LUISS

Degree Programme in International Relations

Course of Comparative public law

Constitutional Reforms of Italian Parliamentarism in a Comparative Perspective: In Search of Governmental Stability?

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Academic Year 2023/2024

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Introduction

In May 2024, the President of the Italian Republic, Sergio Mattarella, honoured former President of the Council Giovanni Goria by quoting him: 'This is not only the Constitution of our past, but it is that of our future as well'. He added: 'Precisely in being a Constitution of compromise between different and opposite ideological projects […] lies [its] great modernity and the ability that it has had of serving as a constant reference point'. Keeping in mind this teaching and warning, this dissertation will try to answer the following research question: would the proposed reform of the Italian Constitution on the form of government put forward during the 19th parliamentary term be effective in resolving the country's supposed governmental instability as per its aspirations? The topic of constitutional reforms of the form of government has been of interest in the Italian scholarly and political debate since the very birth of the Italian Republic in 1946 and has acquired an always growing momentum from the 1980s onwards. It has become newly central in the public discussion after the 2022 parliamentary elections, as the winning right-wing coalition supporting the Meloni government had in its electoral programme an expressed will to approve such a reform, which eventually started its *iter* in parliament in 2023. The approach through which this dissertation will attempt to answer the research question is that of a comparative legal analysis, so that a number of elements will need to be discussed in order to reach the desired goal.

A first important point to make is that the current Italian form of government is a parliamentary one, and the proposed constitutional amendments that this thesis aims at reviewing and assessing from the 1970s onward have focussed on either reforming such form of government (alternatively in a lighter or deeper manner) or at overcoming it, by adopting a different one.

In Chapter 1, an analysis of various key theoretical factors will be presented. At first, a brief historical investigation of the relationship between democracy, especially the current concepts of representative and liberal democracy, and parliamentarism will be proposed. The analysis will then move to the definition of 'form of government' and the description of the existing forms of government in democratic systems, of which the parliamentary system is one. The chapter will continue with a more in-depth description of the parliamentary form of government, analysing its main characterising elements and presenting the existing differences among its declensions in various constitutional systems. In particular, regarding its formal operating principles deriving from constitutional provisions, it will focus on the structure of parliaments, both on a historical and legal level, on the different versions of investiture procedure of governments by the elected assemblies, on the confidence relationship which exists between a legislature and the respective executive and on the

cases of dismissal of the latter, and on the powers and mechanisms through which a parliament can be dissolved. Furthermore, a special degree of attention will also be dedicated to the description of the role that the electoral and party systems play within a parliamentary form of government, since they are crucial in determining its actual functioning. The dissertation will then try to shade some light on the idea of governmental stability within parliamentary systems, since a proper description of such concept is essential in order to answer the research question, with a particular attention on the Italian debate on this issue. Finally, the last part of the chapter is devoted to the description of the current Italian parliamentary form of government, starting from its historical origins and then moving on the key concepts used for the general analysis: structure of the parliament; governmental investiture, confidence relationship, government dismissal, and parliamentary dissolution; electoral and party systems, in particular focussing on the differences which were impressed to them in the 1990s and later on through the 2010s.

In Chapter 2, the focus of the analysis will be the various proposed constitutional reforms of the Italian form of government which have been presented by various political forces over the years. The first section of the chapter will discuss the reasons which led the Italian political class to propose such reforms, in particular since the 1970s, linking them with the discussion on governmental instability and the circumstances related to the party and electoral systems presented in Chapter 1. Then, an analysis of such reforms will be proposed in a historical perspective, starting from the first parliamentary works on the topic dating back to the 1980s and 1990s (in particular, the Riz–Bonifacio panels of 1982, the Bozzi bicameral commission of 1983–1985, the 'Labriola project' of 1991 and the De Mita–Iotti bicameral commission of 1992–1994). The chapter will then continue with the proposed reforms promoted after the 1994 watershed election, which mostly shifted the focus of analysis from the parliament to the government, with the exception of the D'Alema bicameral commission of 1997–1998. Indeed, after an analysis of the proposal of the Speroni committee in 1994, the two main governmental reforms proposed until now will be presented: the 2005 Berlusconi government reform and the 2016 Renzi government reform. The last part of the chapter will finally analyse the constitutional reform currently under discussion in the Italian parliament, proposed by the Meloni government in 2023: the dissertation will at first present the historical background of this last proposal and will then move on to analyse the provisions in its current formulation, which was voted on by the Senate in June 2024.

In Chapter 3, the discussion will focus on other institutional systems which will be used to assess the reform proposals in a comparative manner. Lessons could be learnt from a high number of systems worldwide, but in order to offer a more linear and understandable analysis only four have been

selected because of their distinct relevance to the Italian debate[1]. The first system is that of the French Republic: indeed, France has been a prime example of parliamentary republic since the 19th century, while the Fourth Republic was born concurrently with the Italian Republic in 1946, after World War Two. Just as the Italian Republic, the Fourth French Republic presented elements of governmental instability, which however resulted in its eventual dismissal in 1958, when the Fifth French Republic was founded. The French political class indeed resorted to the complete overcoming of the parliamentary form of government in order to solve its instability and opted for the adoption of the semi-presidential system, which will be described in Chapter 1 as well. In Italy, some scholars and politicians have also proposed through the years to draw on the French model and establish a semi-presidential form of government, so that the description of such system is instrumental in understanding their reasons and the possible causes of the failure of such model in Italy. The second system is that of Germany. Before the rise to power of the Nazi party in the 1930s, Germany also had a parliamentary form of government, whose instability however was one of the main causes of the establishment of the authoritarian regime. After World War Two, Germany opted again for a parliamentary form of government, but implemented a series of rationalising mechanisms which proved to be effective in providing it with stable governments ever since. Analysing such mechanisms is extremely important within the discussion on the Italian constitutional reforms, as the German system has often been presented as a model to be followed in order to stabilise the Italian parliamentary system without abandoning it. The third system is instead that of Israel. When the state was founded in the late 1940s, it also opted for a parliamentary form of government, which however started growing more and more unstable from the 1970s. The solution that the Israeli lawmakers found to resolve the situation was that of adopting a new form of government, the elected prime-ministerial system (also described in Chapter 1), which was in place from 1996 to 2001. This form of government was eventually abandoned as it proved to be ineffective in solving the problem of governmental stability, and a parliamentary system was re-adopted, with some rationalising elements. The description of the Israeli elected prime-ministerial system between 1996 and 2001, and especially the reasons for its failure, are crucial for the aim of this discussion: indeed, the 2023 Meloni proposal intends to introduce such form of government in Italy and Israel is the only country globally which has adopted it so far. Finally, the Italian regional form of government will be described. In the 1990s, the Italian regions switched indeed from a parliamentary form of government, based on the model of the national Italian system, to an elected prime-ministerial one, with necessary differences due to their

[1] When talking about case selection in comparative legal studies, it is impossible not to mention Ran Hirschl, in particular 'The Question of Case Selection in Comparative Constitutional Law' (2005) 53(1) *American Journal of Comparative Law* 125.

subnational nature. Differently from the Israeli experiment, however, the current Italian regional form of government has been effective in tackling the problem of governmental instability which also existed in the Italian regions before the reform, so that a comparison between its particular mechanisms, the Israeli ones, and the ones proposed by the Meloni reform could shed some light on the possible outcomes that the latter would have on the Italian system in case it is approved.

In Chapter 4, a full critical and comparative analysis will be presented. At first, the issues of the current Italian parliamentary system will be analysed in the light of the governmental instability that the country shows. Through a comparison with other systems, especially the German one, possible solutions will be presented remaining in the framework of a parliamentary form of government, thus showing how an abandonment of such a system is not necessary in order to reach a higher degree of governmental stability. Secondly, the focus will shift to the possible implementation of a prime-ministerial system in Italy, with special references to the current proposal of reform by the Meloni government. The critical analysis of such reform will also be conducted thanks to an extensive comparison with the Israeli and Italian regional elected prime-ministerial forms of government, highlighting the similarities and the differences, and thus the possible advantages and drawbacks that such a reform might bring. The third part of the chapter will instead focus on those proposals of adoption of a presidential or semi-presidential system, also using the instrumental comparison with the French form of government, which has often been seen as a possible model for Italy, even before the birth of the Fifth Republic in 1958. Finally, a brief discussion on the possible threats to democracy that constitutional reforms of the form of government might bring will be conducted. In this context, other countries will be presented and used as a comparison (Hungary, Tunisia, Turkey), in order to analyse what consequences on the democratic principles of a system might stem from deep reforms of its constitutional order.

By drawing on the concept of governmental stability as a common constitutional good, the comparative analysis on the Italian form of government and its (attempted) reforms also aims to contribute to the literature on constitutional democracies in crisis, on the legislative executive-imbalance and on the general problem of the preservation of liberal constitutional values in the context of institutional reforms.

1 Parliamentarism and the Italian System

This first chapter will draw a theoretical introduction to several important concepts, whose understanding is fundamental in order to create an analysis of the topic in question. First, the chapter will briefly introduce the concept of parliamentarism and its link to the modern definition of democracy. Secondly, the contemporary notion of parliamentary form of government will be presented and compared to other systems. Thirdly, the chapter will conduct a more in-depth analysis of the parliamentary system, introducing the different variations that currently exist in the world: these go from the structure of the parliament itself, to the rules that regulate the relation between government and legislature, and to the instrumental role that the electoral system and the political parties play in shaping the functioning of parliamentary systems. Finally, the last part of the chapter will focus specifically on the Italian parliamentary form of government, starting from its historical origins, going over its institutional functioning, and finally analysing the evolution of its electoral and party systems.

1.1 The Relationship between Parliamentarism and Democracy

The majority of the democratic systems that are currently in place in the world find their ideological foundation in the concept of representative democracy, which saw a tremendous expansion during the twentieth century. In this context, parliamentary institutions have come to possess a crucial role, so that often the very modern idea of 'democracy' is equated to 'parliamentarism', an institutional arrangement in which the elected representatives of the people exercise a direct power over the future of the polity within an assembly[2]. Contemporary institutionalised parliaments are recognised to have their historical roots in medieval practices of assemblies, even though it is important to stress that deep differences exist between the two. Indeed, the contemporary idea of parliament has evident intrinsic characteristics which cannot be found in earlier institutions or practices: firstly, it is inspired by democratic values of popular sovereignty; secondly, as a consequence, it represents all the citizens of the nation, and not only specific class interests[3]; thirdly, even though its elected members are tasked

[2] Robert Schütze, 'Constitutionalism(s)' in Roger Masterman and Robert Schütze (eds) *The Cambridge Companion to Comparative Constitutional Law* (Cambridge University Press 2019) 46.

[3] Giovanni Rizzoni, *Parliamentarism and Encyclopaedism: Parliamentary Democracy in an Age of Fragmentation* (Hart Publishing 2024) 30.

with making decisions on behalf of their electorate, they are at the same time independent from it in the exercise of their functions during their term of office[4].

Contemporary parliamentarism and democracy are also strictly linked to constitutionalism, which is an ideological paradigm that defines what a constitution is or should be[5]. There exist many variants of constitutionalism, but their full analysis is not relevant to the scope of this work. However, some aspects are worth mentioning in order to provide a clearer theoretical overview on which the later discussion will be based. Important aspects of constitutions are derived from two different definitions: from a formal point of view, constitutional provisions are the highest laws in a country and even stand above the government; from a material understanding, however, the constitution also needs to be linked with a particular legitimising political ideology[6]. In this latter sense, two main ideas exist and mutually reinforce each other: that of 'democratic' constitution, which ought to be based on the concept of a 'government of the people, by the people, for the people', and that of a 'liberal' constitution, which restricts government action when it goes beyond some superimposed limits, traditionally the separation of powers and fundamental rights[7]. The combination and balance of these three elements (constitution as the highest law within a polity, combining both its 'democratic' and 'liberal' views) creates the contemporary idea of liberal democratic constitutions, the 'real' constitutions, opposed to 'nominal' or 'façade' constitutions of illiberal and undemocratic polities[8].

Early parliamentarism in continental Europe, born with the French Revolution of 1789, bore at the beginning the idea of the supremacy of parliament on all other authorities, thus replacing the monarch as the sovereign of the state. Apart from that early application during the revolutionary period, however, the constitutional history of Europe mostly developed in another way, that of constitutional monarchies, in which the monarch was forced to allow representative assemblies to have a saying on some matters, such as liberty and property. Only in 1875, with the birth of the Third French Republic,

[4] Michel Hébert, 'The prehistory of parliaments' in Cyril Benoît and Olivier Rozenberg (eds) *Handbook of Parliamentary Studies* (Edward Elgar Publishing 2020) 50.

[5] Schütze (n 2) 40.

[6] Even though the version here proposed is paraphrased for the scope of this analysis, on the conceptual dichotomy of formal constitution–material constitution, see: Costantino Mortati, *La Costituzione in senso materiale* (Giuffrè 1940).

[7] Schütze (n 2) 40–42.

[8] Giovanni Sartori, 'Constitutionalism: A Preliminary Discussion' (1962) 56 *American Political Science Review* 853.

a real modern parliamentary form of government[9] was first established in continental Europe[10]. This represented an evolution of early parliamentarism, which entailed the absolute supremacy of the parliament, as constitutional arrangements aimed at counterbalancing the power of the parliament over the executive, for example with the power of parliamentary dissolution held by the head of state. In the Third French Republic, however, the elected parliament was eventually able to exercise an effective supremacy over the executives, which in most of the cases were short-lived and incapable of fully implementing their policies, while the power of dissolution was never used. So, it appeared that democratic values could thrive only in a context of governmental instability, as parliamentary majorities never became solid enough[11].

The British parliamentary system appeared to have a solution to this problem, but it was grounded on centuries of conventions and its particular historical circumstances. In order to successfully export the British model, in which the executive relied on the parliamentary confidence but was not for this reason unstable, after World War One European countries started to conceive new means to grant the executive instruments to ensure the stability of its action through the drafting of new constitutions (Germany 1919, Austria 1920, Czechoslovakia 1920, Poland 1921, Spain 1931). These were the first attempts to rationalise the parliamentary form of government: the supremacy of parliaments needed to be balanced, through constitutional provisions, with the strengthening of the executives in order to grant continuity and effectiveness of governmental action. It was in this historical context that the concept of 'rationalised parliamentarism' was first developed by Boris Mirkine-Guetzévitch[12], who defined the process of rationalisation of parliamentarism as the precise definition of the rules of a parliamentary regime in its constitutional charter. In particular, there needed to be clear procedures for the formation and the dismissal of a government, with necessary and well-defined legal and political conditions to be met in order to trigger the latter[13].

The eventual rise of fascist regimes on the continent, however, annihilated such institutional arrangements. After World War Two, all democratic countries in Western Europe opted again for

[9] What a parliamentary form of government is will be examined in depth in the coming sections of this chapter, but in general it can be described as an institutional arrangement in which the government, which holds the executive power, is accountable towards a parliamentary majority in a directly elected assembly.

[10] Anthony W Bradley and Cesare Pinelli, 'Parliamentarism' in Michel Rosenfeld and András Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law* (Oxford University Press 2012) 654.

[11] ibid 653–654.

[12] cf Boris Mirkine-Guetzévitch, *Les Constitutions de l'Europe nouvelle* (Delagrave 1928).

[13] Jean-Félix de Bujadoux, 'Des rationalisations du parlementarisme en France' (2020) 71 *Droits* 173, 175–176.

parliamentary forms of government, which proved to be effective in keeping democracy alive and granting governmental stability. This successful balance was achieved for various reasons, which can be divided into two main categories: legal reasons, because the new constitutions formalised a complex system of balance of powers not only between the executive and parliament, but also involving the judiciary, the sub-national levels of government, and the whole electoral body through referenda; and political reasons, because all major national parties expressed their democratic commitment[14].

1.2 Forms of Government: The Parliamentary System and Beyond

It is now important to describe more thoroughly the functioning of parliamentary systems, and the characteristics that differentiate them from other models. The parliamentary system is one of the two 'pure' forms of government, the other one being the presidential system. Many variations of the definition of 'form of government' currently exist, but in general one can describe it as 'the group of legal rules, written and customary, which characterise the distribution of the political power among the constitutional bodies that are at the top of the state apparatus in a condition of equal sovereignty and reciprocal independence'. The constitutional bodies which are relevant to analyse forms of government are thus, undoubtedly, the parliament and the executive, as well as the head of state whenever their powers have a political effect, while the judiciary is not, as its acts are not political but jurisdictional[15].

A minimal definition of a parliamentary form of government is that of a system 'in which the head of government and their cabinet are accountable to any majority of the members of the parliament and can be voted out of office by the latter'[16]. The main characteristic of the parliamentary system is thus the dependence of the executive on a confidence relationship with the elected parliament: the head of the executive and the cabinet are voted into office and can be dismissed through a majoritarian procedure in the assembly, and thus remain accountable to the assembly through their whole term in

[14] Bradley and Pinelli (n 10) 654–656.

[15] Mauro Volpi, *Libertà e autorità: La classificazione delle forme di Stato e delle forme di governo* (8th edn, Giappichelli Editore 2022) 7–8.

[16] Kaare Strøm, Wolfgang C Müller and Torbjörn Bergman (eds), 'Parliamentary Democracy: Promise and Problems' in Kaare Strøm, Wolfgang C Müller and Torbjörn Bergman (eds) *Delegation and Accountability in Parliamentary Democracies* (Oxford University Press 2003) 12–13.

office[17]. In the presidential system, instead, there is a clear separation between the executive, whose head is also the head of state, is usually directly elected and always serves in office for a fixed term, and the parliament, which cannot be dissolved and is able to remove the head of the executive only through special procedures, such as an impeachment process[18].

There are thus some central aspects that differentiate the most between these two forms of government. The first one is the parliament–executive relationship: in a parliamentary system, a central aspect is indeed not only the power of the assembly in the moment of formation of the cabinet, but most importantly the power it holds onto the survival of the executive[19]. A second crucial matter relates instead to the responsibility of the executive towards the head of state, whenever the two offices do not coincide. This responsibility is direct when the head of state has the power to unilaterally dismiss the cabinet, partly or entirely, and indirect when they can only cause the resignation of the executive by dissolving the parliament. In a classical parliamentary system, the head of state does not possess such powers. Instead, when the governmental responsibility exists both towards the parliament and the head of state, the system is part of the category of the 'mixed' forms of government, as it contains simultaneously elements of the two 'pure' systems – parliamentarism and presidentialism[20].

Mixed, or 'hybrid', forms of government exist in many countries and have actually been very popular among those which started building democratic regimes from the 1980s onwards, so that they currently make up a non-irrelevant share of all democratic or semi-democratic regimes globally[21]. Traditionally, scholars have focussed on one specific form of mixed regime, semi-presidentialism, described as the form of government in which the executive power is exercised in collaboration by a directly elected president for a fixed term and a prime minister and cabinet accountable to a parliamentary majority. Nonetheless, two different variants of semi-presidentialism can be distinguished, according to the responsibility of the cabinet towards the parliament and the president. In the so-called 'president–parliamentary' system, both the president and the parliament possess the power to dismiss the prime minister and the cabinet on political grounds. The only democratic country

[17] Steffen Ganghof, 'Presidentialism, Parliamentarism, and their Hybrids' in Richard Bellamy and Jeff King (eds) *The Cambridge Handbook of Constitutional Theory* (Cambridge University Press 2024).

[18] José Antonio Cheibub, *Presidentialism, Parliamentarism, and Democracy* (Cambridge University Press 2006) 1.

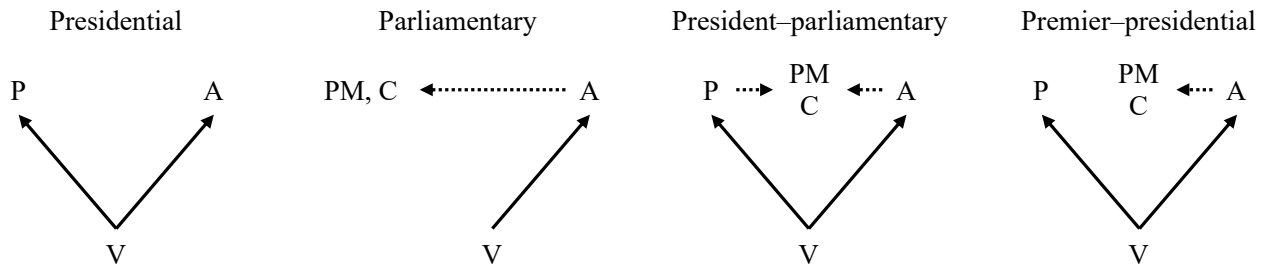
[19] ibid 35–37.

[20] ibid 38–42.

[21] ibid 42–44.

that currently uses this system is Taiwan. Instead, in the 'premier–presidential' system, the prime minister and the cabinet are only responsible to the parliament: the president chooses the members of the executive, but the parliament can remove them through a vote of no-confidence, and in some cases also needs to vote them in. The premier–presidential variant is more widespread and is currently operational in various countries, notoriously in France[22]. The following figure (Figure 1) illustrates the relations between voters, parliament, head of state (president), and prime minister and cabinet in the two 'pure' forms of government – presidentialism and parliamentarism – and in the two variants of semi-presidentialism – president–parliamentary system and premier–presidential system.

Figure 1: Traditional Forms of Government[23]



V = voters; A = assembly/parliament; P = president; PM = prime minister; C = cabinet
→ = election; ⇢ = dismissal

There are however other possible forms of government, which are much rarer and thus not often the focus of scholars. The first one is the 'elected prime-ministerial' system, whose main characteristic is the fact that the head of government, distinct from or equivalent to the head of state, is directly elected, but needs nonetheless to rely on the confidence of the parliamentary majority to remain in office. This system was experimented in Israel between 1996 and 2001 (with two separate offices for the head of state and the head of government) as a way to overcome the governmental instability of parliamentarism but was unsuccessful. A version of this system currently exists on the national level only in Kiribati (where the head of government is equivalent to the head of state)[24], while in Italy it

[22] Ganghof, 'Presidentialism, Parliamentarism, and their Hybrids' (n 17).

