments to the draft. Taking into account these amendments, the D'Alema Commission approved finally the constitutional bill that was submitted to the Chamber of Deputies on 4 November 1997. Concerning to the form of the state, the corrections introduced were numerous but unsubstantial. With regard to the distribution of legislative competences between central state and regions –still the most controversial matter – the new text added a central responsibility for competition law, while it decided that, on environmental protection, central government could set only general guidelines. The supremacy clause remained unchanged ("The State shall also have legislative power to protect prominent and imperative national interests").

The Parliamentary discussion of the bill started on January 1998. Criticism, perplexity and dissent quickly emerged. The communist extreme left was strongly against, since they believed that the project endangered the unity of the country and the principles of parliamentary democracy. Also against the draft was the Northern League, since they considered the project as inconsistent with the proposal to build a true federal state. Berlusconi and *Forza Italia* Members of Parliament were almost as critical, mainly because of the insufficient powers assigned to the President (who, following the bill, would have been directly elected by Italian people): the new form of government - they claimed – resembled the Austrian or Portuguese model more than the one of the French Fifth Republic)[14]. Both in the centre-right and centre-left ranks, many MPs were perplexed by the reform proposals concerning the form of the State. But, within the same parliamentary groups, there were those who criticised the bill for its excessive federalism, and those for its excessive centralism[15].

[14] See Hon. Berlusconi's speech at the session held on 28 January 1998 ("The new constitutional physiognomy of the President of the Republic still remains uncertain. His powers, limits and functions are not clear, so we could have a constitutional figure that is legitimised by millions of votes and therefore of strong political impact, but with a lack of real powers. A President that is elected by the people must be responsible for government policy direction and must have the tools to implement it. it will not be possible to successfully complete the reform process without solving this problem, which determines political and institutional balance"). In Berlusconi's assessment what actually had an even greater influence were justice-related issues ("separation of the careers for public prosecutor and judges - that is a prerequisite for truly fair and efficient justice - still seems far from happening").

[15] See the Hon. Berlusconi's speech, again during the session held on 28 January 1998 ("However, it is on the issue of federalism that the gap between needs of the country and the text of the reform as agreed by the bicameral Commission seems widest. Of course, steps forward have been made. The regions will have some legislative independence and local authorities will have financial, tax and organisational independence in sectors which

Nevertheless, the project as a whole was still supported by a transversal parliamentary majority, including D'Alema's left-wing democrats, Marini's People's Party (former Christian Democrats) and Fini's *Alleanza Nazionale*. This majority was, however, politically and culturally too heterogeneous and in any case not enough large to achieve success for such a complex project. Even before moving on to examine the provisions on the form of the state, and therefore, on the federal reform, the *casus belli* arose about the powers to be assigned to a President of the Republic directly elected by the people. After a sort of ultimatum by Silvio Berlusconi[16], the presidency of the Parliamentary Commission on constitutional reform was forced to acknowledge that "the political conditions to continue the debate on the reform project do not exist anymore" (9 June 1998). In other words, the Commission recognized that the launch of a general reform of the whole second part of the Constitution with such a slight parliamentary majority was impossible.

4. Federal reform of the D'Alema government

A few months later, in autumn 1998, the political scene changed again. *Rifondazione Comunista* left the majority, Prodi resigned and a new government led by Massimo D'Alema was established. It was supported by the centre-left parties and by a new centre party of former Christian Democrats which had been elected in the centre-right ranks two years earlier. In the new cabinet, a highly prestigious political member, former Prime Minister Giuliano Amato, was appointed as minister for constitutional reform.

On a proposal by D'Alema and Amato, the government considered it appropriate to restart the parliamentary debate on federal reform, mainly for

directly affect citizens' lives. But this autonomy, based on the bicameral proposal, could be suspended by central government at any time. Can we define this as federalism?"

16 In his speech during the parliamentary session held on 27 May 1998, after strong criticism for the text as approved thus far ("The figure of President of the Republic as emerges from the text approved so far seems nonsensical; a President that is elected by the people but still has powers which remain weak, uncertain, definitely not proportionate to the source of legitimisation. Why inconveniencing the sovereign people to elect such a President? Who will solve inevitable conflicts which will arise with the Prime Minister who is elected by the people?"), Berlusconi dictated the terms to carry on with the debate ("a truly political federalism, together with an advanced fiscal federalism, that can allow a correct allocation of resources; a strong statement of freedom of initiative in the economic and social sector, supported by effective restrictions on state and public institution powers; a system to protect citizens' rights in line with Europe through the transposition of the principles of the Strasbourg Convention into our Constitution: presidentialism. If, as it seems, the strength of the decisions already made compel us to vote on this inconsistent, contradictory and dangerous presidentialism , we would not hesitate to say "no". A decisive "no" that, also valid for other observations, would involve the whole reform project we are looking at now").

