

# Why Italians should reject Renzi's constitutional reform

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We are now in the final month of campaigning ahead of Italy's constitutional referendum on 4 December. Presenting a case for a No vote, [Valentino Larcinese](#) argues that the proposed reform would remove much needed checks and balances on executive power in Italy, while the method used by the government to try and enact the reform is also worthy of rejection in its own right.



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In early December Italians will vote on a constitutional reform proposed by the current government. The most important consequences of a "Yes" victory in the referendum would be, first, to change radically the role of the Senate, second, to extend the privileges of the executive in the legislative decision-making process, and third, to centralise a number of functions previously devolved to regional governments. These three pillars will all work in the direction of creating a much stronger central executive. A detailed description and assessment of the reform is provided in an excellent [EUROPP piece](#) by Gianfranco Pasquino and Andrea Capussela, which should be consulted for further details. In this blog I will argue that there are at least two good reasons why the reform deserves to be rejected.

The first is based on the *merit of the reform*: it will mark a shift towards a *de facto* quasi-presidential system embedded in *de jure* parliamentary institutions. This is a system where parliamentary checks on the executive would be severely limited. At the same time there is no reason to expect that the reform will have any positive impact either on the functioning of Italian public administration or on its economy.

The second reason stems from the *method employed* to enact the reform: the conditions that led to its parliamentary approval are very different from the conditions that led to the 1948 constitution. The proposed reform is not the outcome of an open parliamentary deliberation but rather of party discipline and short-term political considerations. This method to change a constitution deserves to be rejected in itself and independently of the content of the reform.

## **A stronger executive and a weaker parliament**

The reform of the Senate is substantial and alters in a fundamental way the legislative process. At the moment the Italian parliamentary system is bicameral: all legislation must be passed by both the *Camera* (Lower Chamber) and the Senate (Upper Chamber). The executive needs the confidence of both chambers. The reform will reduce the powers of the Senate. First, the executive will no longer need the confidence of the Senate. Second, a perfectly bicameral system will remain in place for matters of constitutional interest and for policies that concern local administrations and international treaties.

In all other cases the Senate may require a reading and suggest amendments but the second reading in the *Camera* is final. The Senators will be reduced from 315 to 100 and will no longer be elected directly by citizens. The Senate will be formed by representatives nominated by the Regional Councils, although the nomination process has not been specified yet. The reform would therefore create a fuzzy entity of part-time Senators/local councillors, with some margin for the government to decide after the referendum how it should be shaped.

The reform will diminish the role of the Senate but will not create a unicameral system. Article 70 of the Constitution, which currently reads "The legislative function is exercised collectively by the two chambers" would be replaced by a new article which consists of almost 500 words (and in turn refers to ten other articles of the Constitution),

attempting to delimit the functions of the new Senate. Constitutional experts are still debating how many legislative procedures the new constitution would create: it is hard to imagine that everything would proceed smoothly with no controversies on which role the Senate should play on specific pieces of legislation.

Contrary to its intention, there is no guarantee that the reform would make the legislative process more efficient than it currently is. When looking at the performance of other European parliaments, it is also not clear that the number of laws passed and the speed at which they are approved are really a problem in Italy. In the end it is well known that the main problem with Italian public administration is not so much the production of laws as it is their implementation.

Let's now ignore then the complications deriving from possible conflict between the two chambers and focus on the policy domains on which the Senate would only retain a *de facto* consultative function. In these cases, the reform would remove (or reduce the influence of) one institutional veto player, therefore increasing the set of feasible policies that a government can successfully pass through parliament. Since in many instances the government acts as an agenda setter and the parliament as a veto player, there is little doubt that the executive would be stronger under the new constitution since it would face the approval of one less institutional veto player (for a more technical explanation of why this is the case, the interested reader can consult George Tsebelis' book on '[Veto Players](#)'). In addition, the reformed constitution would go even further by reinforcing the agenda setting powers of the executive. The reform, for example, would introduce temporal limits to the legislative process and a special high speed lane for executive-initiated legislation: five days to have it timetabled and 70 days to have it approved. The government would *de facto* dictate the calendar of parliamentary work.