[23] The images are elaborated on the similar models provided in Ganghof (n 26).

[24] The system in Kiribati is very peculiar: the electorate votes for the House of Assembly, the unicameral legislature of the country, for a four-year term. The House of Assembly then chooses among its members three or four presidential candidates which are later directly elected to office. The President of Kiribati is simultaneously head of state and head of government and is elected for a four-year term, but can nonetheless be removed from office by the legislature through a majority vote of no-confidence.

is present at the regional level[25]. Both the Israeli system in place in the years 1996–2001 and the Italian regional form of government will be discussed in depth in Chapter 3 of this paper.

Another mixed form of government is the 'assembly-independent' system, which was introduced in Switzerland already in 1848. In this system, the voters only elect the parliament, which in turn elects the cabinet. The latter is in Switzerland the collective head of state and head of government, and cannot be dismissed by the parliament by a vote of no-confidence[26]. Finally, some also define one last mixed form of government, called 'semi-parliamentary'[27]. This system is mostly equivalent to the parliamentary system[28], but presents a parliament divided into two equally legitimate and directly-elected parts (usually, two chambers), which also have equal powers on most legislation, but only one possesses the power to dismiss the executive[29]. This system exists in Australia and Japan, where the lower chambers are the only ones capable of passing a vote of no-confidence towards the cabinet, even though they are both fully legitimised by popular direct elections[30]. The following figure (Figure 2) exemplifies these three mixed systems.

[25] Ganghof, 'Presidentialism, Parliamentarism, and their Hybrids' (n 17).

[26] Steffen Ganghof, *Beyond Presidentialism and Parliamentarism*: *Democratic Design and the Separation of Powers* (Oxford University Press 2021) 23–26.

[27] The term 'semi-parliamentary' form of government is also used by some scholars as an equivalent to 'elected prime-ministerial' form of government – see: Volpi, *Libertà e autorità* (n 15), which is sometimes also referred to as 'neo-parliamentary' form of government – see: Ceccanti, 'La forma neoparlamentare di governo alla prova della dottrina e della prassi' (n 204). In this dissertation, the terms 'elected prime-ministerial' and 'semi-parliamentary' will be used in accordance with the representation in Figure 2.

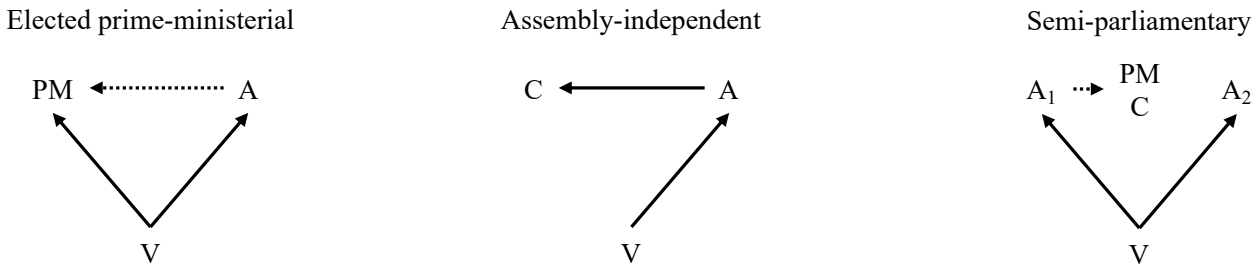
[28] So similar that many scholars only see it as a parliamentary form of government with some peculiar characteristics. See: Volpi, *Libertà e autorità* (n 15), or Giuseppe F Ferrari, 'Il Giappone' in Paolo Carrozza, Alfonso Di Giovine and Giuseppe F Ferrari, *Diritto costituzionale comparato* (GLF Editori Laterza 2014).

[29] Ganghof, *Beyond Presidentialism and Parliamentarism* (n 26) 30–32.

[30] cf Steffen Ganghof, 'Bicameralism as a Form of Government (Or: Why Australia and Japan Do Not Have a Parliamentary System)' (2014) 67(3) *Parliamentary Affairs* 647. In countries with a classic parliamentary form of government and a bicameral parliament, either the two chambers are both fully directly elected, and they both maintain the power to dismiss the government (e.g., Italy), or the upper chamber does not possess this power but neither has the same democratic legitimacy as the lower chamber.

Figure 2: the Three Rarer Mixed Forms of Government[31]

Figure 2: the three rarer mixed forms of government



V = voters; A = assembly/parliament; PM = prime minister; C = cabinet
→ = election; ⇢ = dismissal

1.3 The Functioning of Parliamentary Systems

The analysis will now focus on the parliamentary system, as it is the system that is currently in place in Italy, and will describe the existing differences and analogies among the national variants in relation to the main characteristics of parliamentary systems. In the end, an overview of government instability in parliamentary systems will also be presented, as it is a central feature of this dissertation.

1.3.1 The Structure of Parliaments

A first constitutional distinction can be drawn between legislatures made up of only one chamber – unicameral – and two chambers – bicameral. Globally, the majority of countries (around 60%) has a unicameral legislature, but focussing only on democratic regimes two patterns can be observed: a correlation between the existence of an upper chamber and either the size of a country in terms of population (the less populous the countries, the least probable that they have a bicameral legislature) or its federal nature (federal countries are more likely to have an upper chamber representing the federated entities). However, bicameralism is also associated with democratic stability, as upper chambers can have a protective role against electoral excesses. It can thus be asserted that bicameralism currently represents the standard in large democratic countries, as well as in federal polities[32].

Historically, upper chambers were intended as a means of the upper classes (i.e., nobility, clergy) to have a representation at the central level, in opposition to a lower chamber representing the will of

[31] Also elaborated on the models provided in Ganghof (n 26).

[32] John Uhr, 'Bicameralism' in Sarah A Binder, RAW Rhodes and Bert A Rockman (eds) *The Oxford Handbook of Political Institutions* (Oxford University Press 2008) 476–477.

the majoritarian lower classes. This was the case, for example, in the first modern example of bicameral legislature, the English parliament, divided since the 14th century in an upper chamber, the House of Lords, and a lower chamber, the House of Commons, whose names are self-explanatory in regard to the interests represented in each one. The rise of republicanism in the 18th century, however, led to new reasons for explaining the existence of upper chambers as the main ideology was the equal representation of all citizens. For example, the United States Senate was the first example of an upper chamber representing territorial interests in opposition to the House of Representatives, expression of the nation as a whole. In Europe, upper chambers continued to represent the interests of the upper classes, or the monarchies themselves, until the wave of democratisation led, in most cases, either to the abolition of upper chambers, or to the creation of 'asymmetric' bicameralism.

In general, one can observe three different paths regarding the evolution of bicameralism in parliamentary forms of government. In federal systems, the upper chambers have come to represent the interests of the federated entities and are oftentimes indirectly elected or chosen by the organs of such entities (e.g., Germany, India). In unitary states, instead, the role of upper chambers in the context of democratisation was contested. In some cases, the powers of the upper chambers were highly limited and thus they became deeply less relevant than the lower chambers of the same legislature (e.g., United Kingdom, Third and Fourth France Republics). In other cases, instead, symmetric bicameralism was chosen, with the two chambers possessing equal powers: in most of the countries which opted for this option, however, various reforms eventually led to unicameral legislature through the abolition of the upper chamber (e.g., Sweden, Denmark)[33]. Other reasons of existence of the upper chambers have also been linked with other constitutional values, such as the separation of powers or the protection of minorities[34].

1.3.2 The Investiture Procedure

A crucial role for parliaments in parliamentary systems is the making (and unmaking) of governments. Already in his landmark book, *The English Constitution*, Bagehot W. (1867) called this the 'elective' function of the parliament, which he considered the most important one. Regarding the appointment of executives, even though the formal power of investiture is usually in the hands of the head of state, it is the parliamentary majority on which the executive will have to rely upon during its

[33] George Tsebelis and Jeannette Money, *Bicameralism* (Cambridge University Press 1997) 15–43.

[34] Nicola Lupo, 'Parliaments' in Roger Masterman and Robert Schütze (eds) *The Cambridge Companion to Comparative Constitutional Law* (Cambridge University Press 2019) 338–339.

term that determines its composition[35]. Investiture procedures in various constitutional frameworks have different characteristics[36], which can be analysed using six dimensions: number of chambers involved; what is voted on; timing of the vote; decision rule; number of rounds; what happens if the investiture fails[37].

Regarding the number of chambers involved in the investiture procedure, it is instrumental to remember, as said before, that in bicameral legislatures the roles of the two chambers vary profoundly. An executive might be responsible to and need an investiture vote from both chambers, as it is the case in Italy, or only one, as in Germany.

What the parliament votes on is also an important aspect. It may vote in the head of government alone, or the ministers of the government (together or separately from the head of government, and in relation to a specific portfolio distribution or not), and might also have to give its assent to the policy programme of the incoming cabinet. In many countries, such as Germany, Japan, or Spain, the parliament only votes in the head of government (which in some cases is also the head of state, like in South Africa). In other cases, the legislature votes in both the head of government and the ministers, either with a pre-assigned portfolio distribution, like in Italy, or without it, like in Ireland.

The third variable is the timing of the vote. Here we can distinguish between two main possible courses of action: an *ex ante* and an *ex post* investiture. In the latter case, the parliament votes on a choice that has been previously made, most likely by the head of state. It might vote in a cabinet which is already in place, even though not in its full capacity until the vote itself, like it does in Italy, where the head of state appoints the whole government which then later has to be given a confidence by the parliament; or it might vote in only the head of government which has already been selected by the head of state, as is the case in Germany or Spain[38]. In the former case, instead, the parliament votes in a head of government (or cabinet) which it chooses independently: in Japan, the legislature votes in a head of government which is only later officially appointed by the head of state, while in

[35] Bradley and Pinelli (n 10) 663.

[36] On the details of the investiture procedure in the main historical and contemporary European parliamentary systems (i.e., UK, France until 1958, Germany, Spain, and Italy), also in a comparative perspective, see: Salvatore Bonfiglio, *La scelta del Premier nei sistemi parlamentari* (Giappichelli 2023).

[37] Bjørn Erik Rasch, Shane Martin and José Antonio Cheibub (eds) *Parliaments and Government Formation: Unpacking Investiture Rules* (Oxford University Press 2015) 16–18.

[38] It might be worth noticing that in the vast majority of parliamentary systems, at least the democratic ones, the decision of the head of state regarding the appointment of a head of government (or the whole cabinet) before the formal investiture by the parliament is a direct consequence of the will of a parliamentary majority. In some cases, it became a custom for the head of state to appoint the leader of the most voted party when such choice comes directly after elections.

Ireland it also votes in the members of the cabinet at a later time. These differences, concurrently with other elements such as the electoral and party systems, which will be later discussed, may also shift the time during which the political bargaining processes take place: when there is an *ex post* investiture, the political agreement needs to be completed before the vote, even when this only regards the head of government, as parties would have already built a coalition to support the candidate, while in the opposite case the establishment of the policy platform and especially the negotiations on the allocation of portfolios can more easily take place after the vote. In some institutional systems, the parliament does not officially express its confidence with an investiture vote and the cabinet is assumed to possess the support of the legislature until and unless there is a successful vote of no-confidence (e.g., the Netherlands). However, even in these cases the composition of the parliament surely plays an important role in the appointment of the government by the head of state, as the cabinet would need to be able to govern with the support of the legislature[39].

The decision rule regards instead the way through which the parliament grants the confidence. The government might need to score an absolute majority, as it happens in the first round of voting in Germany and Spain. Just a simple, or relative, majority might instead be required, as it is actually the case in most democracies. Moreover, a 'negative' majority could be sufficient: this means that the absolute majority of MPs must not vote against the confidence to the government. This system is currently in use, for example, in Portugal and Sweden. Finally, there could be a plurality rule as well, in which more than one possible alternative is present and the one with the more votes wins, even without an actual majority. This solution is adopted, for example, by the German and Finnish constitutions in case the first rounds of voting fail to elect a head of government. It is important to note that the decision rule has an impact on the likelihood that minority governments come to existence: when the rule is more restrictive (absolute majority), they are much less likely, while when it is less restrictive (simple majority, negative majority, or plurality vote), they are much more probable to be formed[40].

The possible number of attempts to elect a government is also a variable. In some constitutional systems, multiple rounds are allowed, with changing decision rules, so that it is easier to form a majority in each consecutive round. In Spain, an absolute majority is required in the first formation attempt, but a simple majority will be sufficient in a potential second round. In Finland, instead, simple majority is the rule, but two consecutive rounds can be held with two different candidates for

[39] Rasch, Martin and Cheibub (n 37) 333–334.

[40] ibid 346–349.

head of government; in case both attempts fail, a plurality vote will be sufficient. In Poland, the first voting round will be carried out on a candidate which has been appointed by the head of state, and if this fails the task to find a new candidate will fall onto the parliament instead. Even if the decision rules which are in place for later rounds are never used, they are nonetheless important as they might represent a means of bargaining for the largest parties, as they might not need smaller coalition partners to appoint a government.

If parliament fails to vote in a new government, the most immediate outcome is the continuation of the previous one in a caretaker capacity. After this first assumption, however, there are various possibilities. The first one is just the silence of the Constitution on the matter, so that it is implied that the same investiture rules keep repeating themselves until a government is formed, and, in case this is not possible, the parliament will be eventually dissolved by the head of state. In other cases, however, the Constitution demands a mandatory dissolution of parliament, as for example it is the case in Poland.

In addition to these six dimensions proposed by Rasch, Martin and Cheibub (2015), the regulation of the personal relationship between parliament and members of the government also varies. In some cases, members of the government need to be elected members of parliament, as is the case in the conventional framework of the United Kingdom, or only the head of government needs to be, as it happens in Israel. In some countries, the two roles are not incompatible and could theoretically be exercised at the same time, as long as this is factually possible, but it is not a required condition. Finally, in other systems, such as Belgium or the Netherlands, a person appointed to a governmental position is forced to resign from their parliamentary seat[41].

Figure 3: Summary of Variables in Investiture Rules

number of chambers	one or two chambers involved
what is voted on	head of government, whole cabinet, or ministers, policy programme
timing of the vote	*ex post* or *ex ante*
decision rule	absolute, simple, or negative majority, or plurality vote
number of rounds	various, with possible changes in decision rules
if the investiture fails	repetition or dissolution of parliament (mandated or not)
personal relationship	cumulative role of MP and member of government (required, forbidden)

[41] Bradley and Pinelli (n 10) 663.

1.3.3 The Confidence Relationship and the Dismissal of a Government

As briefly mentioned in the previous section of this chapter, a central aspect of the parliamentary systems is the power that the parliament has over the survival of the government, which is not rarely regarded as even more important than the investiture procedure that was just analysed. Such power is the confidence which the parliament grants to the cabinet and is the ultimate expression of the governmental responsibility towards the legislature. Indeed, not in all parliamentary systems the cabinet needs the formal approval of the parliament to take office, but all parliaments hold the power to dismiss a government if the majority of their members agree to do so[42].

The confidence relationship between parliament and government has various material instruments through which it becomes visible. Some of them have a weaker nature, such as parliamentary questions, interpellations, or question times; others have much stronger effects, so that the parliament can directly influence the existence of the cabinet by applying a question of confidence[43]. There are two main types of situations in which a vote of no-confidence can be passed by the parliament: the first one takes place when the opposition MPs specifically put before the parliament a motion of no-confidence with the intent of defeating the government and force its resignation; the second one may instead happen when the government itself proposes a question of confidence[44] in support of its political programme, a policy, or a single bill, in order to avoid dissent within the parliamentary majority. Finally, in many parliamentary systems, single cabinet ministers can also be held accountable in front of the parliament through individual motions of no-confidence, though these are very rarely successful[45].

Regarding votes of no-confidence, a high variability between the numerous constitutional systems exists as well. The differences pertain different procedural aspects, such as the minimum number of MPs necessary to propose a motion of no-confidence, the timing with which the vote must take place, and the type of majority requested for approval. The way in which the procedure needs to be conducted has a direct effect on the ease with which the government can avoid a no-confidence to be adopted by the parliament. For example, in case an absolute majority is not requested and thus a

[42] Reuven Y Hazan and Bjørn Erik Rasch, 'Parliaments and government termination: understanding the confidence relationship' (2021) 45(3) *West European Politics* 455, 455–456.

[43] ibid 456–457.

[44] cf Marco Olivetti, *La questione di fiducia nel sistema parlamentare italiano* (Giuffrè 1996).

[45] Bradley and Pinelli (n 10) 664.

simple majority suffices, abstentions practically count in favour of the government. Moreover, analyses of the more recent reforms on the topic of no-confidence have shown how the trend is towards a more restrictive direction for parliamentary initiative, both in initiating and voting a motion of no-confidence[46].

A particularly restrictive case is the so-called 'constructive' vote of no-confidence. Just like in a regular vote of no-confidence, a majority (absolute or simple, depending on the national rules) needs to vote against the incumbent government; however, in the case of constructive no-confidence, the same majority also needs to agree on a new head of government (or cabinet) at the same time of the vote. It is thus much more difficult to force the dismissal of a government in this way, so that this tool is seen as an instrumental way of securing governmental stability and durability. This mechanism was first adopted in the German Basic Law of 1949, and later copied in Spain, Hungary, Poland, and Slovenia after their democratic transitions. Instead, Belgium and Israel are the only two established democracies were the constructive no-confidence was introduced through a reform of the existing rules. Studies have found that the adoption of this tool is linked to a rate of survival of governments 83% higher than in those countries where a regular vote of no-confidence is used, thus confirming its positive effects on governmental stability[47].

When a vote of no-confidence is passed by the parliament, the general principle in all parliamentary systems is that the government must resign. The main exception to this rule is that the government, in some constitutional frameworks such as in the United Kingdom, has instead the power to impose the dissolution of the parliament and order a snap election to be held. The resignation of the cabinet usually means that a new executive needs to be appointed by the parliament: in case of a constructive vote of no-confidence, the new executive immediately takes office, while in regular cases a parliamentary majority (identical to or different from the previous one) needs to be formed anew. It is not rare that a different parliamentary majority is formed after a resignation, so that it is clear that in parliamentarism elections and government formation are not strictly correlated[48].

1.3.4 The Dissolution of Parliament

In parliamentary systems, a crucial aspect in the constitutional framework is reserved to the power of dissolving the parliament. Dissolution powers are defined as 'the constitutional prerogatives of a

[46] Hazan and Rasch (n 42) 460–461.

[47] Ayelet Rubabshi-Shitrit and Sharon Hasson, 'The effect of the constructive vote of no-confidence on government termination and government durability' (2021) 45(3) *West European Politics* 576

[48] Bradley and Pinelli (n 10) 664.

political actor to (a) initiate or (b) advance a political process that can result in early election, or to (c) decide the early dissolution of parliament[49].' The regulation of parliamentary dissolution usually involves multiple actors, such as the head of government, the cabinet collectively, the head of state, or the parliament. Their roles vary and are usually constrained to secure a balance in the decision-making process.

In analysing dissolution powers, five dimensions can be identified. The first one is represented by the agenda setting role of an actor, which needs to have the ability to initiate or advance the dissolution process. The second dimension is instead the power to take the final decision to dissolve the assembly. The third one is based on the collective nature of some actors (governments and parliaments), which need to reach an internal agreement before being able to act. The fourth dimension has to do with the time barriers to dissolution. The fifth and final one is the conditionality of the first two dimensions (agenda setting and triggering power) on the binding or non-binding consent or consultation of other actors.

Executive actors (i.e., the head of government, or the cabinet as a whole) or the head of state usually possess the agenda setting power and can thus directly request dissolution or can indirectly initiate the process by asking for a vote of confidence. In some systems, legislatures can also directly declare their own dissolution by passing a motion in this direction. However, most of the times they have an indirect power to initiate the process: a regular way is by voting no-confidence to the incumbent government, so that the latter needs to resign and the dissolution becomes an actual option; a different way is instead represented by a political crisis, in which event the parliament repeatedly fails to vote in a government thus paving the way for an early election.

Regarding the actors which have an intermediate or final role in parliamentary dissolution, it is clear that their ability to do so is limited by the powers of the initial actors which can set the process in motion. Intermediate actors are those which can advance the process of dissolution, without the power to trigger early elections, which is instead a prerogative of what are here called 'final' actors. All of them might also possess different ways of exercising this power according to the situation in which the dissolution takes place, for example if there is a regular vote of no-confidence or if there is a political crisis.

[49] Max Goplerud and Petra Schleiter, 'An Index of Assembly Dissolution Powers' (2016) 49(4) *Comparative Political Studies* 427, 430.

Regarding the collective actors, their ability to fully express their dissolution power is limited by their very nature. A government is usually more efficient in this sense, as it is composed of a very limited number of individuals which usually share a similar political will. Parliaments, instead, have different majority rules which need to be fulfilled: simple majority, absolute majority, or various thresholds of super-majorities (e.g., two-thirds or three-fifths majorities).

Time limitations to dissolution powers are imposed in some constitutional systems. The most common cases concern constraints in the first period after a legislative election or in the last period of either the parliament's or the head of state's term.

Finally, a conditionality in the use of dissolution power usually takes the form of a binding agreement or of a non-binding consultation between different actors. The head of state, which usually has the formal power to dissolve the parliament, usually has to act on the advice of other actors, such as the head of government, and might need to carry out consultations with representatives of the legislature (e.g., presidents of the chambers, leaders of the parliamentary political groups). In some cases, the conditionality might depend on the circumstances in which the dissolution is taking place: in Ireland, for example, the head of state usually does not have a discretionary role and shall dissolve the parliament on the advice of the head of government; however, in case the latter does not possess the confidence of the legislature anymore (i.e., after a vote of no-confidence), the former has instead absolute discretion over the dissolution[50].

There are also other peculiar instruments of limiting the power of dissolution, which do not fall on these broad categories. For example, in Sweden a strong disincentive is represented by the fact that, after early elections, the new parliament will only serve for the rest of the dissolved parliament's term, so that the advantage of the governing majority in deciding when to call early elections, such as in times of favourable opinion polls, is limited[51].