two reasons. On the one hand, it seemed necessary to consolidate and complete the evolution towards a federal form of government started by the Bassanini reforms (which the D'Alema government was implementing). On the other hand, the centre-left majority – which had also achieved good results in terms of fiscal consolidation, accession to the European Monetary Union and the reform of public administration – regarded it as unwise to face the next elections (in 2001) without having approved the federal reform that the majority of Italians (at least in the central and northern areas) were clamouring for[17]. Therefore, a new project was submitted by the government to Parliament, concerning only the Fifth Title of the second part of the Constitution[18]. Significantly entitled as "Federal Framework of the Republic", it followed in general terms the corresponding section of the D'Alema Commission project, with some important differences, most of which aimed at gaining the consent of the supporters of federalism that were in the ranks of the parliamentary opposition. The main differences concerned:

- the suppression of the "supremacy clause" that would have allowed Parliament to legislate in the sectors of regional competence if proved necessary "for the protection of preeminent and imperative national interests";
- the extension of concurrent legislation (in which case the national legislator can only set out "general provisions") to some highly important sectors that the D'Alema Commission had reserved to national legislation: large transport and navigation networks; communications law; production, transportation and national distribution of energy; cultural and environmental heritage protection. Vice versa, legislation on higher education passed from concurrent to exclusive competence of the State;
- the suppression of the recognition of vertical and horizontal subsidiarity principles (the substance remaining only for the first, not for the second);
- the preference for a presidential form of government for the Regions, unless the regional statute did not decide otherwise.

The Government explicitly aimed at a wide consensus to be reached through parliamentary debate. All previous attempts of constitutional reform after the second World War were driven by the conviction that amendments of the constitution would have needed in any case a wide agreement. In fact, all previous reform, and even the unsuccessful attempts - included those not mentioned in this paper - had had the support of transversal political forces not congruent with the parliamentary majority. But this was not the case for

[17] In fact, the impasse on the reform project proposed by the D'Alema Commission had not been related to the federal reform, which had been supported - at least verbally - by all the political forces (with the exception of the extreme left-wing communists)

[18] Constitutional Bill no. 5830, *Ordinamento federale della Repubblica* (Federal framework of the Republic), presented on 18 March 1999.

the Title V reform: the parliamentary process, in fact, was characterised by a bitter clash between majority and opposition. Nothing could avoid it, neither the adoption of the text approved by the D'Alema Commission with a large majority, nor the addition of amendments proposed by the opposition (one of them reintroduced the principle of horizontal and vertical subsidiarity). In fact, in the opposition ranks, the renewed alliance between the centre-right parties and the Northern League kept until the end. And until the end the opposition denounced the inadequacy of steps made by the bill towards the federal model[19], the vacuity of the provisions on horizontal subsidiarity, the *sine die* postponement of the transformation of the Senate into a Chamber of Regions, the inadequate formulation of the rules on fiscal federalism and on taxation powers of regional and local authorities, and, above all, the claim to change the constitution by relying only on majority votes. Until the last minute, the centre-left majority internally debated on the opportunity to set the controversial precedent of a constitutional reform approved only by a very narrow parliamentary majority. In the end, electoral considerations (the aim to limit room for opposition propaganda in the central and northern areas) and, above all, the strong support provided to the reform by regional and local governments (including most of the centre-right governments), were decisive.

As promised, the centre-right opposition immediately launched a people's referendum (as provided under the constitution when a reform project does not reach, at second reading, at least a two-thirds majority from MPs). But the referendum, held on 7 October 2001, despite of a low turnout (34% of the electorate), led to the success of the reform, that was approved by 64% of voters.

The outcome of the referendum was the confirmation of some specific features of the Italian constitutional process in the eighties and nineties: first of all the strong support of the large majority of public opinion for a federal reform conceived as a tool for modernizing the country, bringing the institutions closer to citizens, reducing the bureaucratic centralism and improving the self-governance of local communities. And so, in the referendum of 2001, the supporters of the old centralized state and the supporters of a more radical federal reform (Northern League) were both clearly defeated.

19 The Northern League leader, Umberto Bossi, spoke of "Stalinist federalism". Sen. La Loggia, the spokesman for Forza Italia senators, was equally critical, ("There is no serious reference to the principle of subsidiarity in a horizontal and social sense. The Chamber of regions is not really established. There is no structural reform of the Constitutional Court. There is no authentic fiscal federalism").

Indeed, in support of a federal but not radical reform (therefore following the model of cooperative federalism) a vast and somewhat unusual convergence was recorded during the nineties: it included the major trade unions (CGIL, CISL and UIL) and employer organizations (*Confindustria*), the most influential newspapers, the vast majority of public opinion and of scholars of constitutional law. But public support for the federal model, very wide in the mid-nineties, began to decline at the end of the decade, and in any case expressed, rather than an adherence to a well-defined constitutional model, a general request for modernization and cutting red tape.