## Checks and balances

To be fair, reinforcing the executive is an explicit aim of this reform, as stated in the very first page of the proposal, where the main problem with the current system is identified as "the chronic weakness of the executives in implementing the government programme". This reflects a view which is well stated in a [paper](#) produced in 2013 by the Economic Research team of JP Morgan, pointing to restraints on executives as one of the causes of the difficulties faced by Southern European Countries during the Great Recession:

*The political systems in the periphery were established in the aftermath of dictatorship, and were defined by that experience. Constitutions tend to show a strong socialist influence, reflecting the political strength that left wing parties gained after the defeat of fascism. Political systems around the periphery typically display several of the following features: weak executives; weak central states relative to regions; constitutional protection of labor rights; consensus building systems which foster political clientelism; and the right to protest if unwelcome changes are made to the political status quo. The shortcomings of this political legacy have been revealed by the crisis.*

Most supporters of the reform would probably not go so far, but it is not uncommon to hear that the restrictions on executive power that were imposed by the founding fathers of the Italian Republic after WWII and the Fascist regime are outdated and unnecessary today. This is a rather risky view: it's not difficult to observe the rising nationalism in all corners of Europe, the brutality of the relations between EU states, the attempts to set aside the British parliament in the Brexit negotiations, and the quick rise of "strong" leaders displaying little respect for democratic values and institutions even in solid democracies.

There has probably never been a time so similar to the 1930s: far from being outdated, we need more than ever those restrictions on executive power and those checks and balances (institutional, political and social, like the right to protest) guaranteed by the founding fathers in the 1948 Constitution. And when a head of government tells us that such checks and balances are outdated, this is probably a sign that they remain vital.

## The selection of MPs

The reform must be assessed with Italy's current electoral law taken as given – and not, as some have argued, by abstracting from it (because it is not part of the constitution). Any promise to change the electoral law after the referendum is not credible because we do not know if and how incentives to modify the law will change after the referendum (and abstracting from possible new judicial intervention on its constitutionality).

The current electoral law, which has been called “Italicum”, is a slight modification of the electoral law introduced by Berlusconi in 2006 (and it would obviously only apply to the *Camera*). It gives a majority premium to the party that reaches a plurality of at least 40% in the first round or a majority in a run off. Even more importantly, it is a system that elects most MPs in closed-list ballots, giving huge influence to party leaders over the choice of their MPs.

The choice of Senators, which would be changed by the referendum, would be made by the Regional Councils. Hence, Italians will continue to be unable to choose their MPs, a practice which has been in place since 2006 and on which the government has not felt the need to intervene. Selection by party leaders and career concerns means that MPs will be in most cases simple executors of party lines and that MPs will be selected for their loyalty to leaders, not for their competence. Hence the constitutional reform would give us a much reinforced executive with the capacity *de facto* to nominate a majority of MPs. Inevitably the parliament will become even more than today a mere rubber stamper of executive-initiated policies.

One good reason to reject the constitutional reform is precisely that, by doing so, Italians can force the government to rethink the electoral law. Since the Italicum only applies to the *Camera*, and since its only positive feature is to create stable majorities, it would become completely useless if the government still needed the confidence of the Senate.

## There is no reason to expect any economic benefit from the reform

As we have seen, under the new constitution it would be easier for the government to move policy from the status quo. There is nothing intrinsically desirable or undesirable about this: it depends entirely on what we think about the status quo and about the reforms that an empowered government would try to pass. As in many other situations we face a trade-off. On one side, an entrenched status quo may render the political system less able to quickly respond to a sudden crisis or to other changes requiring immediate action. This (and not the propaganda on the negligible reduction of the costs of the Senate) is the main argument in support of the reform. On the other side, reducing the number of veto players reduces policy stability and creates more volatility. This is because any change in the executive would have a larger impact on implemented policies (particularly in the current unpredictable three-party system).

Hence the new constitution would not decrease, but rather increase, policy instability and uncertainty. Most economic literature tends to stress that policy instability and uncertainty are not good for the economy. There is no empirical evidence suggesting that the first effect (being able to better respond to changes) should dominate the second (greater policy instability). I would rather point to an ample literature suggesting that constraints on executive power tend to have positive effects on the capacity to borrow, the respect of property rights, the building of state capacity and, ultimately, on economic growth (see for example the classic work of [Douglass North and Barry Weingast](#) on 17<sup>th</sup> century England).

## The method: a constitutional reform with little deliberation

Constitutions lay the foundation of democratic decision-making, they define the rules of civil coexistence and as such they should be broadly accepted by all members of a society, ideally, or a qualified majority in practice. The 1948 Constitution was the expression of a special period of cooperation between all anti-fascist political parties and represents the synthesis that emerged from a broad coalition. A Constituent assembly was elected, using a proportional electoral system, to draft and approve the Republican Constitution after the Monarchs had been kicked

out by a referendum.

Nothing comparable is happening at the moment. Renzi's Constitutional reform has only been supported by a slim majority in parliament. In addition, the current parliament has been elected using an electoral law which has been, *ex post*, declared unconstitutional. The slim majority obtained in parliament is only a consequence of the electoral system, which provides a majority premium in the *Camera* and regional majority premiums in the Senate. A proportionally elected parliament, without a hefty prize for the current government, would have, most likely, expressed a different view or it would have been able to force the government to give more consideration to the opposition.