Finally, and beyond a mere schematisation of the formalities imposed by constitutions or customs, it is important to stress how some authors see in the substantial power of dissolution a major stabilising element in parliamentary system when such power is possessed by the government. It is indeed seen by scholars as a preventive deterrent towards government crises initiated by parts of the parliamentary majority, especially in the hands of executives born, even indirectly, from clear electoral results. In European countries, two main conceptions of dissolutions exist: one is restrictive, so that only in cases

[50] ibid 427–456.

[51] Bradley and Pinelli (n 10) 665.

of actual impossibility of continuing with the legislative term dissolution can be triggered (e.g., in Belgium or Germany, but also in Italy as such constitutional power is currently interpreted); the second one is instead more permissive, and often labelled as a 'power of announcing early elections', so that the deterring effects show their potential (e.g., Spain, Greece). The reasons for early elections (i.e., early dissolution) might be electoral (favourable opinion polls), or their threat might be linked to the will of disciplining minoritarian but unruly parts of the parliamentary majority or strengthening the leadership of the head of government within their own political party or coalition[52].

1.3.5 The Role of Electoral Laws and Party Politics

In any kind of democratic institutional system, be it presidential, parliamentary, or any form of mixed regime, the party and electoral systems highly influence its functioning. Because of this, similar constitutional systems can actually operate very differently when they have dissimilar partisan politics or electoral laws; at the same time, a system can deeply change even without a constitutional reform when its party or electoral systems transform. It is thus important to analyse these two aspects even though they are not part of the formal constitutional arrangements of a system. Moreover, it is important to notice how these two aspects of a democratic system are strictly intertwined: the rules of the game (the electoral system) deeply shape the behaviour of the players (the parties), while the latter are often able to change the former to serve their partisan interests as they can control the legislative process[53].

Traditionally, the approaches on which electoral laws are based can be grouped in two large camps: majoritarian and proportional. These two views are related to the two great approaches to representative democracy that Arend Lijphart identifies: majoritarian democracy and consensus democracy. The first model, also called 'Westminster approach' because of its origins in the British parliamentary system, has its roots in the definition of democracy as 'government by the majority of the people', with minorities relegated in the role of opposition to such government. Conversely, consensus democracies is based on the assumption that 'all who are affected by a decision should have the chance to participate in making that decision either directly or through chosen

[52] Stefano Ceccanti, 'L'elezione del Governo e lo scioglimento anticipato delle Camere nei Paesi dell'Unione europea' in Stefano Ceccanti and Salvatore Vassallo (eds) *Come chiudere la transizione: cambiamento, apprendimento e adattamento nel sistema politico italiano* (Il Mulino 2004).

[53] Stephen Gardbaum, 'Political Parties, Voting Systems, and the Separation of Powers' (2017) 65(2) *The American Journal of Comparative Law* 229, 230–231.

representatives', and only on secondary instance the will of the majority should prevail[54]. Thus, the two theoretical visions offer a binary choice between decisive elections and a multi-stage process: majoritarian elections serve as a mean for the electorate to directly choose a government with the power of fully implementing its mandate; proportional elections are instead a way for all points of view to gain an influence on the policy-making discussions which are held after the elections in the context of parliamentary assemblies, enabling the elected representatives of the people to bargain for the interests of their voters[55].

There are two main arguments on which the proportional view relies. The first one is that it is dangerous to allow elections to be the only instrument in deciding the concentration of political representation. Indeed, there exist too many distortions between the citizens' will and the electoral outcome to consider the latter as the perfect expression of the former. It is thus deemed better to let the representatives of all citizens bargain in a more complex way than just a direct vote in order to find, select, and implement the most preferred policy solution. The second argument has instead to do with the fact that a modern democratic regime should not be a dictatorship of the majority, but rather an arrangement in which all citizens, especially minorities, have equal rights and treatment. It is thus indispensable that the representatives of the majority take into account the preferences of the minorities as well in the policy-making process and the best way to do so is by giving such minorities a share of the policy-making power[56].

The actual expression of these two electoral visions is what creates a country's electoral law. The classic majoritarian electoral system is the single-member district plurality rule. Under this system, the national territory is divided into geographic constituencies with only one elected MP each. Thus, all candidates need to compete in a plurality vote in order to win a representative position: the one with the relative majority of the votes is elected, while the votes of all other candidates will not be represented in parliament. In this context, usually only two candidates have a reasonable chance of winning the post: voters would thus act strategically by voting for one of these, rather than 'wasting' their vote. This mechanism has in turn an effect on the strategy of political parties, which would most likely group behind two candidates thus creating a bipolar competition. Even if neither citizens nor parties act strategically, the natural outcome of such a system is anyways a reduction of parties

[54] Arend Lijphart, *Democracies: Patterns of Majoritarian and Consensus Government in Twenty-One Countries* (Yale University Press 1982).

[55] G Bingham Powell, *Elections as instruments of democracy: majoritarian and proportional visions* (Yale University Press 2000) 26–27.

[56] Powell (n 55) 6–7.

represented in parliament. It is very likely that, in any case, such a system would lead to a deep distortion of the vote–seat relation, which is what the proportional view aims at minimising.

Indeed, proportional electoral systems tend to have the goal of representing the actual distribution of the partisan votes in parliamentary seats. There are two main ways in which this is done, with the only difference being the size of the constituency. In the case of a nation-wide constituency, adopted for example in the Netherlands, the proportional system is easily implemented and distributes the available seats proportionally according to the national vote distribution. However, even in proportional systems the national territory can be divided into geographical constituencies. These differ however from the single-member districts in the number of seats at stake, which represent the magnitude of such district: the greater the magnitude, the more proportional representation is guaranteed, so that a larger number of candidates from different parties would be willing to stand for election. With seats in each district allotted proportionally, the polarization between two main parties or coalitions would be less likely, both in terms of voters' choice and parties' strategies[57]. Another difference that exists among proportional systems is between closed- and open-list systems: in the former, the party leadership chooses the order of election of the candidates, so that its role is strengthened and party loyalty is usually rewarded; in the latter, voters can express a preference among candidates of the same party, thus increasing intra-party competition (which can have the advantage of forcing candidates to cultivate their relationship with the electorate, but the disadvantage of also promoting their ties with powerful private and sectional power centres outside the party)[58].

There are of course other solutions which do not follow the distinction between classic majoritarian single-member districts and proportional multiple-member constituencies. In Lithuania, for example, 50% of the seats of the unicameral parliament are allocated through a two-rounds system: if no candidate has reached the threshold of 50% of the votes in the first round, a run-off is held between the two most voted candidates and the winner is chosen with plurality vote. In some systems, such as the Australian one, voters can indicate a preference order among candidates, so that 'wasted' votes can pass to winning candidates. Another common instrument is a minimum threshold (either on the national or constituency level), applied to proportional systems, that parties need to reach in order to achieve any form of representation[59]. Finally, there are countries, such as Germany, in which seats

[57] ibid 22–25.

[58] Gardbaum (n 53) 247–248.

[59] Powell (n 55) 25.

are allocated by a mixed system: part of the parliament is elected through single-member constituencies, while another part is elected using a proportional representation system[60].

Electoral rules highly influence the party system as well, if not in ideological terms for sure in the way they exercise their policy-making power. A majoritarian electoral system would favour the presence of fewer parties in the parliament, with a larger probability of forming single-party governments. In this way, such executives would have a much more concentrated power as they would be the expression of a politically united parliamentary majority. In this context, the main politically responsible institution would not be the parliament, but the party itself, within which the political negotiations would also take place. A proportional system would instead resemble more a presidential system in which the parliament and the government need negotiations between themselves to exercise an effective and efficient policy-making power. Indeed, coalition governments would become the norm and thus compromises between the cabinet and the various coalition parties in the parliament would be necessary[61].

1.3.6 Governmental Stability in Parliamentary Systems

For the scope of this dissertation, it is also important to outline a theoretical framework on the issue of governmental stability (or instability) in parliamentary systems, in order to be able to apply it to the institutional systems that will be later discussed. The first important point to be made on this matter is that scholars themselves debate over the very term of governmental stability[62], as its definition is not straightforward. Identifying one single way of describing governmental stability is thus impossible. It is nonetheless important to analyse this topic because it has been central in the Italian debate on institutional reforms of the last decades[63] and is thus strictly connected with the topic of this dissertation.

One of the usual approaches used to define governmental stability is to measure the temporal duration of governments: the more governments last, the more an institutional system shows governmental stability, and vice versa. The various constitutional regimes have varying provisions to clearly define

[60] Gardbaum (n 53) 231–232.

[61] ibid 250–251.

[62] In this dissertation, the concept of governmental stability/instability will be used, while this will not be the case for the concept of 'governability' (cf Gianfranco Pasquino, 'Governabilità' (1996) *Enciclopedia Treccani delle Scienze Sociali*). Indeed, the latter is possibly even more evasive, sometimes equated to that of governmental stability, other times instead defined alternatively as broader, thus having stability as one of its elements, or stricter, referring to the action of a single government and not the whole system.

[63] Andrea Manzella, 'Il Presidente del governo' (2021) 3 *Rivista AIC* 24, 44–50.

when a government ends and when a new one takes office, and a comprehensive analysis is thus very difficult. Scholars have nonetheless identified three criteria according to which a new government is thought to begin: if a new head of government takes office, if elections occur, if there is a change in the composition of the parliamentary support[64]. Some national specificities might present cases of government alternation even if none of these three conditions apply, but they are a minority[65].

Most studies on governmental instability tend to focus specifically on the last criterion (change in the composition of parliamentary support), as party politics is regarded as the main cause of governmental stability or instability. Indeed, scholars see some characteristics of parliamentary coalitions as a good means to understand the possible instability of the cabinets. There is however no consensus on which type of coalition might be the most stable one: some find minimum-winning coalitions as more stable than surplus majorities, while others have come to the opposite conclusion; minority governments are seen as the most unstable ones, while a coalition dominated by one party might be seen as more stable. Moreover, fragmentation in the party system should also negatively affect government duration[66]. Both research and history, however, have shown how there can be exceptions in all these cases: for example, the United Kingdom in the 58th parliamentary term of the House of Commons (2019–2024) has shown an incredibly high governmental instability (three different cabinets), even though all were single-party majority cabinets and more than 80% of the seats in parliament were held by the two major parties.

This view, which sees any change in the composition of the cabinet or in the parliamentary support of the government as a direct manifestation of governmental instability, fails however to understand that the issue is much more complicated. Indeed, some empirical cases prove the limitations of this idea. For example, the increase in the number of parties supporting an incumbent government can hardly be seen as a manifestation of instability. Even some cases in which coalition partners withdraw from the coalition cannot be regarded as creating instability: if the majority status of the government[67]

[64] Yael Shomer, Bjørn Erik Rasch and Osnat Akirav, 'The inflated measures of governmental instability' (2019) *Sciences Po LIEPP Working Paper n°96*, 5–7.

[65] For example, in Italy between 1963 and 1968, three different cabinets headed by Aldo Moro, supported by the same parliamentary coalition, alternated in office, even though no parliamentary election was held between them. The ends and beginnings of each one of these cabinets were marked by the formal resignation of the head of government and a new investiture vote by the parliament. Instead, in Germany it is not clear whether one can talk about a fourth and a fifth Adenauer cabinet (1961–1963): no elections were held, the parliamentary majority did not change, and nor did the head of government. There was a deep ministerial turnover, but this might not be regarded as sufficient to define a change of government.

[66] Shomer, Rasch and Akirav, 'The inflated measures of governmental instability' (n 64) 3.

[67] One can distinguish between three main types of majority status of governments: the first one is a minority government, thus a government which is not supported by the absolute majority of MPs but often relies on

is not altered, such a change in the party composition cannot be seen as influencing the stability of the government. Instead, an alteration of the majority status is actually what hampers governmental stability, and is thus a more precise measurement when analysing the issue. Furthermore, ministerial turnover, which is the change in the allocation of various cabinet portfolios, cannot be seen as an intrinsic element of instability. Studies have indeed found that, in some cases, more stable governments are more likely to implement ministerial turnovers than unstable ones[68].

Within this discussion, the Italian case is particularly interesting, as it has been described as exhibiting government stability and instability concurrently. Looking at the mere number of governments that have formally been in office, since the birth of the Republic 78 years ago in 1946, Italy has had the record number of 68 governments, of which five never received the necessary parliamentary confidence to officially take office[69]. On average, thus, Italian republican governments have lasted just a little more than one year, with none of them lasting for the full normal five-years parliamentary term. There have been however only 31 Presidents of the Council, as 15 of them have served in the office more than once (up to seven times for Giulio Andreotti and Alcide De Gasperi).

While these numbers seem to draw a clear picture of an unstable situation, they do not tell every relevant information on the matter. Governmental changes have undoubtedly been frequent, but they often represented just minor changes in the party composition or even only in the members of the cabinet, from the same parties. A deep change in the party composition of governments during the same legislative term has only been experienced a handful of times: broadly speaking, examples of this might be the four 'technocratic' governments (which are however peculiar cases), the Renzi cabinet in 2016, and the Conte II cabinet in 2019[70]. Moreover, in the first five decades of the Italian Republic (1946–1994), the Christian Democracy (DC) was always the political party with the most

abstentionism from other parties to gain a relative majority; the second one is a minimal winning (or minimum-winning) coalition, which is an absolute majority in which all constituting parties are necessary to maintain such majority; the third and last type is an oversized (or surplus) coalition, which includes one or more parties which are not essential to reach the absolute majority in parliament. See: Shomer, Rasch and Akirav, 'The inflated measures of governmental instability' (n 64).

[68] Shomer, Rasch and Akirav, 'The inflated measures of governmental instability' (n 64) 5–9.

[69] These are: De Gasperi VIII in 1953, Fanfani I in 1954, Andreotti I in 1972, Andreotti V in 1979, Fanfani VI in 1987.

[70] The concept of 'technocratic' governments will be analysed more in depth in the next sections of this chapter, but the always represented a deep change in the party composition of the cabinet as they were national unity governments. In 2016, the centre-left Renzi cabinet succeeded to the Letta cabinet, which was a grand coalition government supported by large parts of both the centre-left and centre-right. Finally, in 2019 the Conte I cabinet was replaced by the Conte II cabinet: the head of government did not change, nor did one of the main coalition partners (the Five Star Movement); what changed was the second largest coalition partner (the far-right League before, the centre-left Democratic Party afterwards).

parliamentary seats and, as a consequence, the main coalition partner of any government as well. The coalitions were not always the same, and went from the centre-right to the centre-left depending on the junior coalition partners, but nonetheless the DC basically held the executive power for almost 50 years (out of the 50 governments that existed in the 1946–1994, 44 were headed by a member of the DC)[71]. This discussion will be implemented more in depth in the following sections, after the necessary descriptions of the Italian form of government and its party and electoral systems.

As the Italian example shows, the assumption that government duration is the sole, or even main, characteristic of governmental stability is thus exaggerated. Indeed, others have connected the conceptualisation of governmental instability with the concept of '*indirizzo politico*' ('political direction'), developed within the Italian scholarly debates. In the framework of government action, this is the manifestation of a programmatic will oriented towards a political goal related to the administration of a political community and guides government action towards specific political aims. In a rigid constitutional system, such as the Italian one, the political direction is forcefully subordinated by the Constitution and its provisions, but the programmatic character of most constitutional charters allows governments to define their own political direction within a given constitutional framework[72]. The political direction of governments is in many cases exemplified by the government programme, a document released by the government itself, which outlines the aims it wishes to reach, and might be voted on by the parliament.

Focussing on the concept of political direction as the main representation of government action, one can see that the mere alternation of various heads of government cannot by itself be seen as an accurate measure of governmental instability. As previously mentioned, for example, for almost five decades Italy has been governed by the same political actors, with little alternation both in terms of parties and of political figures. The political direction was not exactly the same throughout the years, as history presents various governments with new challenges to face, but the system of 'blocked democracy'[73] ensured that the definition of the 'political direction' always remained in the hands of the same political actors, so that, in this sense, the system can hardly be defined as politically

[71] Yael Shomer, Bjørn Erik Rasch and Osnat Akirav, 'Termination of parliamentary governments: revised definitions and implications' (2021) 45(3) *West European Politics* 550, 552.

[72] Temistocle Martines, 'Indirizzo politico' (1971) XXI *Enciclopedia del Diritto* 134.

[73] The concept of 'blocked democracy' will be presented in the following sections after the necessary legal and historical preconditions are presented. Briefly, however, it related to the impossibility of actual alternation in power between different parties, so that the DC was in government for all the pre-1994 Italian republican history.

unstable[74]. Using this idea, thus, governmental stability can be seen as the ability of governments to implement a manifest political direction, which might be shared by different executives within the same legislative term or even, as the Italian case, throughout the years or decades. Even in this case, party politics is central: not only it determines governmental stability in terms of government duration (as seen before), but it also determines governmental stability in terms of continuity of the political direction.

In addition to party politics, other variables can influence government stability in a specific institutional system. Indeed, there are formal elements of a constitutional setting which are empirically found to influence overall stability[75]: the existence of a formal investiture vote of a new government by the parliament is positively associated with stability, as weak majorities would not be able to even take office. The rules of government dismissal are also thought to have an effect on stability: for example, 'constructive' no-confidence is a rationalising instrument specifically aimed at tackling governmental instability. Furthermore, the nature of the bargaining process to form a coalition also has effects on the stability: for example, pre-electoral coalitions are more likely to be stable. Finally, external elements can have a serious impact on government stability as well: economic hardships, international crises, wars, or even public opinion shocks related to scandals[76].

In sum, the very concept of governmental stability (or instability) is not easily definable, and this dissertation does not aim at doing so. Nonetheless, it is commonly described in the Italian debates on institutional reforms as the main reason why these very same reforms are necessary, and thus its contextualisation appears instrumental. Here, two main aspects of this concept have been presented: on the one hand, government duration, which might be called 'formal' stability; on the other hand, efficacy and durability of the political direction ('*indirizzo politico*'), a 'substantial' stability[77]. While the former is often presented as the most visible manifestation, and is undoubtedly a problem of the Italian system, this view fails to see that the latter is also crucial.

Just as no one definition of governmental stability exists, no one cause can be found. As said, both the party system and the institutional framework, mostly regarding the constitutional provisions, have

[74] Marco Improta, 'Unpacking government instability. Cabinet duration, innovation, and termination events in Italy between 1948 and 2021' (2022) 2 *Quaderni di scienza politica* 151, 162.

[75] Gaetano Azzariti, 'Appunto per l'audizione innanzi alla I Commissione – Affari costituzionali del Senato della Repubblica del 5 dicembre 2023 sull'elezione diretta del Presidente del Consiglio dei Ministri (ddl nn. 935 e 830)' (2023) 20(2) *Diritto Pubblico Europeo – Rassegna Online*.

[76] Shomer, Rasch and Akirav, 'The inflated measures of governmental instability' (n 64) 4–5.

[77] Renato Balduzzi, 'I caratteri originari della forma di governo e la loro evoluzione' (2024) 3 *Rivista AIC* 141, 160.

a concurrent effect on governmental stability, even when this is defined in different versions, so that an action on both aspects would probably result as more effective[78]. Defining with certainty what the solutions for an unstable system might be remains however difficult, even though one might (and probably should) rely on examples which are deemed to possess no (or less) governmental instability in order to have the desired results from institutional reforms[79].

1.4 The Italian Form of Government

This section will now describe the peculiarities of the Italian parliamentary system using the theoretical framework so far presented. At first, a brief historical overview of how Italian democracy came into life will be presented, then followed by an analysis of the relevant constitutional provisions and an overview of the evolution of the party and electoral systems.

1.4.1 The Birth of Modern Italian Parliamentarism

The early roots of the Italian parliamentary system can be traced back to the Albertine Statute of 1848, the fundamental law of the Savoy monarchy which was extended to the newborn Kingdom of Italy after the unification of the country in 1861. The Statute did not create a parliamentary system, as the government was only subordinate the monarchy and not the parliament, but laid the basis for its eventual appearance. Already in 1852, an indirect and customary confidence mechanism was introduced, with an incoming cabinet receiving parliamentary support through the election of a new President of the Chamber of Deputies ('confidence presidency'). In 1903, the new head of government, Giovanni Giolitti, asked the Chamber for an investiture vote, thus creating a new custom for a more direct link between cabinet and the lower chamber of parliament. The rise of fascism in the 1920s and the subsequent twenty years of dictatorship halted the evolution of Italian parliamentarism, but the anti-fascist movements that started developing soon after the seizure of power by the Fascist regime managed to keep the parliamentary experience of the liberal Kingdom of Italy alive[80].

[78] Enzo Cheli, 'Alcune indicazioni di metodo in tema di riforma della forma di governo' (2023) *federalismi.it*.

[79] Azzariti (n 75).

[80] Giampiero Sica, *Prove di fiducia. Il presidente della camera e il parlamentarismo nel periodo statutario* (Carocci editore 2021).

During the pre-war period, the various parties who opposed the Italian Fascist leader Benito Mussolini failed to create a common front. In 1943, however, after Mussolini was deposed on July 25th and the new Italian government led by Marshal Pietro Badoglio signed the armistice on September 3rd, they united in the National Liberation Committee (*Comitato di Liberazione Nazionale*, CLN). The CLN was composed of different parties, from the left to the centre-right of the political spectrum: the Christian Democracy (DC), the Communist Party (PCI), the Socialist Party of Proletarian Unity (PSIUP), the Action Party (Pd'A), the Labour Democracy (DL), and the Liberal Party (PLI). In the confused period of the last phases of the Second World War in Italy, with the country divided into two main parts (the Nazi-controlled Italian Social Republic in the North and the allies-controlled Kingdom of Italy in the South), the parties of the CLN, and especially the Communists, finally agreed in April 1944 to join all anti-fascist forces and finding a compromise with the House of Savoy and Prime Minister Badoglio. The CLN thus left the institutional questions, in particular regarding the future of the monarchy, to the post-war period, and became the true bearer of political power in Italy.