In the constitutional process as described, the support for federal reform was naturally strong among the vast majority of the regional and local governments and local political class. But their role was generally marginal. In constitutional reform decision-making process the role of the national political class has always been predominant. This was mainly due, in my opinion, to three reasons:

- the centralized structure of Italian political parties (the result of their historical evolution, especially in the case of the left-wing parties, linked to the Leninist model, and of the Northern League, which that model had consciously copied);
- the lack of vision and long-term strategies of the regional political elite, mostly projected towards national political roles and responsibilities
- the divisions and conflicts that have almost always opposed the local representatives to the regional representatives: the distrust of mayors and presidents of the provinces towards the regional political elite, and their fear of falling from the frying pan of the centralized state into the fire of a new regional centralism.These factors have weakened the bargaining power of the front of autonomy against the central government and administrations.

In fact, until the approval of the 2001 reform, regions, provinces and municipalities, rather than helping to build a culture of forward-looking reform and to define and implement a comprehensive project for modernising the institutions, engaged in an action to claim more powers and resources. After the approval of the reform, the quality of their action has not change much. The claim of more powers gives way to the request for implementing a reform that has now already given to the regions and local authorities, at least in theory, the powers and responsibilities typical of a regional or local institution in a federal state. What remained unchanged - and today not yet satisfied – was the request of adequate resources, i.e. the request of implementation of the tax autonomy recognized by the new Article 119 of the Constitution.

5. The failed "reform of the reform"

The new Title V entered into force as reformed on 8 November 2001, after the referendum. In the meantime, the centre-right and the Northern League won the 2001 general elections. Thus, the political forces that had fought against the reform became the new parliamentary majority. The new majority immediately declared its intention to approve as soon as possible a "reform of the reform" intending to establish an "authentic federalist form of the state". Moreover, it refused to consider the form of the state introduced by the 2001 reform as accepted and shared. Waiting for questioning it and replacing it with another process, the majority blocked the completion/implementation of the reform that still needed approval for

- the reform of the Senate, transforming it into a Chamber of regional and local authorities (similar to the German *Bundesrat* model or on the French *Sénat* one)[20];
- the definition of the key functions of local and provincial governments, and the transfer of functions and resources from the State to local authorities;
- the definition of public service standards, in order to ensure equality for citizens in the exercise of their fundamental rights;
- the reform of public finance law in accordance with the principles of fiscal federalism, needed to convert the mechanisms of finding resources from a system based on transfer from the central state to the regional and local governments, to one based on local and regional government responsibility (by rebuilding the relationship between revenues and responsibility for expenditure, as required for a well-balanced functioning of any federal system).

During the 14th legislature (2001-2006) none of these measures was approved. Therefore, the implementation of the reform remained paralysed. Amongst other things, the result was a strong increase of disputes before the Constitutional Court: Regions were claiming powers and financial resources as assigned to them by the reform of Title V, while the State was refusing to hand them over in absence of adequate implementing measures.

In 2005, after a hard battle with the centre-left opposition, the centre-right majority approved a new, global reform of Part 2 of the Constitution. This reform was based on the one hand on a hyper-presidentialist model, on the other hand on the new "totem" chosen by the Northern League: the "devolution" of exclusive legislative powers to the regions. The reform:

- almost completely cancelled the separation between executive and legislative powers, by assigning to the Prime Minister – directly elected by the people - unlimited powers to influence Parliament's legislative decisions;

[20] Though non-federal, the French Senate seems to better respond to the need – that is based on solid historic, political and cultural rationales – to represent noto only the Italian regionas, but also the Municipalities and the Provinces, too.

- returned to the exclusive legislative competence of the central state some sectors which Title V had made concurrent between the state and the regions (like, e.g., work safety; transport and navigation networks; communications; intellectual professions law; and national energy production transport and distribution);
- assigned to the exclusive competence of the Regions some sectors previously included under concurrent legislation, such as health care and organisation, regional administrative police, school organisation, school management and the definition of education programmes of specific interest for the region ("devolution" in common journalist jargon);
- assigned to the Parliament (triggered by a government proposal) a sort of discretional veto power over regional laws considered to be against the national interest;
- set up a "federal" reform of the Senate, according to the US Senate model.

Apparently the winner was Berlusconi. The reform assigned unlimited powers to the Prime Minister, so that, according to the opposition, a sort of majority dictatorship, or rather a premier dictatorship had been set up. Moreover, introduced a sort of "accordion" federalism, almost confederal in vesting exclusive legislative powers to the Regions, but strongly neo-centralist in assigning "a posteriori" veto powers to central government and Parliament in order to stop regional laws considered as against the national interest.