As such, the Constitutional reform has only been passed in parliament thanks to an unconstitutional electoral law. Unconcerned by this, the government has done very little to open up a debate and to create a cooperative and constructive atmosphere around the reform, as the circumstances would have merited. The reform has simply been passed thanks to party discipline, in a context in which, because of the closed list electoral system, MPs know all too well that their political career is in the hands of their party leaders more than their voters.

The government strategy has been to ensure a minimum winning coalition thanks to short term political rewards while waiting for the moment when the reformed constitution and the leader proposing it could be blessed by popular vote (counting, it has to be said, on the support of most mainstream media). This is no way to reform a Constitution: this reason alone should be sufficient to reject the reform for any voter who thinks that democracy is first and foremost about having a set of rules on which a vast majority of a society can agree.

### **Analogies with Brexit: parliamentary sovereignty under attack**

Parallels are often made between the Brexit referendum and Italy's referendum. Some supporters of the Yes camp, for example, insist that a No vote would have negative economic consequences for Italy, like Brexit for the UK (and there is rather a lot of scaremongering in mainstream Italian media these days). However, while it is easy to see why leaving the EU or the European single market would have an impact on the British economy, it is not clear at all why refusing to concede so much power to the executive should have negative economic consequences.

As we have seen, a well-established theoretical and empirical literature would instead suggest that excessive executive power is typically associated with worse, not better, economic outcomes. It is true that a No vote could trigger a government resignation and that a general election could follow but, again, why an election should have a negative effect on the Italian economy, beyond the very short term, remains a mystery.

Much like in the EU referendum, where the views of foreign leaders were one-sided against Brexit, most EU leaders (and President Obama) have come out in support of Renzi's constitutional reform. It is clear why foreign leaders may want to voice their support for keeping the EU single-market intact, since their own interest is at stake. It is entirely legitimate to ask your trading partner not to leave, even if you acknowledge that it is their choice. But it is much less clear why foreign leaders should be interested in the way Italians pass their laws.

One possibility is that stronger executives within the EU (and particularly the Eurozone) could more effectively execute EU policy and avoid the complications of parliamentary deliberations (see the recent case of the Canada-EU trade agreement). I could perhaps be persuaded that this would be an acceptable arrangement if the EU was a federal state with a fully empowered parliament. This possibility, however, seems to be unpalatable to European citizens and is not supported by European leaders. It is therefore hard to understand why the endorsements of foreign leaders should be of any relevance for Italian voters.

The real analogy between the Italian Constitutional referendum and Brexit concerns instead the sovereignty of parliament. In the UK, one of the few rational arguments in favour of Brexit contrasted a democratically elected parliament in Westminster with the democratic deficit of EU institutions. However, after the Brexit vote, the executive intends to keep its hands free to interpret the referendum outcome as a mandate to exit the single market (although

the referendum posed a question on the EU, not the single market) without involving or even informing parliament about the negotiations. With the Great Repeal Act, Westminster risks being stripped of any say over how EU law should be changed into British law. As a reminder of the importance of the separation of powers, it has been so far the judiciary that has reinstated the right of parliament to vote on Brexit.

Similarly, in Italy the executive is trying to make parliamentary approval a mere rubber stamp for the government's policies. With the reform, the agenda and the calendar of parliamentary work would be dictated by the executive. Thanks to the closed-list electoral system, MPs will depend for their re-election mostly on party leaders and only marginally on voters' choices. The parliament will be increasingly populated by yes-men and will become increasingly irrelevant. In short, the constitutional reform will deal a serious blow to the separation between legislative and executive power.

Both Italy and the UK are parliamentary systems and the sovereignty of parliament is central to their democracies. As already argued on EUROPP by [Fabio Bordignon](#), Renzi's constitutional reform must be seen as part of a gradual long term empowerment of the executive which could eventually culminate in a "third republic", with increasingly personalised politics, strong party leaders and parliamentary elections leading *de facto* to the choice of a quasi-president.

This would clearly be a problematic outcome: presidential systems come with a much tighter separation between legislative and executive powers. Checks and balances are different from those of parliamentary systems. When contemplating the possibility of a Trump presidency, for example, we can at least be reassured that a President Trump would be very unlikely to have Congress on his side. The American Constitution, drafted nearly 250 years ago, still works very well by providing safeguards to at least limit the damage of a Trump presidency. Italian voters should consider very carefully the consequences of creating an overly empowered executive with limited checks and balances.

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