Differently from other Resistance movements (such as the French led by General De Gaulle or the Yugoslavian led by Tito), the CLN was not represented by one single leader, but rather implemented *de facto* a representative form of government, becoming itself a parliament-like institutional body. The national unity government was supported by a coalition of all anti-fascist parties and operations were decided under unanimity in a context of equal representation of all forces. The working of the CLN was however designed in a period of deep political crisis, and thus was not able to invent new organisational practices, relying instead on institutional models from the pre-fascist liberal Italian state. A first turning point took place in June 1944, when Marshal Badoglio was dismissed as Prime Minister and a new government, led by Labour-Democrat Ivanoe Bonomi, President of the CLN, was appointed. From that moment, the political parties of the CLN became the sole holders of political power[81].

In the autumn of 1945, the minister for the Constituent Assembly, the Socialist Pietro Nenni, founded the Commission for studies concerning the reorganisation of the State, composed of scholars, jurists, and politicians. The commission, also known as the Forti commission (after his chair, jurist Ugo Forti), conducted preliminary studies and analysed several relevant topics that would have been central in the works of the Constituent Assembly, which should have been formed after the following general elections. An important choice that the commission took was the adoption of the parliamentary system, which was agreed upon by all parties. The reasons of this choice were many,

[81] Benedetta Barbisan, 'The Republic of Parties: From Singular to Plural in the 1948 Italian Constitution' (2020) 39 *Giornale di Storia Costituzionale* 173, 173–175.

but especially: fear of a comeback of authoritarianism in case of a strong government; will to keep the predominance that political parties were exercising in that historical moment, while maintaining a balance among them; weight of the past liberal institutions regulated by the 1848 Albertine Statute, whose adaptability was seen as a virtue by many in the old liberal elite. On June 2nd, 1946, the Italian citizens voted in favour of a republican form of government, thus dismissing the monarchy, and contemporarily elected the Constituent Assembly[82].

During the works of the Assembly, the vast majority of its members sticked to the choice of the Forti commission. They indeed voted in 1946 in favour of the 'Perassi order of the day' (*ordine del giorno Perassi*), which advocated for a parliamentary form of government, deeming a presidential or directorial system incompatible with the Italian society. Nonetheless, the same motion also prescribed that 'means to safeguard the stability of the government action and to avoid the degenerations of parliamentarism' should have been created. However, this last point is regarded by many as having been neglected by the Constituent Assembly in its later deliberations. The fear of creating a government with strong powers was indeed even more aggravated by the implosion of the governing coalition, which followed the start of the Cold War. The left-wing forces – Communists and Socialists – abandoned the government, and the remaining governing parties led by the DC were thus unwilling to give strong executive powers to a government which might have been led by the left[83].

The Constitution thus embodied the elements that were above listed (lack of a strong government, important role of political parties, continuation of a number of liberal bodies), most importantly institutionalising political parties and their activity in the political life of the country as an essential mediator between citizens and public institutions. In this last aspect, a heritage of the twenty-years long Fascist regime can also be found: as the National Fascist Party was the only channel for political participation of the people, anti-fascist post-war parties took upon themselves, this time collectively, the same role[84].

[82] Vittoria Calabrò and M Antonella Cocchiara, 'The form of parliamentary government and 'perfect' bicameralism in the Italian constitutional system: at the beginning of the Italian constituents' choices (1946–47)' (2015) 35(1) *Parliaments, Estates and Representation* 84, 85–92.

[83] Laura Ronchetti, 'Il parlamentarismo e la democrazia a distanza di oltre un secolo dalla lezione di Tomaso Perassi' (2017) 2 *Costituzionalismo* 19, 41–47.

[84] Barbisan (n 81) 177–185.

1.4.2 The Italian Bicameralism

The Italian Republic thus has a parliamentary form of government as a result of the historical circumstances in which it was born. The first important characteristic of the Italian system is that it is bicameral: the Chamber of Deputies is the lower chamber, while the Senate is the upper one. This trait is not itself unique: as we saw, a bicameral parliament is the norm in large democracies. However, the Italian system has a defining particularity, called 'symmetric' bicameralism. Indeed, while it is usually the norm that the chambers have different origins, composition, and tasks, in Italy this is mainly not the case.

The current structure of the Italian parliament is a result of the compromises that were made within the Constituent Assembly among the various parties, especially the Christian Democracy and the two main left-wing parties, the Communists and the Socialists. The former insisted on the concept of a corporative upper chamber, following the doctrine of Social Catholicism which gave a high importance to the interests of professional categories. The Christian Democrats also expected that such a chamber would have remained more conservative, even in the case that the lower chamber would have a left-leaning majority. The left-wing forces strongly rejected this project, denouncing it as an antidemocratic attempt, both because it would have lacked an election by universal suffrage and because it would have been representative of the interests of a particular social class only. The left-wing parties proposed instead a chamber elected by direct universal suffrage with single-member constituencies; this proposal also saw the approval of some right-wing non-Catholic forces.

The idea of a chamber representing regional autonomies was also proposed, but rejected as the Republic was to be structured as a unitary state, rather than federal. However, territorial representation was not completely discarded, and in the end the Constituent Assembly opted for a vague formula, which stated that 'the Senate of the Republic is elected at a regional level'. The two chambers were in any case given the exact same powers, both in relation to governmental responsibility and legislative action. However, to distinguish them in some ways, the Senate was given a term of six years (against the five years of the Chamber of Deputies), an active electoral threshold at twenty-five years of age (age of majority for the Chamber of Deputies), and a passive one at forty years of age. However, the difference in terms length was never applied: in the elections of 1953 and 1958 the Senate was dissolved one year earlier than its natural term, and the difference was eliminated in the Constitution before the 1963 elections. Moreover, in 2021, the active electoral power was equated

with the one of the Chamber of Deputies, which is the age of majority, thus rendering the two chambers almost completely identical in formation as well as powers[85].

1.4.3 Governmental Investiture, Confidence Relationship and Dissolution of Parliament in Italy

Since Italy has a parliamentarian system, its government, the Council of Ministers, needs to maintain a confidence relationship with the parliament. The investiture of a new government involves both chambers of parliament on which we discussed in the previous section, the Chamber of Deputies and the Senate, and the head of state, the President of the Republic. The investiture procedure will be analysed using the variables previously introduced in this chapter (i.e., number of chambers involved, what is voted on, timing of the vote, decision rule, number of rounds, what happens if the investiture fails, personal relationship of members of government with the parliamentary institution).

First, as said before, Italy has a system called 'symmetric' bicameralism, so that the Italian Constitution prescribes that 'the Government must receive the confidence of both chambers of parliament' (art. 94(1)). Second, the parliament votes on the composition of the full cabinet, not only on the head of government (the President of the Council of Ministers), or separately for the President and the other members of the Council of Ministers. Third, the Constitution clearly states that the vote is *ex post*. Indeed, '[t]he President of the Republic appoints the President of the Council of Ministers and, on their proposal, the Ministers' (art. 92(2)), who, 'before taking office, […] shall be sworn in by the President of the Republic' (art. 93). After the President of the Republic has appointed a cabinet deemed capable of having a political majority in the parliament, '[w]ithin ten days from its formation the Government shall come before the chambers to obtain their confidence' (art. 94(3)). These provisions force the political bargaining between the parties to form a government to take place before any formal vote of the parliament. Moreover, it has also led to the creation of the practice of 'exploratory mandates': a person can receive the role of *formateur*, to form a government that they would eventually lead, or *informateur*, to find a feasible parliamentary majority only[86].

Fourth, the Constitution itself only prescribes that '[e]ach chamber grants […] the confidence through a reasoned motion voted on by roll-call' (art. 94(2)), but does not dictate any other specific decision rule nor do the rules of procedure of either chamber, so that simple majority is sufficient. The Senate used to have a different Rule of Procedure regarding the counting of abstentions, so that practically

[85] Calabrò and Cocchiara (n 82) 95–106.

[86] Rasch, Martin and Cheibub (n 37) 142–143.

an absolute majority was needed for the approval of a vote of confidence, but this was changed during the seating of December 20th, 2017, thus equalising the rules of both chambers[87].

Fifth, the only option of the chambers is to reject or accept the new government, and no repetition of the vote is possible. So, sixth, in case either chamber votes against the motion of confidence, the cabinet must resign and acts in a caretaker capacity until a new government is appointed by the President of the Republic. It has happened that in cases of multiple and subsequent failed attempts, the parliament has been dissolved by the President of the Republic before the end of its natural term, but never has happened that no cabinet was successfully formed right after a general election.

Lastly, in case the President of the Council or any cabinet minister are member of parliament, they retain their seat until the end of the parliamentary term. However, it is also possible that they are not part of the legislature, nor even political figures. Indeed, Italy has had in its republican history four so-called 'technocratic governments'. This very definition is problematic, as no government can survive without a political parliamentary majority, nor any political cabinet can do without technical figures supporting its action. To simplify the discussion, however, one can define a government as technocratic when its head, in the Italian case the President of the Council, is themselves a technocrat, meaning that they had never before been elected to any political office and they possess a certain high-level expertise, for example in the economic field. The four Italian governments which pertain to this definition were headed by: Carlo Azeglio Ciampi (1993–1994), then governor of the Italian Central Bank; Lamberto Dini (1995–1996), previously director-general of the Italian Central Bank and then shortly minister of the treasury; Mario Monti (2011–2013), former European commissioner for competition and internal market; Mario Draghi (2021–2022), former governor of the Italian Central Bank and of the European Central Bank[88]. Even though there has been much critic about the

[87] Art. 107(1) of the Rules of Procedure of the Senate, before the 2017 reform, stated that '[a]ll deliberations of the Senate shall be decided by a majority of the senators taking part in the vote, save where a special majority is otherwise required […]'. See: Rasch, Martin and Cheibub (n 37).

[88] What are here called 'technocratic governments' could be more precisely defined as 'technocrat-led governments', which is a broad category. Inside this category, a more specific definition is that of 'full technocratic government', which needs to possess three characteristics: (a) its head is a technocrat, (b) the majority of the cabinet ministers are technocrats, (c) the government needs to have a mandate to change the *status quo*. If condition (c) does not apply, a more accurate definition is that of 'caretaker governments', which have a limited mandate. Moreover, condition (b) might be problematic, as mere percentages in such cases could me misleading. Anyways, all 'technocratic governments' that Italy had so far had a full mandate, so none of them can be classified merely as a 'caretaker government'. Nonetheless, they can be divided in this way: Dini (1995–1996) and Monti (2011–2013) have been 'full technocratic governments', as all cabinet ministers were, at least at the moment of their investiture, independent from any party and technocrats in some field of expertise; Ciampi (1993–1994) and Draghi (2021–2022) can instead be more easily described as 'technocrat-led governments', as the majority of the cabinet ministers were politicians coming from parties represented in parliament. See: Lupo, 'I "governi tecnici" nell'esperienza repubblicana italiana' (n 89).

very legitimacy of this type of executive, they are undoubtedly adherent to the constitutional provisions: political parties themselves, protected by the Constitution in art. 49, may indeed choose to self-limit their powers not imposing a head of government from their ranks, within the constitutional framework of government formation procedures which have just been described[89].

Figure 4: Summary of Investiture Rules in Italy

number of chambers	both chambers involved
what is voted on	whole cabinet
timing of the vote	*ex post*
decision rule	simple majority
number of rounds	one per cabinet
if the investiture fails	new cabinet proposal or dissolution of parliament
personal relationship	none required nor forbidden

Regarding the confidence relationship after the investiture, the Constitution states that '[e]ach chamber […] withdraws the confidence through a reasoned motion voted on by roll-call' (art. 94(2))', thus using the same rules that apply to the investiture procedure. Moreover, '[a]n opposing vote by one or both chambers against a government proposal does not entail the obligation to resign' (art. 94(4)), thus limiting such obligations only to the proposals on which the same majority has posed a question of confidence. Both chambers of parliament also have the possibility of initiating a vote of no-confidence against the government with some limitations, as '[a] motion of no-confidence must be signed by at least one tenth of the members of the chamber and cannot be debated earlier than three days from its presentation' (art. 94(5)). This is the main rationalising mechanism on the confidence relationship existing in the Italian system, which is aimed at avoiding sudden withdrawals of support for the government[90].

One final fundamental institutional issue regards the powers related to the dissolution of parliament, for which five dimensions were earlier identified in this chapter. Regarding the formal power to initiate or advance the dissolution process, both parliament and government possess it, as the former can pass a vote of no-confidence, and the latter can resign, thus opening a political crisis which might

[89] Nicola Lupo, 'I "governi tecnici" nell'esperienza repubblicana italiana' (2015) 14(36) *Ventunesimo Secolo* 9, 9–13, 20–26.

[90] Bradley and Pinelli (n 10) 655, 664.

lead to dissolution. The Constitution however leaves the final power to dissolve in the hands of the President of the Republic, who, '[…] may dissolve one or both chambers' (art. 88(1)). The third dimension of dissolution powers has to do with the collective nature of the actors involved, which in the Italian case mainly applies to the parliament, which needs to decide to dismiss the incumbent government through a simple majority vote and, at the same time, not to find another political majority to appoint a new cabinet. Regarding the limitations to the dissolution power of the President of the Republic, the Constitution states that they '[…] may not exercise such right during the final six months of the presidential term, unless said period coincides in full or in part with the final six months of parliament' (art. 88(2)). The final dimension has to do with the conditionality of agenda setting and triggering powers on the consent or consultation of other actors. In this sense, the President of the Republic may dissolve one or both chambers '[i]n consultation with the presiding officers of parliament' (art. 88(1)); such consultation is deemed mandatory but not binding.

Notwithstanding the formal powers invested upon different offices by the Constitution and the procedures that it envisions, scholars have mostly focussed on the substantial power of dissolution, arriving to different conclusions. Some confirm the literality of the constitutional provisions, saying that such power is formally and substantially in the hands of the President of the Republic. Others, to the contrary, say that such power is substantially governmental, believing the dissolution to be subordinated to the agreement of the government or to its own initiative. Some instead see it as a 'shifting' power: normally, it is governmental, but in times of crisis it becomes a presidential prerogative. Finally, another school of thought sees it as a 'duumviral' power, so that its exercise always requires the head of state and the government to come to terms and act with reciprocal coordination. Even though this topic remains controversial, the last vision might be seen as the most accurate one: the President of the Republic and the government, and thus the parties on whose support the latter relies, need to forcefully and positively interact in order to trigger parliamentary dissolution[91].

1.4.4 The Italian Party and Electoral Systems: 1946–1994

As previously highlighted in this chapter, the party and electoral systems deeply influence the functioning of an institutional construction. To really understand the dynamics in the Italian

[91] Carlo de Girolamo, 'Lo scioglimento anticipato delle Camere: una ricognizione della dottrina e della prassi' (2011) *forumcostituzionale.it*.

parliamentarism, it is thus important to present an overview of their historical evolution and current state.

As seen before, post-war Italy had a very strong party system, which had its roots in the antifascist resistance movements. The start of the Cold War eventually led to the end of a first period of cooperation between all democratic forces in May 1947, when the Communists (PCI) and the Socialists (PSI) went into the opposition, and the government remained in the hands of the Christian Democracy (DC) and its centrist junior partners. With the first elections after the entry into force of the 1948 Constitution, the Italian political framework was thus dominated on the one side by the left-wing PCI and PSI, on another side by the centrist forces headed by the DC, and on the other side by the neo-fascist Italian Social Movement (MSI), which was able to enter into the new democratic parliament. However, both internal and external factors (especially, the Cold War) created a situation in which both left- and right-wing parties were left out of government as they were deemed incompatible with the very notion of democracy that was present in the West at the time. Thus the concept of *conventio ad excludendum* ('agreement to exclude') was coined by jurist Leopoldo Elia to describe the attitude of the centrist parties towards the PCI[92]; other scholars, however, argue that the Communist excluded themselves from any participation in government by rejecting the alliance with the US and the European integration process and by supporting Soviet imperialism in Central and Eastern Europe[93]. Whatever the reasons, the Italian post-war regime has been defined as a 'blocked democracy' (*democrazia bloccata*), since alternation in power was essentially impossible even in the context of a liberal democracy[94].

The party system and the overall functioning of the institutions in the first decades of republican Italy were deeply influenced by the electoral system in place. In the highly partisan context detailed so far, in 1946 a new law for the election of the Constituent Assembly (D.L.L. 10 marzo 1946, n. 74) was approved: it was highly proportional and reflected the will of parties to maintain the power in their hands within the parliament. The same law was then used for the election of the Chamber of Deputies, while the Senate adopted a new law (L. 6 febbraio 1948, n. 29), also proportional, but with lists based on the regional level, to follow the precepts of the Constitution.

[92] Leopoldo Elia, 'Governo (forme di)' (1970) XIX *Enciclopedia del Diritto* 634.

[93] Paolo Ungari, 'Ancora su un «nuovo» sistema elettorale per l'Italia' (1984) 49(4) *Il Politico* 741.

[94] Giovanni Orsina 'Party democracy and its enemies: Italy, 1945–1992' (2019) 17(2) *Journal of Modern European History* 220, 222–225.

During the first legislative term (1948–53), however, the centrist governments saw a growing opposition from both sides, on the left-wing by the Communists and Socialists and on the right-wing from the Monarchists and the Neo-fascists. The DC and its allies, thus, started working on a new electoral law intended to strengthen the role of the centre and to weaken the extremes, real or presumed, of the political spectrum. It was in this context that the parliamentary majority led the discussion and finally approval of new provisions (L. 31 marzo 1953, n. 148) to add to the already existing electoral law. In particular, this system would have granted 65% of the seats in parliament to the party or grouping of parties which would have reached the threshold of 50% of the total votes. This law was soon called *'legge truffa'* ('scam law'), as it was seen by opposition as an illegitimate way of the DC and its allies to maintain their grip on power in contrast to the popular will. Many critics recalled the electoral law approved in 1923 which consolidated the Fascist takeover of the institutions of liberal Italy, as this also granted a majority of two-thirds of the seats in parliament to the political force with the most votes. Of course, the 1923 law was much less representative, as the threshold to access the bonus was only 25%, thus transforming a relative majority into an absolute majority; the *'legge truffa'* only aimed at strengthening an already existing absolute majority. However, other doubts were also correlated to the fact that a 65% majority would have been very close to the two-thirds threshold necessary to amend the Constitution without the need of a referendum. In any case, even though the DC-led coalition won the 1953 elections, it failed to reach the threshold stopping at 49.8%, and thus the majority bonus was not awarded, and the law was repealed already in the following year[95].

In any case, the DC continued to govern in centrist coalition governments for the following decade until 1962, when it first gained the support of the PSI, at first external and then as a full government partner. More openings to the left-wing parties arrived after the 1968–69 workers' and students' protests, which heavily affected the political debate in Italy. The PCI, seen as a mainstream representative of the protesters, was thus granted a larger degree of power through some institutional reforms passed by large parliamentary majority in a consociational manner: new parliamentary rules of procedure started giving more importance to the activity of the opposition parties, a new labour law was approved, and regional devolution, always present in the Constitution but never implemented, was finally granted, so that in some regions the Communists were able to govern. Furthermore, between 1976 and 1979, a new phase was opened, with the PCI involved in the parliamentary majority in times of deep economic and social crises in the country. However, in 1979

[95] Davide Possanzini, 'L'elaborazione della cosiddetta 'legge truffa' e le elezioni del 1953' (2002) 46(1) *Italian Journal of Electoral Studies* 49.

this phase ended, and new critics of the Italian 'party democracy' started growing. From outside the parliament, the Radical movement started attacking the political institutions by proposing a series of referenda (e.g., on divorce and abortion) which showed how society was much more open than governing parties. From inside the parliament, Communists and Socialists started attacking state corruption and slowness, both wanting to become the centre of a renewed centre-left coalition. This party democracy remained in place until the early 1990s, when the PCI, the DC, the PSI and the MSI were all dissolved, and new political forces emerged after a series of judicial investigations trampled on the whole Italian party system. The 1994 general elections are conventionally regarded as the end of the so-called 'First Republic' and the beginning of the 'Second Republic': even though the Constitutional regime remained the same, indeed, such a deep transformation of the party system (as well as the electoral law, as will be discussed in the next section) was seen as a major turning point in the democratic history of the Italian Republic[96].

The history of the first five decades of the Italian Republic was thus characterised by the political impossibility of alternation in power between different political parties. The only major evolution was the opening of the coalition to the PSI in the 1960s, but the DC remained the main coalition partner of all executives. This situation led to some customs which do not precisely follow the constitutional precepts, but which have been accepted due to historical circumstances. As the DC was a very large party, it was itself divided into various factions (*correnti*), the agreement between whom was necessary in order to form stable parliamentary majorities. A consequence was that many heads of government were not strong political figures, but instead just the ones capable of mediating between these factions. In turn, weak heads of government opened the way for the so-called 'plural–dissociated management governments' (*governi a direzione plurima dissociata*): the President of the Council did not possess the ability to direct the government and maintain a unitary character of its political direction ('*indirizzo politico*'), theoretically granted by the Constitution, but instead the various ministers (from different parties of factions of the DC) often acted in an uncoordinated manner[97]. This had, for example, clear and tangible consequences on the legislative activity of those years: parliamentary committees, in which all parties in parliament were represented, started acting more and more independently from the political direction of the government as a unitary body, instead following the direction imposed by the various ministries and their heads[98].

[96] Orsina (n 94) 225–233.

[97] Enzo Cheli and Vincenzo Spaziante, 'Il Consiglio dei Ministri e la sua presidenza: dal disegno alla prassi' in Sergio Ristuccia (ed) *L'istituzione Governo. Analisi e prospettive* (Giuffrè 1997).

[98] Cristina Fasone, *Sistemi di commissioni parlamentari e forme di governo* (CEDAM 2012) 377.