However, on June 2006, the reform bill wanted by the Berlusconi government was rejected by people in a referendum, with a wide majority of the 61.7% of the voters.

6. Outcomes and achievements

In recent years the political clash on the Title V reform decreased. A sort of widespread reassessment seems to be ongoing. Even many of those who in 2001 criticised it, seem now to discover many merits of the reform. After the rejection by the electorate (as mentioned earlier) of the clumsy attempt to introduce a federalism coming close to the confederal model, for many the "new" Title V came back to mean the maximum innovation possible for a federal reform.

The reform's implementation process vigorously restarted with the approval by a wide majority of the bill on fiscal federalism (Law 62/2009). The debate on this law confirmed that the Title V provisions on regional and local finance (art. 119) are today generally appreciated. Moreover, all agreed on the need for regional and local governments to become firmly responsible for their public spending and to fight tax evasion. Likewise, almost all agree on the need to adopt a caring, cooperative federalism model in which every

regional and local government must have sufficient resources to guarantee essential public services, without discrimination among the various areas of the country.

Implementation of the fiscal federalism will take several years and will have to overcome considerable technical and political difficulties, aggravated by the effects of the economic and financial crisis; the crisis implies of course that additional funds are not available for facilitating the implementation of the reform. But at least on this point the way has been paved.

On other Title V provisions, too, the criticism has either disappeared or has at least died down. As for the distribution of powers between the central state and the Regions, the Northern League seems to have given up on its claim to exclusive regional legislative powers in healthcare and education in favor of its request for a rapid and consistent implementation of the fiscal federalism reform. A widespread consensus is emerging between the majority and the opposition on two amendments to article 117[21], both of which aim to downsize the legislative powers of the Regions. The first concerns a decrease in the list of sectors assigned to concurrent competences of state and Regions, by returning to the state important competences such as work safety, large transport networks, energy production and power grid, laws on communications and the professions. The second amendment, long suggested by scholars, consists in adding to the constitution a provision following the model of art. 72 of German *Grundgesetz*. It awarding to the central legislative the power to intervene in matters covered by regional legislation, where required to protect the legal or economic unity of the Federal State or the equality of citizens in exercising their constitutional rights. It is well known that this supremacy clause can be found in all federal systems, either explicitly written in the constitutional law, or established by a settled interpretation of the constitutional court, so much so as to justify the conclusion that it is one of the structural elements of a federal state, and actually, one of the distinctive features of the federal system as compared to the confederal system.

The introduction of a supremacy clause would also solve the problem of "variable geometry" federalism, as envisaged in article 116, subsection 3 of the Constitution[22]. In fact, all, or almost all, are ready to accept that a certain

[21] These are the same corrections that, in autumn 2000, the Senate wanted to make to the Title V reform approved on first reading by the Chamber of Deputies. However, any amendment would have forced a return of the text before Parliament and it would therefore have been impossible to approve the law before the end of the legislature. Therefore the Senate was forced to give up.

[22] Under article 116, final subsection, individual Regions could obtain by "law approved by the absolute majority of members of the Chambers" … "further forms and special conditions of autonomy" and in particular exclusive legislative powers in sectors assigned under article 117 to concurrent responsibility of State and Regions (including health,

degree of variable geometry is imposed by the marked differences in economic and social conditions, and in cultural political and administrative traditions that characterise Italy. However some fear that this provision could constitute a kind of Trojan horse to demolish the unity of the Republic and the very principles of cooperative federalism. The introduction of the supremacy clause would give national Parliament the necessary powers to intervene to protect general and national interests, in sectors that the constitution fully or exclusively assign to regional legislation (and therefore also in sectors assigned to the competence of a single region, under article 116, subsection 3).

Nevertheless, we cannot underestimate the fact that, in federal systems, the supremacy clause is mostly accompanied by suitable guarantees to prevent its misuse by federal institutions – in other words to avoid its power being used as a means to squash regional autonomy as recognised under the constitution. For this reason, the supremacy clause envisaged in article 72 *Grundgesetz* of the Federal Republic of Germany is balanced by the *Bundesrat's* participation in the approval of the federal laws issued to protect the legal and economic unity or to guarantee equivalent living conditions across the entire federal territory.

The addition of a supremacy clause to the Italian constitution should therefore go together with a reform of the Senate, in order to make this Chamber representative of the Regions (or, more likely, of the whole system of local authorities). On this point there seem to be a total consensus at least on the principles. In practice, the solutions differ, wavering between various models: the US Senate, the German *Bundesrat*, the French Senate or a combination of these different models.

Thus, the reform of Title V is therefore far from complete. The transition from the old constitutional organisation to the new will be lengthy and difficult.

energy, infrastructures, research and local government), in addition to matters concerning education and environmental protection.