Another custom that was established from the very start of the functioning of republican institutions is that of the so-called 'extra–parliamentary' government crisis. This definition is commonly used to describe government crises which do not originate from a formal vote of no-confidence by the parliament. However, there are different cases for which a government crisis can take place, so that this definition appears to be imprecise. A more accurate definition of different government crises distinguishes between five cases: 'extra-parliamentary' crisis, when the causes are not political and do not relate to the confidence relationship (e.g., death of the head of government); 'intra-government' crisis, when tensions within the cabinet lead to the resignation of its head; 'party' crisis, when party decisions lead to the dismissal without recurring to a formal parliamentary vote; 'non-binding parliamentary' crisis, deriving from an act of parliament which does not forcefully entail the dismissal of the government; 'proper parliamentary' crisis, following the approval of a formal vote of no-confidence (as per art. 94 Cost.), or the rejection of either the investiture vote or a question of confidence[99]. A crisis of the latter type has only taken place a handful of times in the history of the Italian Republic: out of 68 governments, five did not receive the initial confidence from the parliament (De Gasperi VIII in 1953, Fanfani I in 1954, Andreotti I in 1972, Andreotti V in 1979, Fanfani VI in 1987), two were dismissed by a rejection of a question of confidence (Prodi I in 1998 and Prodi II in 2008), while none was ever dismissed by the approval of a no-confidence motion.

It is finally instrumental to link this description of the party and electoral systems, and their political consequences, to the government stability of Italy for the purpose of this paper. As previously discussed, Italy shows both stability and instability of governmental action concurrently, especially before 1994. From 1948 to 1994, the dominance of the DC on the executive power, as well as its preeminence in parliament, in the context of the Italian 'blocked democracy' led to a highly stable general government action, characterised by a continuity of the 'political direction' ('*indirizzo politico*'), concept introduced in the previous sections[100].

1.4.5 The Italian Party and Electoral Systems: after 1994

During the early 1990s both party and electoral systems radically changed. The end of the Cold War and the almost concurrent wave of judicial issues striking all the major post-war parties led to their dissolution or deep transformation and the popular anger against the old political elite let new political forces emerge. At first, two referenda on the electoral laws were held, in 1991 and 1993, which

[99] Marco Cecili, 'Le declinazioni assunte dalle crisi governative nella storia costituzionale italiana' (2018) 2 *Costituzionalismo*, 8–15.

[100] Improta (n 74) 162.

respectively reduced the number of preferences from four/three to one and transformed the electoral system of the Senate into a majoritarian one, even though all main parties opposed them. The logic was that the citizens would in this way get a more immediate and direct power on the governing majority, avoiding the excessive mediation of parties which was typical of the first five decades of the Republic. Thus, in 1993, the parliament felt compelled to reform all of the electoral system, for both chambers, and adopted the so-called *'legge Mattarella'*, or *'Mattarellum'* (L. 4 agosto 1993, n. 276–277). This law introduced a 'mixed' system, in which three quarters of the seats were assigned by a plurality vote in single-member constituencies and the remaining quarter through a proportional formula aimed at compensating the possible distortions of a highly majoritarian system. This system was used in three elections (1994, 1996, and 2001) and produced the effect of creating a new bi-polar system. Indeed, as all the old parties did not exist anymore, a new left-right divide emerged in the country. The right coalition was formed around the figure of tycoon Silvio Berlusconi, which allied with the neo-fascists and right-wing regionalists in the North, while the left wing was born from the remnants of the old Communist and Socialist parties.

In 2005, however, the centre-right majority led by Berlusconi decided to change the electoral law again. This reform had clear partisan objectives and was passed by the incumbent government to reinforce its own possibilities of winning, or better limit the size of the victory of the opposite political camp. The new law (L. 21 dicembre 2005, n. 270), called '*legge Calderoli'* or *'Porcellum'* (the latter name is a distortion of *porcata*, 'rubbish' or 'trickery') abolished both the single-member constituencies and the preference system, while giving a majority bonus (340 seats out of 630) to the winning coalition on the national level without any threshold. The system was slightly dissimilar for the Senate, as the bonus (55% of the seats) was given on a regional basis. Furthermore, the law itself imposed the official selection of a leader for each party or grouping, thus undermining even more the role of parties and parliament after the election. The logic behind the new reform was thus plebiscitarian, meaning that it would have given the people a *de facto* way of directly selecting the head of government, without any constitutional change and even more profoundly than with the previous mixed, but highly majoritarian, system[101]. The law was applied in three elections (2006, 2008, 2013), before finally been declared partially unconstitutional by the Constitutional Court, whose judgement 1/2014 was based on the lack of a threshold for the majority bonus and the existence of long and closed lists of candidates chosen by the parties[102]. Moreover, the effects of this electoral

[101] Antonio Floridia, 'Electoral systems and concepts of democracy: electoral reform as a permanent policy issue in the Italian political system' (2018) 10(2) *Contemporary Italian Politics* 112, 114–117.

[102] 'The provision of the attribution of a majority bonus […] would then compromise the equality of the vote and thus the 'parity of condition of the citizens in the moment in which the vote is expressed', in violation of

system were very distorted, so much as in 2006 the centre-right coalition won the national vote for the Senate but had fewer seats than the centre-left coalition, or in 2013 the centre-left coalition surpassed the centre-right coalition only by 0.37% in the Chamber of Deputies and resulted having almost three times the seats[103].

In those same years a new wave of transformation of the party system also took place. The global financial crisis of 2008–2009 and the subsequent European sovereign debt crisis started in 2009 played a major role, but internal discontent towards the political class was also growing by itself. In 2011 Silvio Berlusconi resigned as President of the Council and opened the way for a technocratic government led by Mario Monti. This new government can be considered as a 'national unity government', as almost all parties in parliament supported it, and was forced to adopt harsh austerity measures to counter the growing economic crisis. In the 2013 elections, the weight of this experience was heavy. Berlusconi's centre-right coalition lost millions of votes and arrived second with 29.2% of the votes, while the centre-left coalition led by the Democratic Party (PD) was able to win the relative majority of the votes with 29.6% of the votes. The most voted single party was however the populist Five Star Movement (M5S), which did not have any coalition and alone reached 25.6% and whose platform was based on a strong criticism of the parties and the political class in general, especially after the Monti government, seen as an undemocratic experience. The entrance of a third pole into the political game profoundly changed the Italian system, which after 1994 was dominated by a largely stable bipolarism. The 2005 electoral law granted however the absolute majority of the seats in the Chamber of Deputies (344/630) to the centre-left coalition, which was however unable to secure a majority in the Senate, much more divided. In the following legislative term, then, the centre-left parties formed an alliance with parts of the centre-right coalition in order to govern[104].

As anticipated, after the third elections using this electoral system in January 2014 the Constitutional Court declared the *'legge Calderoli'* partially unconstitutional. In 2015, the PD-led majority thus passed a new electoral law within a larger context of proposed reforms by then President of the Council Matteo Renzi. The proposed, and failed, constitutional reforms will be discussed more in depth in the next chapter, but the new electoral law (L. 6 maggio 2015, n. 52), the so-called '*Italicum'*,

art. 48, second clause, Cost, considered that the distortion provoked by said attribution of the bonus would not constitute a mere factual inconvenience, but the result of a mechanism, which is irrational since it is programmed for such result by law' (excerpt of the judgement 1/2014).

[103] Marta Regalia, 'Electoral Reform as an Engine of Party System Change in Italy' (2018) 23(1) *South European Society and Politics* 81, 82–83.

[104] Roberto Biorcio, 'The reasons for the success and transformations of the 5 Star Movement' (2014) 6(1) *Contemporary Italian Politics* 37.

was approved by the parliament. This system had a majority bonus of 55% of the seats for the list, not the coalition, reaching 40% of the total votes, with a runoff to determine the winning party in case none reached this threshold in the first round. Preferences were not restored, and the heads of the lists had the possibility to run in up to 10 out of the overall 100 constituencies, choosing the one in which they would have been elected in case of multiple victories. In 2017, however, the Constitutional Court declared this new law partially unconstitutional as well, specifically regarding the runoff to acquire the majority bonus and the possibility for the heads of the lists to choose their constituency once elected. This method, which together with the proposed constitutional reforms wanted to stress even more the plebiscitarian role of the vote, was thus never used.

Later in 2017, the parliament approved a new electoral law (L. 3 novembre 2017, n. 165), '*Legge Rosato'* or *'Rosatellum'*, which proposes again a mixed system with both majoritarian and proportional elements. The new law needed to be approved before the following elections in a relatively short period, and probably the same parties that voted in favour of it, especially the PD, started doubting its principles soon. Indeed, no clear ideology appears behind the choices made: thew creation of a clear and stable parliamentary majority was not achieved in the 2018 elections, representativeness is also disregarded, and party fragmentation was not resolved. The law divides the distribution of seats into two parts: 37% of the seats are attributed through a single-member constituency system, while 63% through a proportional system. Differently from the 1993 *Mattarellum*, however, the two parts are not correlated as the seats allotted through the proportional system are not intended to compensate the majoritarian distortions. The main effects of this new law are linked to its majoritarian part. In such a fragmented party system (at least tripolar, with various divisions inside the coalitions as well), single-member constituencies force parties to create coalitions behind strong candidates to be competitive. However, given that only 37% of the votes are allocated through this method, the districts need to be relatively large, so that mobilisation around single local candidates is much more difficult. This new electoral law was used in two elections (2018 and 2022) and is the one currently in use in Italy[105].

The 2018 elections represented an important turning point in Italian politics from the perspective of the party system. In particular, two parties are seen as the real winners: the M5S, which grew from its already important result of 2013, and the League, previously a Northern regionalist movement but then transformed into a far-right national party. The right-wing coalition arrived first (37%), with the League being its main member party, the M5S arrived at 32.7%, thus resulting as the largest single

[105] Floridia (n 101) 117-125; Regalia (n 103) 83–85.

party, while the incumbent centre-left coalition led by the PD only gained 22.9% of the votes. Both the League and the M5S can be considered populist, and their victory clearly represented the disruption of traditional party dynamics in Italy. Their populism has however different bases: the M5S focuses more on the economic and political crisis of the country, has an inclusive political discourse, but also presents many ambiguities as its positions have often largely shifted during time. The League, instead, has a more cultural focus, with particular attention to the topics of immigration and nationalism, while economic issues represent only a secondary point in its policy programme[106]. None of the three poles managed however to reach a majority in parliament, and three governments with different parliamentary majorities alternated in the 2018–2022 parliamentary term. The first Conte government was a M5S–League coalition, the second Conte government a M5S–PD coalition, while the Draghi government was a technocratic government of national unity, tasked with addressing the crisis which followed the Covid-19 pandemic and to implement the National Recovery and Resilience Plan (part of the Next Generation EU package), with all parties other than Giorgia Meloni's right-wing Brothers of Italy (FdI) being part of it.

All the parties that were parts of the governments of the 2018–2022 term suffered in the 2022 snap elections. Indeed, this electoral round constituted yet another important change in the Italian party system. The right-wing coalition, the winner of the elections, was not dominated by the far-right League anymore, which supporting the Draghi government lost much consensus, and not even by the re-founded Berlusconi's centre-right Forza Italia (FI), but instead by Meloni's right-wing FdI. This party was indeed the only one which did not participate in any government in the last term and could thus claim the role, previously held by the M5S, of the outsider, thus attracting the mounting 'protest vote'. The centre-left coalition led by the PD arrived second, but very weakened in large parts of the country, while the M5S was led by former PM Conte, thus becoming fully a part of the political elite it pledged to fight at its birth. The majoritarian system in the electoral law this time worked in assuring a large majority to the right-wing coalition, while the other parties ran mostly separately: the PD-led coalition, the M5S, and a liberal pole were not able to find an agreement to find common candidates in the single-member constituencies. Thus, Meloni became at the same time the first woman and the first right-wing politician at the head of an Italian republican government. These last elections were a confirmation of a trend of volatility in the Italian party system, still not stable after the end of the

[106] Manuela Caiani, 'The populist parties and their electoral success: different causes behind different populisms? The case of the Five-star Movement and the League' (2019) 11(3) *Contemporary Italian Politics* 236.

'First Republic' (1946–1994) and the age of bipolarism (1994–2013). It is thus clear that the Italian democracy is in a phase of transition, but where this is headed is still uncertain[107].

The changes of the party and electoral systems after 1994 had effects on the government stability of the country. As said before, two periods need to be distinguished after the end of the proportional post-war period: a bipolar era (1994–2013) and a 'volatile–tripolar' era (after 2013). In the bipolar era, median cabinet duration increased in comparison to the previous years: 11 cabinets in 19 years, with 6 different Presidents of the Council and the two most lasting governments in Italian republican history (Berlusconi II in 2001–2005 and Berlusconi IV in 2008–2011). This was probably an effect of the new electoral systems, which forced parties to form pre-electoral coalitions and, after 2005, to publicly identify a coalition leader as a *de facto* candidate as head of government, so that the replacement of the President of the Council during the legislative term became politically riskier. However, the implosion of the post-war party system and thus the overcoming of the concept of 'blocked' democracy led to higher instability in terms of continuity of governmental action from a legislative term to the other, as bipolar alternation became the norm[108]. This cannot however be seen as an intrinsically negative outcome, as political alternation in power is normal in democratic regimes[109].

After the 'electoral earthquake' of 2013, which ended the phase of bipolarism, a de-institutionalisation of the party system took place[110], so that it become tripolar but also started showing a larger degree of volatility, as it has kept evolving through the following years. Median cabinet duration once again decreased (7 governments in 11 years) and political instability increased as well, as political alternation within the same parliamentary terms also took place in both complete legislative terms and ideological boundaries between parties have been disregarded to form unprecedented coalition governments: a grand coalition government (Letta, 2013–2014), centre-left cabinets with the full support of some centre-right MPs (Renzi, 2014–2016; Gentiloni, 2016–2018), a full-fledged populist cabinet (Conte I, 2018–2019), an alliance between ideological rivals (Conte

[107] Alessia Donà, 'The 2022 Italian general election and the radical right's success' (2023) 6(2) *European Journal of Politics and Gender* 295.

[108] 1994–1996 legislative term: a centre-right government followed by a national unity technocratic government; 1996–2001 term: four centre-left governments; 2001–2006 term: two centre-right governments; 2006–2008 term: one centre-left government; 2008–2013 term: a centre-right government followed again by a national unity technocratic government.

[109] Improta (n 74) 163.

[110] Marta Cartabia and Nicola Lupo, *The Constitution of Italy: A Contextual Analysis* (Bloomsbury Publishing Plc 2022) 24–25.

II, 2019–2021). Thus, the volatility of the still-evolving Italian party system has negatively affected government stability, in both its 'formal' and 'substantial' aspects. It is finally important to stress that, even after 1994, a 'proper parliamentary' crisis (as described in the previous section) only took place twice (i.e., Prodi cabinets), while the rest of the executives were dismissed for other reasons, in most of the cases related to internal political conflict within the governing coalition[111].

[111] Improta (n 74) 165, 170–171.

2 Proposed Constitutional Reforms of the Form of Government in Italy

After having analysed the Italian form of government in various aspects and its evolution in time, this chapter will focus on the constitutional reforms to this system that have been proposed. At first, the thesis will analyse the causes that led political actors to conceive such reforms. Then, the text will focus on the past proposals of the form of government, analysing their formation processes, their provisions, and finally their dismissals. Even though no reform in this sense has been approved, as seen in the previous chapter the evolutions of the party and electoral systems impressed nonetheless a change on the functioning of the Italian institutions. Lastly, the constitutional reform proposed by the current governing right-wing majority will be examined.

2.1 The Reasons behind the Proposals

Since the late 1970s, the question of institutional reforms has entered the Italian political debate, occupying an always more prominent part of it. The watershed that gave the first impetus to this long discussion arrived in 1976, when the leader of the Socialist Party Bettino Craxi launched the idea of a 'great reform' (*grande riforma*) of the Constitution to change it in a deep and comprehensive manner, rather than implementing gradual and more focussed amendments. Craxi's reasons for wanting a deep reform of the system were double. On the one hand, there was a systemic motivation, which had to do with the extreme power of the parliament over the governments, which were seen as unstable and weak. When Craxi became President of the Council in 1983, he saw this as an instrumental way of acquiring more powers for his own office. On the other hand, a more partisan motivation can be identified: the two main post-war parties, the DC and the PCI, considered themselves custodians of the 1948 Constitution. The main partisan need of the PSI, even before Craxi's leadership, was thus to gain more political power and break this strong DC–PCI "bipolarism" [112].

In the 1980s, the main result that parties reached in terms of reforming the system related to the parliamentary rules of procedure[113], in particular regarding the use of secret ballots. Indeed, the Italian

[112] Martin J Bull and Gianfranco Pasquino, 'A long quest in vain: Institutional reforms in Italy' (2007) 30(4) *West European Politics* 670, 672.

[113] The reform of the rules of procedure of parliament is not marginal in the context of the debate on the form of government. Scholars indeed point out how crucial the actual functioning of the parliamentary institution is within the context of the constitutional rules regarding the form of government. For example, rules of procedure have an impact on parliamentary fragmentation, as they regulate the organisation of political

republican parliament kept the same rules of procedure deployed in the liberal period of the Kingdom of Italy, which granted easy ways of resorting to secret ballot votes. In the first decades of the Republic, this mechanism ensured cooperation between majority and opposition in parliament, as the threat of exposing fractures of the governing coalition always existed and parties preferred to come to terms regarding important legislative topics. When the relationship between different parties started becoming more adversarial in the late 1970s and early 1980s, however, the use of secret ballot dramatically increased and became an evident threat to government survival because of the so-called 'turncoats' (*franchi tiratori,* i.e., MPs who secretly vote against party lines). Thus, in 1988 the governing coalition decided to amend the rules of procedures in order to strengthen the government *vis-à-vis* the parliament, in a context of collapse of the post-war consociationalism so far in place[114]. In that same year, the parliament also finally approved a law regulating the organisation of the government, and especially the Presidency of the Council of Ministers, which until that point acted in a confused normative framework which parties never bothered to fill. This law (L. 23 agosto 1988, n. 400) recognised the relevance of both collegiality and leadership within the government, trying to overcome the so-called 'plural–dissociated management governments' (*governi a direzione plurima dissociata*) presented in the previous chapter, and also regulated the normative acts coming directly from the government[115].

The political parties were thus able to reform some aspects relating to the instability of governments and their powers, especially in relation to the legislature. However, these reforms were rather partial and were not able to heavily affect the scenario. Other attempts to change the system on a deeper level coming from the political parties failed in the 1980s and 1990s, as we will see in the next section. It was only thanks to a different actor, the Italian electorate itself, that a real transformation started to take place. Indeed, through the 1991 and 1993 referenda, which have been mentioned in the previous

parliamentary groups and their powers. They directly influence the efficacy and rapidity of the procedure of adoption of laws, so that they impact the ability of the government of acting according to its political direction. They regulate the confidence relationship, implementing the constitutional provisions. They also discipline the control mechanisms of parliament towards the government, making them more or less effective. Among others, see: Vincenzo Lippolis, 'Maggioranza, opposizione e Governo nei regolamenti e nelle prassi parlamentari dell'età repubblicana' in Luciano Violante (ed) *Storie d'Italia. Annali 17. Il Parlamento* (Einaudi 2001); Nicola Lupo, 'La continuità del diritto parlamentare. La riadozione del regolamento prefascista nella Camera dei deputati' in Ugo De Siervo, Sandro Guerrieri, Antonio Varsosi (eds) *La prima legislatura repubblicana. Continuità e discontinuità nell'azione delle istituzioni* (2nd edn, Carocci 2004); Silvano Labriola, 'Il diritto parlamentare nel sistema del diritto pubblico' (2000) 2 *Rassegna parlamentare* 335.

[114] Daniela Giannetti, 'Secret Voting in the Italian Parliament' in Jon Elster (ed) *Secrecy and Publicity in Votes and Debates* (Cambridge University Press 2015) 108–130.

[115] Giovanni Barbieri Tarli, 'La disciplina del ruolo normativo del governo nella legge n. 400 del 1988, ventinove anni dopo' (2018) 1 *Osservatorio sulle fonti*.

chapter, the electoral system was deeply changed even against the will of the main parties, which opposed this outcome. However, these changes were not constitutional and the further transformations of the electoral laws that were previously analysed showed how unstable a solution only based on these can be[116]. Furthermore, scholars point out how this excessive focus on the electoral laws appears even more ineffective when the parliamentary rules of procedures have not been adequately adapted to the new majoritarian view. The last major reforms of the rules of procedure date to 1988 for the Senate and 1993 and 1997 for the Chamber of Deputies: they were mostly in continuity with the already existing rules, and actively prevented a full implementation of a bipolar system, instead increasing political fragmentation within the parliament and maintaining a proportional logic in the parliamentary works[117].

Even after the end of the post-war party system and the entrance into force of a new electoral system which favoured bipolarism, the idea of constitutional reforms did not cease to exist in the public debate. Indeed, there are reasons for political parties to want to amend the current form of government which go beyond mere historical circumstances of partisan competition. A first reason, rather shallow, is that Italian political parties have shown, on different sides of the political spectrum, to have a will to leave a mark on the Constitution whenever they have the occasion to do so. A second, deeper reason, has to do with the functioning of the institutional system, which on some occasions has appeared not to live up to the challenges it was forced to face. Indeed, many politicians or scholars see institutional and constitutional reforms as the only way to overcome the so-called 'degenerations' of parliamentarism, which the Italian Republic is supposedly showing[118].

These degenerations of parliamentarism are often linked to the weakness and instability of the executives *vis-à-vis* the retention of the political power in the hands of the legislature by those advocating for institutional reforms. However, governmental instability is a product of many different elements, which have been analysed in the previous chapter. The rules of the confidence relationship have important effects, which vary a lot depending on the existence of rationalising and restrictive elements (e.g., majority needed for a positive vote of confidence, constructive vote of no-confidence, etc.). Moreover, the electoral law and the party politics also play an important role in the instability of executives, as they can either create stable and unitary parliamentary majorities or unstable and

[116] Bull and Pasquino (n 112) 670–674.

[117] Nicola Lupo, 'L'adozione di regolamenti parlamentari di ispirazione proporzionalistica e la loro permanenza con leggi elettorali ad impianto maggioritario' in VVAA (eds) *Studi in onore di Vincenzo Atripaldi* (I, Jovene 2010) 691–717.

[118] Fiammetta Salmoni, 'Conciliare governabilità e forma di governo parlamentare attraverso riforme legislative e due revisioni costituzionali' (2023) *federalismi.it*, 3.

divided ones. In addition to this, the previous chapter already discussed how inflated the idea of governmental instability in Italy is when merely looking at the number of cabinets formally existed, which cannot be considered by itself an accurate measure of systemic instability. Nonetheless, this presumed high instability is the central reason for many to advocate in favour of deep institutional reforms to correct and rationalise the mechanisms of parliamentarism. Finally, as already noted, the vast majority of government crisis do not follow the path of a 'proper parliamentary' crisis, so that merely changing the rules governing this specific possibility might be ineffective in solving the problem.

In the view of many, the governmental instability is even more exacerbated by the very nature of the Italian parliament, which has been described as 'symmetric' bicameralism in the previous chapter. The choices of the Constituent Assembly to create two chambers with equal powers, and then the subsequent reforms which almost completely equated their composition as well, have created an Italian exceptionalism. On the one hand, the ordinary legislative procedure, as well as other parliamentary functions, appear to have a lengthy approval course, which in some cases can be inefficient and redundant. On the other hand, as history has shown, it might happen that the two chambers do not have the same majority (e.g., after the 2013 elections), so that the confidence relationship between government and parliament can appear problematic as both chambers have identical powers on this as well, from the formation to the dismissal of a cabinet.

It is also interesting to make one final consideration on the actual current state of the relationship between the executive and the legislature in Italy. While many prefer to focus on the presumed governmental instability, fewer people tend to point out that a much more concerning degeneration of the Italian institutional system is taking place since the early 1990s, with the end of the post-war electoral and political systems. This degeneration is the weakened role of the parliament, which has almost completely lost its two main powers: the control over the activity of the government and the legislative function[119].

Indeed, while the legislature and its political groups had a major role during the formation of governments before 1994, with the adoption of a majoritarian electoral law and the deep change of the party system started in the same year, the legislature in the era of bipolarism (1994–2013) started having a 'ratifying' role of the electoral result, which saw a clear governing coalition coming out as a winner from the elections. The confidence relationship became thus less important than before, and

[119] ibid 3–4.

the role of the parliament in shaping the political agenda declined consequently[120]. A renewed importance of parliamentary coalition-building appeared in the 17 and 18th legislative terms (2013–2022), but disappeared again in the following and current parliamentary term, given the large majority that the electoral law granted to the right-wing Meloni government. Furthermore, governing coalitions started to be built around a 'contract' (either pre- or post-electoral), a written document with a clear programme for the executive to follow. This might have the consequence of weakening the role of both the President of the Council, to whom the Constitution theoretically grants the responsibility for the general policy of the government and the power of promoting and coordinating the activity of the ministers (art. 95), as happened for the first Conte government (2018–2019), for which the President himself had no role in the drafting process and was instead himself an 'object' of the contract between the coalition partners[121]. Finally, the legislative function of the parliament is also rapidly declining[122]: most of the votes in the assembly are now either mere ratifications of pieces of law proposed by the governments with a question of confidence, or the conversion into law of government decrees which should be of an urgency nature, or the approval of legislative texts with provisions pertaining a way too large variety of topics (so-called 'maxi-amendments') so that their complete parliamentary exam becomes effectively impossible[123].

2.2 Past Proposed Reforms

Whatever the reasons that led many political actors to propose constitutional reforms of the Italian form of government, and whether they are well-founded or not, it is important to analyse such proposals, to understand the historical path that has been followed so far and what the implications on the future might be. This section will thus focus on the past proposed reforms of the Italian system

[120] Carlo Ferruccio Ferrajoli, 'Un declino senza cambiamento. Il Parlamento italiano tra la XVII e la XVIII Legislatura' (2019) 1 *Costituzionalismo* 33, 94–96.

[121] ibid 50–51.

[122] ibid 57–61.

[123] cf Giovanni Piccirilli, *L'emendamento nel processo di decisione parlamentare* (CEDAM 2008), Nicola Lupo, 'Emendamenti, maxi-emendamenti e questione di fiducia nelle legislature del maggioritario' in Eduardo Gianfrancesco and Nicola Lupo (eds) *Le regole del diritto parlamentare nella dialettica tra maggioranza e opposizione* (Luiss University Press 2007) and Elena Griglio, 'I maxi-emendamenti del governo in Parlamento' (2005) 4 *Quaderni Costituzionali* 807.

of government, starting from the 1980s, when the idea of institutional reforms started to acquire a prominent place within the public debate.

2.2.1 The First Parliamentary Proposals: The Riz–Bonifacio Panels (1982) and the Bozzi Bicameral Commission (1983–1985)

The question of constitutional reforms of the form of government was never really silent in the public debate in Italy after the adoption of the 1948 Constitution. It was only in in the 1980s, however, that within the political institutions actual proposals started to be put forward on this issue. A first step took place in 1982, when both chambers of parliament decided to constitute panels (*comitati*) within the respective Constitutional Affairs parliamentary committees, headed by deputy Riz and senator Bonifacio (thus, *comitato Riz* and *comitato Bonifacio*), with members from all political groups[124]. The tasks of these two panels were: mapping all proposals of institutional reform advanced so far; identifying more areas which needed an institutional revision; formulating suggestions to modify the parliamentary rules in accordance with the proposed reforms. To summarise briefly the conclusions of the panels, presented to the presidents of the chambers at the end of 1982, they both highlighted the need to give the executive, and especially its head, more power in terms of defining the political agenda and to rationalise and simplify the activity of parliament in terms of legislative and control function. These conclusions perfectly exemplify the idea that was in vogue in that period, according to which the executive power needed to be increased in a context of loss of centrality of the parliament[125].

In 1983, just a few months before Craxi became President of the Council for the first time, both the Chamber of Deputies and the Senate passed motions to establish a bicameral commission tasked with formulating proposals of constitutional and legislative reforms. The legislative term came however to an early end in that same year, but the bicameral commission was soon re-established in the following term: it was headed by deputy Bozzi and is thus known as Bozzi commission (*commissione Bozzi*). The commission was composed of twenty deputies and twenty senators, proportionally divided in the political groups of the chambers. The final report of the commission, which was approved by a majority without the votes of the communists and social-democrats, which abstained, and the right- and some left-wing groups, which voted against, was presented to the parliament in

[124] Carlo Fusaro, 'Per una storia delle riforme istituzionali (1948–2015)' (2015) 2 *Rivista trimestrale di diritto pubblico* 431, 433, 464.

[125] *Comitato di studio per l'esame dei problemi istituzionali nominato su invito del presidente della Camera previo accordo dei presidenti dei due rami del Parlamento*, Relazione informativa del presidente R. Riz, VIII leg., Camera dei deputati, Rome, 1982.

January 1985. The commission proposed the amendment of 45 articles of the Constitution, thus encompassing various parts of the text. Many provisions regarded institutional reforms of the Italian parliamentary system of government[126].

An important aspect was indeed the dismissal of 'symmetric' bicameralism and the adoption of a 'differentiated' bicameralism. Practically, the proposal envisioned a system of concurrent authority of both chambers on the subjects of: constitutional and electoral laws; organisation and functioning of constitutional organs; budget and taxation laws; laws concerning detention and imprisonment, protection of minorities, and religious freedom; determination of fundamental principles of framework laws, regional statutes, and conversion into law of governmental decrees; ratification of international treaties. All other matters would have been exclusive competence of the Chamber of Deputies, with the government or a third of the senators having the ability to request an examination by the Senate, however not binding in the subsequent final approval by the Chamber of Deputies. The proposal also modified the formation process of the government: indeed, it imposed that only the President of the Council would have needed a vote of confidence from a joint session of parliament, while ministers would have been appointed afterwards by the President of the Republic on the proposal of the President of the Council. Finally, the general confidence relationship would have been between the President of the Council and the joint session of parliament, rather than between the whole government and both chambers separately.

The proposal of the Bozzi commission did not aim at facing many structural problems, such as the overcoming of the basic equivalence of the two chambers in terms of composition or an actual rationalisation of the confidence relationship through institutional means already present in other constitutional settings. However, it tried to solve some of the inherent problems of the Italian institutional system, as was clear from the final report of the commission: 'full governability' thanks to institutional mechanisms which are not tied to 'wearying mediations and compromising solutions', but rather anchored to a precise political direction (*indirizzo politico*); overall rationalisation of the systems to address the issues become evident after decades of republican governments; enhanced accountability, more direct links between lawmakers and citizens and possibility of a higher public participation in the decision-making process[127]. The parliament did not however continue with the examination of this constitutional reform, which was thus set aside. In the following years, some MPs tried to present new constitutional reforms, mostly focussing on the rationalisation of bicameralism,

[126] Fusaro, 'Per una storia delle riforme istituzionali (1948–2015)' (n 124) 464–466.

[127] *Relazione della Commissione parlamentare per le riforme istituzionali*, Doc. XVI-bis, n. 3, IX leg., Camera dei deputati-Senato della Repubblica, Rome, 29 January 1985.

but all of them were presented as partisan proposals and none had an innovative character, so that they were all dismissed.

2.2.2 From the 'Labriola Project' (1991) to the Second Bicameral Commission: De Mita–Iotti (1992–1994)

In 1991, the Constitutional Affairs committee of the Senate passed a project of constitutional reform, then approved by the equivalent committee in the Chamber of Deputies, intended to simplify the legislative process within the framework of 'symmetric' bicameralism, known as 'Labriola project' (*progetto Labriola*), after the president of the committee in the Chamber of Deputies. It introduced the so-called 'cradle principle' (*principio della culla*), according to which legislative texts only needed the approval of the chamber in which they were first proposed[128]. The other chamber maintained the right of re-examination when half of its members asked for it. The proposal maintained an exception for some matters: constitutional and electoral laws; budget laws; ratification of international treaties and variations of the national territory. The reform also envisioned a division of competences between the chambers in the submission of a bill: laws pertaining matters of national competence would have been presented firstly to the Chamber of Deputies, while bills on matters of regional competence, on which the state maintained a right of drafting the general principles, to the Senate. This proposed reform thus altered the balance between the chambers, introducing a principle of functional differentiation, but both chambers nonetheless maintained the power of examining bills coming from the other, whatever the topic. Furthermore, the reform also proposed to give more regulatory powers to the government in particular topics, so not to require the involvement of the parliament[129]. This proposal was thus a further step towards an ideological framework of rationalisation of parliamentarism and strengthening of government powers, but was never approved due to the early dissolution of parliament in 1992[130].

After the elections of 1992, the new presidents of the chambers agreed on forming a new bicameral commission, headed by Ciriaco De Mita, which started working on a preliminary report. In 1993, Nilde Iotti became the new president of the commission, and the parliament gave it a mandate to formulate conclusive proposals of reforms on four aspects: form of state, form of government, electoral law, constitutional guarantees. The commission, known as De Mita–Iotti commission

[128] This principle was first elaborated in the scholarly debate by Leopoldo Elia, 'Proposte per un possibile riordino istituzionale: relazione al "Seminario di Villa Miani sulle riforme istituzionali", promosso dai gruppi parlamentari DC, Roma, 11- 12 gennaio 1988' (1988) 4 *Il Politico*.

[129] AC4887-A (X leg.).

[130] Fusaro, 'Per una storia delle riforme istituzionali (1948–2015)' (n 124) 469.

(*commissione De Mita-Iotti*), elaborated a complex proposal which was submitted to the parliament in January 1994[131].

Regarding the form of government, which is relevant for this dissertation, the proposal envisioned a change in the formation process of the government: joint sessions of parliament would have chosen the Prime Minister by an absolute majority, with votes on different candidates presented by at least one third of the MPs. If this proved impossible, after one month from the first session the President of the Republic would have had a chance to designate a head of government, which needed the approval of parliament by a motion of confidence. In case none of these efforts would have proved effective, the parliament should have been dissolved and new elections organised. In case a Prime Minister was elected, after having been sworn in by the President, they would have chosen the ministers of the cabinet. Regarding the confidence relationship, this reform introduced the instrument of constructive no-confidence, already described in the previous chapter, with the explicit provision of impossibility of naming the same Prime Minister consecutively, so as to avoid any misuse of this instrument. Regarding the reform of 'symmetric' bicameralism, this commission did not propose significant changes. However, given the fact that the confidence relationship was in the hands of joint sessions of parliament, the Chamber of Deputies would have been preponderant over the Senate just because it has double the members. For this reason, the Senate would have been effectively relevant only in the case the Chamber of Deputies would have not reached an unambiguous majority. Moreover, the proposal changed the partition of competences between state and regions, further stressing a unitary approach and thus barring the way for the creation of a chamber specifically representing local or regional interests, which is typical of federal states[132].

In any case, the legislative term came to a sudden end in 1994 after the referenda on the electoral system which have been previously discussed, concluding the post-war proportional era, so that the parliament did not have the time to analyse this project of reform. Nonetheless, this was also an instrumental step in the path towards institutional reforms, especially in terms of relationship between government and parliament. The De Mita–Iotti commission had been an important forum for the discussion of the new 1994 electoral law as well as[133].

[131] Fusaro, 'Per una storia delle riforme istituzionali (1948–2015)' (n 124) 476–477.

[132] *Commissione parlamentare per le riforme istituzionali. Documenti istitutivi, discussioni, progetti*, XI leg., Camera dei deputati, Rome, 1995.

[133] Fusaro, 'Per una storia delle riforme istituzionali (1948–2015)' (n 124) 477.

2.2.3 A First Attempt of Government Proposal: The Speroni Committee (1994)

After the 1994 elections, tycoon Silvio Berlusconi formed his first government with a centre-right majority, of which right-wing and federalist parties also became part. The new government did not stop the process of institutional reforms, but instead the Presidency of the Council created for the first time an *ad hoc* committee, headed by senator Speroni (thus, *comitato Speroni*), whose task was to prepare a report on institutional reforms. The Speroni committee worked for a year on the report, analysing different options on the issues of rationalisation of bicameralism and strengthening of the executive power.

On the former matter, two main hypotheses were formulated, both reflecting the federalist requests of part of the governing majority. Both options envisaged a transformation of the upper chamber, the Senate, into an expression of regional or local authorities. According to the first one, the Senate should have been divided into two equal parts, with representatives of regions on one side and representatives of provinces and municipalities on the other. These senators would have been in a number proportional to the population of the regions and indirectly elected through a system which was however not specified in the proposal. The other option, inspired by the German Federal Council (*Bundesrat*), imagined a chamber whose members were direct an expression of regional governments, which would have had the complete power of appointment and dismissal. In this system, the confidence relationship would have been an exclusive prerogative of the lower chamber, while the upper chamber would have retained powers on legislation regarding specific topics: constitutional and electoral laws; organisation and functioning of constitutional organs; laws concerning detention and imprisonment, protection of minorities, and religious freedom; ratification of international treaties; measures on the general economic balance of the state as well as economic supports to the regions.

The committee also prepared proposals on the system of government, elaborating two options as well. The first one was based on the direct election of the Prime minister, to be held concurrently with the elections of the lower chamber, and giving more functions of guarantee to the President of the Republic. The election of the Prime minister would have been organised in two successive rounds, and they would have had complete power over the appointment and dismissal of the ministers. The lower chamber would have had the possibility to pass a motion of no-confidence towards the Prime minister after they took office, but this would have also caused the dissolution of the same chamber and consequently early elections. The Prime minister would have been able to resign, thus allowing a Deputy prime minister of their choice to succeed them in office. The second option was instead inspired by the French semi–presidential system of government. The executive power would have

been shared by a directly elected President of the Republic and a Prime minister appointed by them. The lower chamber would have had the possibility of dismissing the Prime minister by passing a motion of no-confidence, but this would have forced the President to dissolve the chamber and call early elections. The chamber could have also been able to call for its own dissolution by a vote of two-thirds of its members[134].

In December 1994, however, the federalist coalition partner (the Northern League), decided to leave the governing majority, and thus the first Berlusconi government resigned after less than a year in power. The project of reform elaborated by the Speroni committee was thus set aside even before arriving in front of the parliament for any discussions or votes[135].

It might also be interesting to point out that the 1990s also saw other reforms which were instead successfully implemented and are still in place to this day, not regarding the national form of government but the form of government of subnational entities. Indeed, in 1993 thus soon before the historical 1994 elections and the changes they brought to the Italian political system and concurrently with the reform of the national electoral law, the parliament approved an electoral reform for municipalities and provinces, according to which mayors and the presidents of the provinces (thus the head of the executives of the respective entities) would have been directly elected, and not appointed by local assemblies. To this first reform, another one followed, which also introduced the same principles at the regional level: this reform will be analysed in depth in the next chapter. It thus appeared that a direct election of the heads of the executive, on whatever level, was an almost necessary step to take in order to reform parliamentary systems (which were previously in place at the local and regional level), with these reforms being a part of the state-level discussion on institutional reforms[136].

2.2.4 The Third and Final Bicameral Commission: D'Alema (1997–1998)

In 1997 the parliament decided again to go through the path of bicameral commissions, initiating the third attempt of this kind. The commission was headed by deputy D'Alema (thus, *commissione D'Alema*) and was composed of thirty-five members from each chamber proportionally selected

[134] *Relazione finale del Comitato di studio sulle riforme istituzionali, elettorali e costituzionali*, Presidenza del Consiglio dei ministri, Rome, 1995.

[135] Fusaro, 'Per una storia delle riforme istituzionali (1948–2015)' (n 124) 478–483.

[136] Cristina Fasone and Giovanni Piccirilli, 'The new "form of government" in the reforms of the Italian regional system' in Erika Arban, Giuseppe Martinico and Francesco Palermo (eds) *Federalism and Constitutional Law: The Italian Contribution to Comparative Regionalism* (Routledge 2021) 31.

according to the parliamentary political groups. The commission was divided into four committees, each tasked to analyse one specific topic: form of state, form of government, structure and functions of parliament, and system of guarantees[137].

Regarding the form of state, the commission envisaged a more federalist structure, but this issue is not particularly relevant to this dissertation. Regarding the form of government, the final text of the commission imagined a semi-presidential system, thus providing for the direct election of the President of the Republic. The head of government, the Prime minister, would have been appointed by the President in accordance with the political composition of the lower chamber, the Chamber of Deputies, which would have also been the only one linked to the cabinet through a confidence relationship. The Senate would have instead been a 'chamber of guarantee' and would have had two different possible compositions: the normal form, made of two hundred elected senators, and a special session, which would have comprised two hundred additional members representing regional and local authorities. The project also imagined a complex system of legislative function for the parliament, distinguishing between six possible paths to follow, according to the topic and the nature of the law to be approved, with varying powers of the two chambers in their three possible compositions (i.e., Chamber of Deputies, normal session of the Senate, special session of the Senate)[138]. The analysis of this part of the proposal would however be very technical and not relevant to the general topic of this paper.

The commission, whose works had been carried out with a large parliamentary majority encompassing most of the political spectrum, from left to right, ceased to exist in 1998, when Berlusconi's centre-right party decided to stop its support for the proposal. After this political drift, the president of the commission opted for its dissolution, as the founding idea was that of a commonly supported and non-partisan reform[139].

2.2.5 The 2005 Berlusconi Government Proposal: Federalism and 'Premiership'

Before continuing in the analysis of institutional reforms regarding the form of government, it is important to recall another constitutional reform, the main one ever taken place in Italy, passed by the centre-left governing coalition in 2001 and confirmed by a referendum in the same year (L.Cost.

[137] Fusaro, 'Per una storia delle riforme istituzionali (1948–2015)' (n 124) 483–487.

[138] Atto Camera n. 3931, Atto Senato n. 2583, Atto Camera n. 3931-A, Atto Senato n. 2583-A (XIII leg.).

[139] On all the proposals of constitutional reform of the form of government from the Riz–Bonifacio Panels of 1982 to the D'Alema bicameral commission of 1998, also see: Giuseppe Lupone, *Le riforme costituzionali. Dai Comitati Riz Bonifacio 1982 alla Bicamerale D'Alema 1998* (Edizioni scientifiche italiane 1998).

3/2001). The contents of such reforms are not strictly relevant to the current discussion: it was a deep revision of the Title V of the Constitution, which reformed the relationship between state and regions, strongly advancing on the path of local devolution. The way in which it came to existence is however much more relevant. Indeed, while the centre-left had always advocated for constitutional reforms to involve all political forces according to the principle *quod omnes tangit ab omnibus approbari debet* ('what affect everyone must be approved by everyone'), when it came to power it found the idea of passing a politically instrumental constitutional reform too appealing to be wasted. This set an important and probably dangerous precedent of constitutional reforms imposed on the strength of parliamentary majority (*a colpi di maggioranza*, 'by majority blows'). The quasi–sacrosanct character of the constitutional charter was thus undermined, and when the centre-right, led by Berlusconi, came back to power in 2001 it was able to use the same method on a larger scale without any possibility of ethical criticism from the centre-left opposition[140].

The second Berlusconi government, born in 2001, was supported by a coalition made up of several parties, one of which was the Northern League, whose main political purpose was federalism. However, other parties of the coalition, especially the centrist Christian Democrats and the right-wing National Alliance, were not so keen on allowing even more devolution, so that representatives of these three forces, together with one from Berlusconi's Forza Italia, met to elaborate a mediated constitutional reform. So, in 2003, the 'Lorenzago draft' (*bozza di Lorenzago*), named after the village where the four politicians met, was presented, representing a negotiation between the various demands of the governing coalition partners. The proposal changed fifty articles of the Constitution and added three more, deeply changing the balance of powers, both at the central level and between the centre and local authorities[141]. Indeed, while on the one hand the Northern League obtained a more federal structuring of the state, Berlusconi himself wanted to enhance the powers of the head of government (i.e., himself) acquiring more powers for his office and stripping other institutions (the head of state and the parliament) of some of their prerogatives[142].

The reform thus affected many aspects of the Constitution. First, devolution would have been further expanded, also creating a system of fiscal federalism and giving exclusive legislative competence to regions on aspects such as health, education, and police. Second, the head of government, named Prime minister, would have had to be the leader of the winning coalition, without the possibility for

[140] Bull and Pasquino (n 112) 673–674.

[141] Martin J Bull, 'The Constitutional Referendum of June 2006: End of the "Great Reform" but Not of Reform Itself' (2006) 22 *Italian Politics* 99, 100.

[142] Bull and Pasquino (n 112) 674, 680–681.

the President of the Republic to carry out any kind of negotiations between parliamentary groups. The Prime minister had complete power over the appointment and dismissal of ministers, and did not need any confidence from parliament to take office. The Chamber of Deputies would have only had the possibility of expressing a view on the government programme at the start of the legislative term. Whenever the Prime minister would resign, the Chamber would have also been dissolved simultaneously, and any vote of no-confidence would have also meant parliamentary dissolution. The only way to change a Prime minister without early elections would have been if MPs from the governing coalition designated a new candidate, which had to follow the same programme as the previous government and rely on the same parliamentary majority. The Senate, renamed 'federal Senate', would have had part of its members elected on a regional basis at the same time as regional elections and part as delegates of regional governments (the latter had however no voting rights). The federal Senate could have only been able to call for modifications to legislative texts of the Chamber, which would have nonetheless retained the power of final approval. Furthermore, bills coming from the government would have had constitutional priority in the timetable of parliament. Finally, the President of the Republic would have lost the effective power to appoint the head of government and dissolving parliament.

As soon as both chambers voted in favour of the reform in 2005, the opposition parties initiated the process of calling for a confirmative referendum, the second one in the history of the Republic after the 2001 referendum. The reform had several aspects which were deemed very critical, both by the opposition politicians and by scholars. Devolution would have probably led to uncertainty over the future of national quality standards of public services, especially in the Southern regions, which heavily rely on central investments. The new institutional system introduced enormous imbalances between powers, so that the Prime minister would have effectively dominated all the political scene, even more since the only chamber left with actual powers would have completely been under governmental control. Furthermore, the new federal Senate failed to actually represent the interests of the regions, as regional delegates did not have any voting right and its powers were generally very limited. In any case, the reform never entered into force, as the electorate decisively rejected it in the 2006 referendum with 61.7% voting against the reform[143].

[143] Bull (n 141) 101–104, 111.

2.2.6 From the Failure of the 2006 Referendum to the 2016 Renzi Government Proposal: Regionalism and Asymmetric Bicameralism

In the two following legislative terms after the 2006 referendum (respectively, 2006–2008, and 2008–2013), other proposals were put forward in parliament. In particular, during the 15th parliamentary term (2006–2008), the so-called 'Violante draft' (*bozza Violante*), named after the President of the Constitutional Affairs committee of the Chamber of Deputies, was supported by the new centre-left governing majority. This proposal mainly focussed on abandoning 'symmetric' bicameralism, making the Senate an indirectly elected body and relieving it of many powers, especially the confidence relationship with the government and the legislative function on most matters, with the Chamber of Deputies always having the possibility of ignoring its resolutions[144]. The early end of the term in 2008 made however this project never come to life[145]. In the 16th parliamentary term (2008–2013), many proposals were put forwards in parliament, but none of them can be considered as relevant as to deserve an in-depth description.

The 17th legislative term (2013–2018) continued on the path of reforms with renewed strength. As already said in the previous chapter, the 2013 elections marked a watershed in the Italian party system with the emergence of the Five Star Movement and the lack of a clear majority in the Senate. The President of the Republic, Giorgio Napolitano, thus appointed Enrico Letta as head of a grand-coalition government, which was composed of the centre-left coalition led by the Democratic Party (PD) and part of the centre-right coalition, in particular Berlusconi's new political formation, the People of Freedom (PdL). The Letta government launched a first attempt of constitutional and electoral reform, also supported by President Napolitano: parliamentary committees for constitutional reforms were established, and a constitutional law was proposed with the aim of forming a new bicameral commission for a general constitutional revision. The Letta government, and its majority, did not however last long, as Berlusconi withdrew its support and the new leader of the PD, Matteo Renzi, started proposing himself as the new head of government.

The new Renzi government, which took office in 2014, supported by the centre-left coalition and a smaller share of the centre-right MPs, carried forward the constitutional and electoral reforms, respectively known as Renzi–Boschi reform and *Italicum* (the latter has already been discussed in the previous chapter). Regarding the constitutional reform, it was named after Renzi himself and minister

[144] AC533 (XV leg.); *Relazione della I Commissione permanente* (rapporteurs Amici and Bocchino), presented to the Presidency on 17 October 2007.

[145] Fusaro, 'Per una storia delle riforme istituzionali (1948–2015)' (n 124) 497–498.

Maria Elena Boschi, thus stressing the fact that it was a government proposal, and was eventually approved by parliament in April 2016. The reform was based on three main pillars, very similar to the ideologies behind other past proposals of reform: territorial reorganisation, abolition of 'symmetric' bicameralism, strengthening of the executive[146].

Regarding the first theme, the provinces, middle-level national divisions between regions and municipalities, often deemed expensive and/or useless, would have been completely eliminated (their powers and structures had already been largely reduced in 2014). Moreover, a new balance of powers was envisioned in favour of the central state, thus going in an opposite direction of almost all reforms previously passed or presented, even by the same political parties. The second pillar was a central part of the reform and was in continuity with other previous attempts. In this design, the Senate would have been a representation chamber for regional and local authorities, as its members would have been partly regional councillors selected by regional councils themselves and partly mayors representing the municipalities of their regions. Moreover, only some specific policy areas would have retained the bicameral legislative procedure: protection of linguistic minorities, regulation of referenda, functions and electoral legislation concerning local authorities, the electoral system of the Senate, legislation on the autonomy of regions. All other matters would have remained an exclusive competence of the Chamber of Deputies, granting the Senate a mere 'recalling' power with no actual possibility of influence on the Chamber's decisions. The third pillar was partly based on provisions of the reform regarding the legislative procedure, which granted a 'fast-track' process for government bills, and partly on the new structure of the parliament, since the confidence relationship would have only existed between the government and the Chamber of Deputies (this had the goal of enhancing governmental stability, but also of ensuring that the Senate remained a representative of local interests irrespective of the national political governing majority). Other provisions were present in the proposal, but they are not relevant to the current discussion and will not be analysed to avoid an excessive prolongation of the text[147].

The reform was started by Renzi with the support of other political forces, even outside his government majority. Soon before he took office, he agreed on institutional reforms with Berlusconi, even though the latter was in the opposition. However, after political disputes between the two, Berlusconi's re-founded Forza Italia (FI) aligned itself with other political parties which opposed the

[146] Luigi Ceccarini and Fabio Bordignon, 'Referendum on Renzi: The 2016 Vote on the Italian Constitutional Revision' (2017) 22(3) *South European Society and Politics* 281, 284–285.

[147] Graziella Romeo, 'The Italian Constitutional Reform of 2016: An 'Exercise' of Change at the Crossroad between Constitutional Maintenance and Innovation' (2017) *The Italian Law Journal* 31, 35–47.

reform. These had very different ideological backgrounds, but rallied together against the Renzi–Boschi reform: the populist Five Star Movement (M5S), Giorgia Meloni's right-wing Brothers of Italy (FdI), Matteo Salvini's far-right League, as well as many far-left political parties. Even inside the PD, the reform met some resistances. The main reasons for this broad alignment against the reform was however probably more personally than political motivated, as Renzi himself linked the success of the reform to his political career. After the approval of the reform in parliament in 2016, thus, a confirming constitutional referendum was held, with 60% of the electorate voting against it. As a consequence, Renzi resigned, and no further attempts were carried out in that legislative term. Moreover, as mentioned in the previous chapter, the new electoral law approved by Renzi's majority, the so-called *Italicum*, was declared partly unconstitutional by the Constitutional Court in 2017, so that no institutional reform of the Renzi government survived[148].

2.3 The 2023 Meloni Government Proposal: from Semi-Presidentialism to an Elected Prime Minister

2.3.1 The Context of the Reform: from the 18th Legislative Term to the 2022 Elections

During the 18th legislative term (2018–2022), two constitutional reforms, which are related to the debate on the form of government but did not directly affect it, came to life: the reduction of the number of members of parliament (L.Cost. 1/2020) and the change in the active electorate of the Senate (L.Cost. 1/2021)[149]. The first reform led to a drastic reduction of the members of both chambers: from 630 to 400 for the Chamber of Deputies and from 315 to 200 for the Senate. A subsequent referendum, the fourth constitutional referendum in Italy, approved the reform by a large majority of 70% of the voters, as almost all major parties campaigned in favour of it (M5S, League, PD, FdI). The second reform, instead, lowered the minimum age for voting in the elections of the

[148] Ceccarini and Bordignon (n 146) 288–297.

[149] Two more constitutional reforms were adopted during the 18th term: on 8 February 2022, the reform on the subject of environmental protection (L.Cost. 1/2022); on 28 July 2022, the reform on the recognition of the peculiarities of the islands and the overcoming of the disadvantages deriving from insularity (L.Cost. 2/2022). The former was adopted by a qualified majority, while the latter was not, but no referendum was called. Both however do not relate to the topic of the form of government and were met with some sort of scepticism by scholars. See: Riccardo Montaldo, 'La tutela costituzionale dell'ambiente nella modifica degli artt. 9 e 41 Cost.: una riforma opportuna e necessaria?' (2022) *federalismi.it* and Gabriele Trombetta, 'Il principio di insularità in Costituzione. Un ritorno (dimezzato) al passato?' (2022) *federalismi.it*.

Senate from 25 to 18 years of age, thus rendering completely equal the active electorate for both chambers of parliament. No confirmative referendum was requested for this reform, so that the Constitution was changed with only an absolute majority[150].

The matter on institutional reforms reemerged during the 2022 early elections, which followed the resignation of Mario Draghi as the head of a technocratic government of national unity[151]. As mentioned at the end of the previous chapter, these elections were characterised by the presence of many different political poles: a right-wing coalition made up of Meloni's right-wing FdI, Berlusconi's centre-right FI, and Salvini's far-right League; a PD-led centre-left coalition, which also included left-wing, green, and liberal formations; the M5S; and a liberal pole, known as 'Third Pole' (*terzo polo*). All of them proposed some kind of reforms in their electoral programmes. The centre-left coalition was the only one that did not propose any major change in the institutional regime: indeed, the PD only proposed the extension of the voting rights to 16-year-olds and the creation of a new electoral law. The M5S suggested instead the introduction of the system of constructive no-confidence, the extension of voting rights to 16-year-olds and the power of directly revoking ministers to the President of the Council. The 'Third Pole' and the right-wing coalition proposed instead much deeper constitutional reforms, intended at changing the whole system of government. The liberals proposed the abolition of 'symmetric' bicameralism, the direct election of the head of government on the model of the Italian local electoral law for municipalities (thus, the nickname 'mayor of Italy', *sindaco d'Italia*), and a new electoral law. The right-wing coalition proposed instead, among other reforms, the implementation of fiscal federalism and 'differentiated autonomy' for regions, and the direct election of the President of the Republic, thus transforming Italy in a presidential or semi-presidential republic[152].

2.3.2 The Provisions of the Reform

When the 19th, and current, legislative term started in 2022, the right-wing coalition came to power right away, having won the majority of the seats in both chambers of parliament. The new Meloni government first presented a reform intended at introducing the concept of 'differentiated autonomy'

[150] Federica Fabrizzi and Giovanni Piccirilli, 'Osservatorio parlamentare sulle riforme istituzionali conseguenti alla riduzione del numero dei parlamentari' (2022) *federalismi.it*.

[151] On the early end of the 18th legislative term and the Draghi government, see: Antonio D'Andrea (ed) 'La traiettoria del sistema parlamentare italiano. Il passaggio dalla XVIII alla XIX legislatura: dal governo c.d. istituzionale di Draghi al Governo Meloni' (2023) I *ConsultaOnline*.

[152] 'Riforme istituzionali: i programmi dei partiti a confronto' (2022), *pagella politica*, 20 September. Available at: https://pagellapolitica.it/articoli/riforme-istituzionali-confronto-programmi-elezioni-2022 (Accessed: 22 July 2024).

of the regions, which would allow even further devolution on many issues to regional governments and was approved by parliament in June 2024, with a confirmative referendum expected to be held. This project does not however directly affect the system of government and will thus not be discussed in depth here, also given the lack of a historical perspective that a brief analysis would require[153]. After the start of this reform, the governing majority also initiated, in November 2023, the legislative process for the constitutional reform of the system of government. The electoral programme of Meloni's FdI proposed a reform in a presidential sense, explicitly citing 'the aim of ensuring government stability and a direct relationship between citizens and the head of government'. However, when the government presented the first draft of reform, what was being proposed was actually an elected-prime ministerial system: the presidential (or semi-presidential) aspect of the idea was thus dropped, but the aims of government stability and of direct relationship between electors and the country's leader remained[154].

The proposed reform (d.d.l. costituzionale A.S. 935) was presented by President of the Council Meloni and Minister for institutional reforms and normative simplification Alberti Casellati to the Constitutional Affairs committee of the Senate[155] with the following title: 'Modifications to articles 59, 88, 92, and 94 of the Constitution for the direct election of the President of the Council of ministers, the strengthening of the stability of the government and the abolition of the appointment of senators for life by the President of the Republic'. This title thus is not limited to a list of articles to be modified, but instead presents a textual description of the provisions. The goal of this choice is probably that, as a confirmative referendum will likely be held as no qualified majority of two-thirds of parliament will be found by the current governing coalition to support the bill, this title will be the

[153] Regarding the reform on the differentiated autonomy of regions, see among others: Michele Belletti, 'Un percorso di riflessione per un regionalismo "differenziato-cooperativo" (2023) *Diritti regionali* and Giovanni Maria Flick, 'Autonomia differenziata delle Regioni: perplessità e interrogativi' (2024) *federalismi.it*.

[154] Elia Aureli, 'Premio di maggioranza e vincolo di mandato governativo: rilievi critici ad una prima lettura del ddl. Costituzionale Meloni' (2024) 2 *Osservatorio costituzionale AIC*.

[155] After the electoral victory of September 2022, the appointment of the Meloni government in October and the first months of necessary adaptation, the right-wing majority held consultations with the other political parties in parliament on the topic of the reform of the form of government and, in May 2023, Undersecretary to the Presidency of the Council Mantovano and Minister Alberti Casellati also discussed the topic with a number of Italian constitutional scholars. These steps proved central in abandoning the idea of the direct election of the head of state, and instead led the right-wing majority to propose an elected prime-ministerial form of government. The text was finally presented to the Senate by President of the Council Meloni and Minister Alberti Casellati in November 2023, and the Presidency of the chamber transmitted the text to the Constitutional Affairs committee in the following days. The proposed reform (AS935) was also combined with the text of another proposal (AS830), proposed by Senator Renzi, former President of the Council, which also aimed at introducing the direct election of the head of government. Some passages of Renzi proposal were subsequently also adopted in the government bill. See: Fabrizzi and Piccirilli (n 156).

one that the voters will find on the referendum ballot, so that it needs to be easily understandable and appealing[156].

The bill was finally approved by the Constitutional Affairs committee of the Senate in April 2024, and finally by the full session of the Senate in June[157]. The text will need three more parliamentary passages, as two approvals from each chamber are needed, all after an interval of three months. Furthermore, as said, a referendum will be probably held soon after its final approval, as most of the opposition sees the bill unfavourably and the majority is not trying to make any openness for minority proposals. The current form of the reform reflects the aspects which are outlined in the title. Senators for life[158] would cease to exist completely, thus removing this prerogative of the President of the Republic (art. 1)[159]. The bill however provides for the current senators for life to remain in office (art. 8).

Most importantly, regarding the executive, the reform provides for the President of the Council of ministers to be directly elected by universal suffrage every five years at the same time of general parliamentary elections. The President of the Council would not be able to serve for more than two consecutive terms, unless they have served for less than seven years and six months, in which case a third term would be possible. The Constitution would also provide some guidelines for the future electoral law, which would need to provide for a majority bonus on the national level to guarantee the parliamentary majority to the lists connected to the winning candidate for the Presidency of the Council. Furthermore, the President of the Council would have to present themselves to the voters in one of the chambers as well, thus also becoming a member of parliament. The President of the Republic would thus have to appoint the President of the Council elected by the citizens, without any

[156] Federica Fabrizzi and Giovanni Piccirilli, 'Un nuovo Osservatorio per un nuovo tentativo di riforma costituzionale' (2024) *federalismi.it* updated 7 August 2024, 3.

[157] The debate within the committee led to deep modifications of the original text, with all the amendments coming from the government. Subsequently, the full session of the Senate approved only one amendment with a particularly fast revision of the text. The thousands of amendments proposed by the oppositions, mostly aimed at creating obstructionism, were not admitted to the vote or rejected both in the committee and the full session. For a detailed overview of the process of approval, see: Fabrizzi and Piccirilli (n 156).

[158] Senators for life are currently envisioned by the Constitution, which gives the President of the Republic the right to appoint to this office 'five citizens who have honoured the Nation through outstanding achievements in social, scientific, artistic, and literary field' (art. 59(2)).

[159] On the suppression of senators for life, see: Giacomo Menegatto, 'I senatori vitalizi come espressione del diritto costituzionale "soggettivo" ed "istituzionale" della cultura' (2024) 1 *ConsultaOnline* 418 and Erik Furno, 'Il tramonto dei senatori a vita nel d. d. l costituzionale sull'elezione diretta del premier' (2024) 1 *Nomos*.

possibility of other choices, but would retain the formal power to appoint and dismiss ministers on the request of the head of government (art. 5).

Regarding the confidence relationship, the reform basically links the very survival of the chambers to the fact that they grant their continuous confidence to the elected head of government. Indeed, the chambers would need to give their initial confidence to the government headed by the elected President of the Council, which might ask for it twice[160]. In case the chambers do not grant it, the President of the Republic would be forced to dissolve the parliament. The head of state would have to do this also in case the chambers pass a motion of no-confidence towards the government (which, as said, was never approved in the history of the Italian Republic), or in case the President of the Council resigns and asks for the dissolution to take place. In case the head of government resigns, but does not ask for the dissolution of parliament, the President of the Republic would have two choices: to renew the office of the incumbent President of the Council or to appoint, only once in each legislative term, a new President of the Council, who would need to be a member of parliament elected in the governing majority. A similar situation would have to take place in case the head of government dies or is permanently impeded (art. 7).

The Meloni reform shows elements of both continuity and discontinuity with the previous proposed reforms of the form of government and rationalisation of parliamentarism. On the one hand, the structure of the parliament is not changed, so that the existing symmetrical bicameralism (by many directly linked with governmental instability, as mentioned previously) would continue to be in place. The 'regionalisation' or 'federalisation' of the Senate proposed in the past (Speroni committee, 2005 Berlusconi reform, 2016 Renzi reform) is indeed abandoned, even though it was a historical demand of the League, part of the current governing coalition. However, the reform attests itself on the same path of previous proposals in its aim at strengthening the head of the executive through popular election, either by adopting a semi-presidential or elected prime-ministerial system (Speroni committee, D'Alema bicameral commission). The renewed strength of the office of the President of the Council is also evident by the power of revoking ministers, which the Constitution currently does not grant, in accordance with other previous reforms (Speroni committee, 2005 Berlusconi reform). A critical analysis of the reform will be presented in Chapter 4, also thanks to a comparison with other systems which will be instead examined in Chapter 3.

[160] The second vote of confidence would be necessary in case the parliament does not grant it the first time. This mechanism would thus allow the political forces in the majority to renegotiate the government programme and the names of the ministers.

3 Insights from Other Institutional Arrangements

The history of the institutional reforms in Italy, mostly only proposed and never approved, shows the large variety of possibilities that the Italian lawmakers have chosen over time. Most of these different options, however, do not need to remain in the field of theoretical speculation, as they have been experimented, in an identical or similar manner, in other constitutional frameworks. The analysis of the latter is thus instrumental in order to understand what such proposed constitutional revisions might actually look like whenever they are applied. Of course, any system has its own peculiarities, which are a result of specific historical, political, and cultural circumstances, but a comparative legal analysis might in any case shade some light on the possible outcomes of the proposed reforms in Italy. In order to better conduct a comparative legal analysis, it is important to understand the terms of comparison. The current Italian institutional system and the reforms so far proposed have already been described in the previous sections of this dissertation. This chapter will instead focus on some constitutional regimes which are deemed relevant for a comparative analysis, examining their birth, historical evolution, legal framework, and advantages and drawbacks.

The first country to be analysed will be France. The current institutional system in France is that of the Fifth French Republic, which provides an example of semi-presidentialism, sometimes proposed as a possible option for Italy as well. Indeed, the Fifth French Republic was born as a successor to the Fourth Republic, which had a parliamentary system, so that the transition occurred in France might be taken as relevant since the introduction of a semi-presidential system in Italy has often been pondered. The second country will be Germany, as the current German system is federal and parliamentary, with elements of rationalisation of parliamentarism, so that it might be an example for the Italian lawmakers on how to better implement an efficient and stable parliamentary system. The third example will be the Israeli system between 1996 and 2001: in those years, Israel experimented the elected prime-ministerial system, similarly to what is currently being proposed in Italy by the Meloni reform. Given the fact that it was the only country to ever implement such a system, it is important to understand the reasons that led to its creation, how it actually worked, and why was abandoned in just five years. The fourth and final system to be analysed will be the Italian regional form of government: in the 1990s, the Italian regions adopted a new form of government and electoral system, going from a parliamentary system to something similar to an elected prime-ministerial one (the head of the regional executive is directly elected, but of course balances are different as the head of state does not exist in a local government). This system is still in place and has been considered successful in enhancing government stability, so that it might serve as an interesting comparison.

3.1 France: from the Fourth to the Fifth Republic

3.1.1 Modern French Parliamentarism: its Origins and the Fourth Republic

As mentioned in the first chapter, France developed the first modern parliamentary form of government in continental Europe with the 1875 Constitution, through which the Third French Republic was established. This system was based on principles continuously elaborated after the fall of the *ancien regime* with the 1789 French Revolution: the Declaration of the Rights of Man and of the Citizen, state secularism, public education, moderate social reformism, and the hegemony of parliament to avoid any return to absolutism and hereditary transmission of power. The Third French Republic was thus a classical parliamentary system without any rationalising element to strengthen governmental action. The limits to this conception started showing right after World War One, and especially after the economic crisis of 1929, with the political class incapable of facing the problems of the system in a context of highly unstable cabinets. The Third French Republic was finally disbanded in 1940, when Nazi Germany invaded France and created an authoritarian puppy government in occupied France, the Vichy regime of marshal Pétain. In April 1944, the Provisional Government of the French Republic headed by general Charles de Gaulle declared null and void every act passed by the Vichy regime, especially focussing on the constitutional amendments that granted full powers to Pétain. However, the political forces which fought against the Vichy regime were also critical of the system of the Third French Republic and of its political class, deemed responsible for the degeneration of the parliamentary system. Thus, when in October 1945 the French electorate was called to express its opinion, 96.4% of the population voted in favour of creating a Constituent Assembly to draft a new Constitution.

The 1945 Constituent Assembly had a left-wing majority, composed of the French Communist Party (PCF) and the socialist French Section of the Workers' International (SFIO), with the centrist and Christian–democrat Republican Popular Movement (MRP) representing the major political opposition to this bloc. All these three formations shared the opinion that the Third French Republic had failed, and that a renewed system needed to be formulated. However, their views largely diverged on many topics, from the structure of parliament and the investiture of the head of state, to fundamental rights. Thus, the constituent process was characterised by a deep confrontation within the Constitutional Assembly, without the search for a trait of national unity, which was present, for example, in Italy in 1946–48. The first important rift was the one between general de Gaulle and parliamentary groups, so that the former resigned as head of government in January 1946 in

disagreement with the 'republic of parties' which was being conceived. The new Constitution was eventually adopted by the Constituent Assembly in April 1946, with the support of the PCF and the SFIO and the opposition of the MRP, as well as other moderate groups and the radicals. This text was however rejected by 53% of the French electorate the following month through a referendum, and thus a new Constituent Assembly was elected in June: the MRP became the main parliamentary group, followed by the PCF and the SFIO, which did not retain their absolute majority. The three main parties finally approved a text together in September 1946, but without any of them claiming particular satisfaction for the result, and with de Gaulle still opposing the system of 'government by assembly' favoured by parties. A referendum approved the new Constitution, but only by a slight majority of 53.5%[161].

The French Constitution of 27 October 1946 created a parliamentary and unitary republic; it was also, at the same time, the Constitution of the French Union, a body whose aim was to replace the old French colonial empire, but this aspect will not be here analysed. The Constitution was opened by a preamble, which recognised the values of the 1789 Declaration of the Rights of the Man and the Citizen and completed them with new constitutional rights, especially those economic and social rights dear to the left-wing parties. The system of government was a classical parliamentary one, with some characteristics: the bicameral parliament was formed by the National Assembly (*Assemblée National*), elected by universal suffrage every five years, and the Council of the Republic (*Conseil de la République*), indirectly elected and expression of local authorities, with representatives of oversea territories as well (art. 6). The National Assembly had a pre-eminence *vis-à-vis* the Council of the Republic, since the latter had a mere examination power of laws approved by the former (art. 20).

The executive power was instead shared by the President of the Republic (*Président de la République*) and the President of the Council of ministers (*Président du Conseil des ministres*). The former was elected by the plenary session of parliament for a renewable term of seven years (art. 29), while the latter was nominated by the President of the Republic and appointed by the National Assembly alone by an absolute majority vote (art. 45). The cabinet ministers were chosen by the President of the Council (art. 46), who also supervised the activity of the government, but it was formally the President of the Republic who presided over the Council of ministers (art. 32). An eventual censure motion, passed by an absolute majority of the votes of the National Assembly, would have forced the whole cabinet to resign. The vote on the motion would have had to be public and take place on day after it was presented (art. 50). The dissolution of the National Assembly was possible only eighteen months

[161] Sandro Guerrieri, 'Le modèle républicain français et la Constitution de 1946' (2005) 25(1) *Parliaments, Estates & Representation* 215.

after the last legislative elections and in case two government crises occurred in a period of eighteen months. The Council of ministers would have had to decide for the dissolution, on the notice of the President of the Assembly, and the President of the Republic would have had to officially declare the Assembly dissolved (art. 51).

The Constitution of October 1946 thus had some 'rationalising' elements of the parliamentary system of government. These were, for example, the absolute majorities needed in parliament for granting confidence and dismissing the government, as well as a time condition on the censure motion; the conditions necessary for a dissolution of parliament to take place; a relatively strong head of state also acting as one of the heads of government, thus assuring some kind of governmental continuity; a President of the Council able to continuously control the composition of the cabinet without having to resort to a new vote of confidence; some residual powers left to the President of the Republic, who used them during the Fourth Republic to avoid sudden government resignations. However, many elements of a strong parliamentarism still remained, such as vague provisions on the question of confidence on government bills, so that often the parliament was able to bloc core government policies without directly provoking its dismissal; the discretion of the same parliament over its own dissolution, as it was strictly linked to its votes towards the government[162].

3.1.2 From Parliamentarism to Semi-Presidentialism: The Fifth Republic

The system of the Fourth Republic eventually proved to be ineffective in solving the problem of governmental instability. Indeed, in the 22 years from 1947, when the first government of the Fourth Republic was sworn in, to 1959, when the last one resigned, 24 different governments were formed. There were many reasons behind this, especially deriving from the complicated party system and a continuation of political practices of the Third Republic. The confidence relationship did not indeed work as the Constitution envisioned: the very first President of the Council, Paul Ramadier, who took office in January 1947 soon after Vincent Auriol was elected President of the Republic, not only asked for an investiture vote for himself, as the Constitution prescribed, but soon after also asked for an approval by parliament of his cabinet, thus undermining his own role of pre-eminence within the government. All following governments resorted to this practice as well, until 1954. In that year, after the election of René Coty as President of the Republic, the Constitution was amended to change the investiture and bringing it back to how it was during the Third Republic: a simple majority of the National Assembly had to grant confidence to the cabinet as a whole. This strengthened the role of party leaders even more and, of course, did not in any way enhance governmental stability. The

[162] de Bujadoux (n 13) 190–193.

proportional electoral system, then, was just another element of instability in a context of uncollaborative party politics. The main cause of instability can thus be identified in parties rather than institutional arrangements, as they proved incapable of forming durable governing coalitions[163].

Eventually, a major crisis struck the whole constitutional system: in May 1958, a coup was staged in Algiers against the French government within the context of the Algerian War by right-wing and military groups. To briefly summarise the events, in order to solve the crisis President Coty appointed general Charles de Gaulle as President of the Council on June 1st, forcing the National Assembly to grant a confidence to the new government under the threat of his own resignation. The coupist forces in Algeria renounced to their cause, as they saw in de Gaulle a strong military capable of solving the War, in opposition to previous weak political governments. With a constitutional law of June 3rd, the National Assembly also granted to de Gaulle the power to govern by decree for six months and to draft a new Constitution, based on the ideas of the same general. Indeed, de Gaulle already in 1946, delivered the so-called 'Bayeux speeches', in which he clearly stated he supported a republican system in which the head of state also had a direct executive power, similarly to the United States. The new Constitution was adopted by the Council of ministers, submitted to the electorate, which approved it by a majority of 82.6% by referendum, and finally promulgated in October 1958.

The new Constitution reflected de Gaulle's will to give primacy to the presidential office while safeguarding the democratic and republican bases of the French state. Indeed, the 1789 Declaration of Rights was included in the Constitution, alongside the principle of immutability of the republican form of state, the values of liberty, fraternity, and equality, and the separation of church and state. At the same time, the President of the Republic, a mostly honorific office since the Third Republic, was given many powers, and a functional division between the legislative and the executive power was created in line with other presidential systems. The figure of the head of government, now named Prime minister (*Premier ministre*), was however maintained, so that the President could have a role of independent arbiter representing the interests of the nation as a whole, leaving political disputes to the government and its head. Indeed, the Constitution provided the President to be elected by an electoral collage of around 80,000 great electors, acting as representatives of the people without any

[163] Rasch, Martin and Cheibub (n 37) 300–302.

party interest. The 1958 Constitution thus created a semi-presidential system[164], combining elements of both parliamentarism and presidentialism[165].

The President of the Republic in the Fifth French Republic is thus the head of state and one of the two heads of the bicephalous executive power, the other being the government headed by the Prime minister. As said, the text of 1958 provided an indirect election for the President, but one of the first constitutional amendments was made already in 1962, when a referendum approved the introduction of direct elections: this represented a major step towards the politicisation of the office. The presidential term was fixed at seven years, but a second constitutional revision, in 2000, changed it to five years, in order to match the parliamentary term of the same length, while a limit of two consecutive terms was introduced in the year 2008 (art. 5). The President of the Republic appoints the Prime minister, on whose proposal they also appoint and dismiss the other members of the government (art. 8). The President also presides over the Council of ministers (art. 9), while the Prime minister directs the policy of the government (art. 21). A peculiarity, briefly mentioned in the first chapter, is that the functions of a member of the government are incompatible with the exercise of a parliamentary mandate, so that MPs who become part of the government need to resign (art. 23).

The parliament remained bicameral: the National Assembly was not deeply changed, as it still is the directly elected lower chamber, with a term of five years; the Council of the Republic was instead transformed into the Senate (*Sénat*), the indirectly elected upper chamber representing the territorial communities of the Republic (art. 24). The National Assembly is the only chamber linked to the government by a confidence relationship, which is however implicit when the government takes office after the appointment by the President. The National Assembly has indeed the power of forcing the government to step down through a censure motion, which cannot be voted on before two days after it is presented and needs to be approved by an absolute majority. Furthermore, the government may pose a question of confidence in front of the National Assembly over its programme or a general policy statement (artt. 49–50). The government has thus a hybrid character, being responsible both towards the President of the Republic and the National Assembly. However, in times of cohabitation between a President and a parliamentary majority which does not support them, the Prime minister becomes an expression of parliament: this leads to a consistent loss of power for the President, as the executive power is mostly transferred to the government. Periods of cohabitation in France existed in

[164] The term 'semi-presidentialism' was coined specifically in relation to the form of government of the Fifth French Republic by Maurice Duverger, *Institutions politiques et droit constitutionnel* (Presse universitaire de France 1970).

[165] Nicholas Atkin, *The Fifth French Republic* (Palgrave Macmillan 2005) 29–42.

the years 1986–88, 1993–95 and 1997–2002; in order to avoid these, however, the term of the Presidency was shortened from seven to five years, so that presidential and parliamentary elections take place at the same time and should thus have consistent results[166]. Finally, the power to dissolve parliament is retained by the President, who exercises it in non-binding consultation with the Prime minister and the Presidents of the chambers (art. 12).

The rationalisation of the parliamentary system established with the 1958 Constitution was generally successful in meeting the expectations of its creators and was mostly based on the powers of the executive (President and government), rather than on limitations of the legislature. Indeed, the Constitution grants the government several powers aimed at pushing the parliament to adopt its bills without distorting them and in reasonable time limits and at preventing that the confidence relationship is continuously put to the test outside the official constitutional provisions. Furthermore, such an empowered role of the President, who also presides over the Council of ministers, is also aimed at constraining the possible shortcomings of an extreme parliamentarism. Indeed, the power of dissolution is very discretionary (as shown in 2024) and the President can also call for a referendum to bypass an opposition of the parliament (art. 11). The politicisation of the presidency after the 1962 constitutional reform also played a role in stabilising the executive *vis-à-vis* the parliament[167].

Another aspect worth mentioning regards the electoral and party systems of France. As soon as the Fifth Republic was established in 1958, the purely proportional method was abandoned in favour of a two-round single-member constituency electoral system, which is rather atypical for parliamentary elections[168]. A classical mechanical effect of single-member constituencies would be the reduction of party fragmentation, as larger parties would always be advantaged, but in France many small parties continue to exist. Indeed, the two-round system allows parties to run separately in the first ballot, so that coalescences can be postponed. Furthermore, strategic voting in a multi-round system requires more information for the electors, so that it might be less frequent than in a classical plurality election.

[166] Rasch, Martin and Cheibub (n 37) 293–294.

[167] de Bujadoux (n 13) 193–198.

[168] The French parliamentary electoral system is regulated by the Electoral Code (*Code electoral*) as follows. In order to be elected in the first round, a candidate needs to satisfy two conditions: they have gathered the absolute majority of the expressed votes, which needs to account for at least a fourth of the number of registered electors (L126). In order to access the second round, a candidate needs to have gathered a number of votes which is at least 12.5% of the registered voters; if none or only one of the candidates reach this condition, the two most voted candidates in the first round can access the second. Furthermore, if a candidate withdraws from the second round, they are not replaced (L162). This system thus also allows to have run-offs with three candidates, in case all of them have reached the minimum threshold of 12.5% of the registered voters in the first round, but one of the candidates in these three-way elections can withdraw and express their support for one of the other two candidates (in the 2024 early elections, this strategy was largely used).

Evidence shows anyways that large parties are usually overrepresented in the French parliament, but electoral alliances are more frequent than in plurality single-member constituency systems, as belonging to a coalition leads to a more predictable share of seats for smaller parties. Finally, it is evident that in legislative elections held right after presidential elections, electors usually favour the parties who sustain the President, as historically a unified government has been preferred to cohabitation, thus also favouring governmental stability thanks to a clear parliamentary majority[169].

3.2 Germany: The Chancellorship in a Proportional System

3.2.1 The First Democratic Experiment in Germany: the Weimar Republic

At the end of World War One, in 1918, the German state transitioned from the authoritarian German Empire under the Prussian Hohenzollern dynasty towards a democratic form of state. In January 1919, national elections were held to elect the German National Constitutional Assembly, tasked with the drafting of a republican Constitution. The Assembly met in the city of Weimar, from whom the name 'Weimar Republic' to describe the democratic regime there imagined is derived; the official name of the country remained however 'German Reich' (*Deutsches Reich*). The Assembly was composed of various political parties, the largest ones being the Social Democratic Party (SPD), the Christian People's Party (CVP), the centrist Democratic Party (DDP), and the right-wing National People's Party (DNVP). The Assembly then elected the first President (*Reichspräsident*), Friedrich Ebert (SPD), who appointed a coalition government between SPD, CVP, and DDP (the so-called 'Weimar Coalition'), which became the main designers of the Weimar Constitution. In August 1919, the Assembly finally adopted the Constitution of the German Reich (*Verfassung des Deutschen Reichs*).

The Weimar Constitution envisioned a federal semi-presidential republic, thus making Germany one of the first countries to experiment such form of government. This choice of the National Assembly was probably dictated by various considerations: the need for a democratic regime, which meant a parliament capable of directly influencing government action; the maintenance of a central power to keep the country united after only forty years of unity, even in the context of federalism, thus substituting the Emperor with a powerful President; avoiding the shortcomings of parliamentarism,

[169] André Blais and Peter John Loewen, 'The French Electoral System and its Effects' (2009) 32(2) *West European Politics* 345.

experienced in those years in France, thus having an elected head of state capable of counterbalancing the power of political parties in parliament[170].

The President was thus directly elected by universal suffrage for a seven-year term, without any limits to re-election (artt. 41, 43). The office of the presidency was granted many constitutional powers, such as the possibility to have sole authority for limited periods in case of major threats or disruptions. This particular power was intended as a means for the President to restore the constitutional order in case of a deep national crisis, but was seen by many as a prelude to dictatorship. A parliamentary majority could order the suspension of the presidential measures, which in any case could not change any constitutional provision (art. 48). The President also had the unilateral power of calling for a referendum, a useful power in case of conflict between the executive and the legislature (art. 73). In any case, an important aspect of the Weimar semi-presidentialism is that, normally, the parliamentary government should have governed the country, with the President exercising their powers only in times of political or national crisis.

The President had the power to appoint the head of government, the Chancellor (*Reichskanzler*), and on their proposal, the ministers of government (art. 53). The choice of the President could not however be arbitrary, as the parliament had the power to dismiss the government (art. 54), which was also a prerogative of the President. The Diet (*Reichstag*) was the parliament of the Republic, directly elected every four years through a proportional method (artt. 22–23). Another legislative body also existed, the Council (*Reichsrat*), indirectly elected and made up of members or representatives of the federated states (*Länder*), which however had limited powers in comparison to the Diet. The President had the power to dissolve the Diet and call new elections, to be held no later than 60 days after the dissolution (art. 25). Two-thirds of the Diet could also call for a plebiscite to remove the President from power, but a popular rejection of the removal would have resolved in an automatic dissolution of the Diet and a re-election of the President (art. 43).

The main internal problem of the Weimar Republic soon appeared to be its highly fragmented party system, further exacerbated by the proportional electoral system, with coalitions impossible to form on both internal and external policy ideas. This led to a deep governmental instability, with short-living governments mostly relying only on a minority of the parliament. This caused the growth of more extremist and anti-republican parties, such as the National Socialist German Workers' Party (i.e., the Nazi party, NSDAP) and the Communist Party of Germany (KPD), which scored big results

[170] Yu-Chung Shen, 'Semi-Presidentialism in the Weimar Republic' in Robert Elgie, Sophia Moestrup and Yu-Shan Wu (eds) *Semi-Presidentialism and Democracy* (Palgrave Macmillan 2011) 229–232.

in the two early elections that were held in 1924 (May and December). A watershed in the history of the Weimar Republic was the death of President Ebert in February 1925 and the following election of Paul von Hindenburg to the office: he was a military and was supported in his campaign by monarchist and right-wing parties against the candidate of the 'Weimar Coalition'. Given the weakness of parliament, the election of such a President was a *de facto* silent constitutional transition, which was leading the country away from parliamentary democracy. The SPD was able to re-enter the governing majority after the 1928 early elections, but the 1929 financial crisis struck Germany so strongly that the government fell in 1930, with President von Hindenburg basically establishing an executive dictatorship soon after. Early elections were called again in that same year, with the anti-republican NSDAP and KPD reaching together 32% of the seats in parliament and all other parties losing support. This new parliament was even weaker, so that the executive dictatorship of President von Hindenburg was able to continue: ample uses of presidential emergency powers crippled parliamentary and party democracy beyond repair. This situation finally resulted in the appointment of Adolf Hitler, leader of the NSDAP, as Chancellor in 1933, and the complete transformation of the Weimar Republic into the totalitarian Nazi Reich[171].

3.2.2 The New Post-War Regime: The Federal Republic of Germany

After the end of World War Two in May 1945, the territories of the German Reich were completely occupied. The lands east of the Oder–Neisse line were permanently separated from the German national territory and given to Poland and the Soviet Union, which annexed them and expelled all German citizens, who fled to the remaining part of the country. There, an occupation by the Allied powers (US, UK, France, USSR) was established, with four different occupation zones (Berlin, even though it was completely surrounded by the Soviet zone, was also divided into four parts, while the Saarland was given to France as a protectorate). The four powers started administering their respective zones without much coordination, with an unclear time framework for the end of this status. Eventually, the three Western powers (US, UK, France) allowed for a reunification of their zones and in September 1948 a Parliamentary Council (*Parlamentarischer Rat*), made up of representatives of the eleven federated states under Western occupation, met in Bonn to draft the new Constitution of the German nation. However, given the division from the Eastern part of the country under Soviet occupation, the Parliamentary Council agreed not to elaborate a proper Constitution, which was delayed until the complete reunification. Instead, the Council created the so-called 'Basic Law' (*Grundgesetz*), meant to function as the legal basis for the new German nation in the absence

[171] ibid 236–243.

of a Constitution. The Basic Law thus created the Federal Republic of Germany (*Bundesrepublik Deutschland*, 'West Germany'), a capitalist country under the influence of Western powers, especially the US, while on the East the Soviets created their own satellite state, the German Democratic Republic (*Deutsche Demokratische Republik*, 'East Germany')[172].

The Parliamentary Council which elaborated the Basic Law was divided into several parties, of which the Christian Democrats (CDU/CSU) and the Social Democrats (SPD) were the largest, followed the Liberals (FDP), the Centrists, the Communists and the National-conservatives. A critical choice that the Parliamentary Council had to make regarded the federal nature of the country. In this sense, an important consideration was that the *Länder* pre-existed the new united country itself, as they were previously created by the Western occupation forces, and the governments of the *Länder* had already agreed on a constitutional draft in August 1948, written by their representatives and known as the 'Herrenchiemsee draft', which stressed the importance of a federal form of state. Moreover, both the Allies and the Christian Democrats expressed their concerns over a strong central government, given the totalitarian years of the Nazi regime. This fear was also at the basis of the choice of a parliamentary regime, with a head of state, the Federal President (*Bundespräsident*), having very weaker powers than the ones that were granted by the previous Weimar Constitution and acting as a mostly ceremonial figure. Other lessons were learnt from the failures of the Weimar Republic and clearly affected the choices of the Parliamentary Council[173].

The Basic Law, which incorporated all these reflexions in a basically constitutional text, is still the fundamental legal text regulating the form of state and government in Germany. Indeed, the reunification with East Germany in 1990 only meant the complete abolishment of the East German socialist state and the expansion of the provisions of the Basic Law to the new territories of the Federal Republic. The fact that the Basic Law was only meant as a transitional text to serve as an institutional framework for the time of national disunity has indeed been disregarded with time: the Basic Law was the Constitution of the Federal Republic of Germany before the reunification, and still is after this event eventually took place and as the Federal Republic annexed the territories of the socialist East German state, even though some amendments have been approved over the years. The discussion on the constitutional character of the Basic Law would however go beyond the point of this dissertation, which will thus consider it in the same manner as a proper constitutional charter.

[172] Anthony James Nicholls, *The Bonn Republic: West German Democracy, 1945–1990* (Addison Wesley Longman 1997) 73–75.

[173] ibid 75–93.

As mentioned, the head of state of Germany is the Federal President, who has a mostly ceremonial role as in classical parliamentary regimes, with their powers being more incisive in conditions of political crisis. The President is indirectly elected for a five-year term, renewable for one time, by the Federal Convention, or Assembly (*Bundesversammlung*), which is composed of all members of the lower chamber of parliament and by an equivalent number of delegates of the parliaments of the *Länder* (art. 54). The lower chamber of parliament is the Federal Diet (*Bundestag*), which is directly elected every four years (artt. 38–39) through a basically proportional system with a 5% national threshold[174]. This threshold is intended at limiting party and political fragmentation in parliament, so that the legislature can remain an efficient institutional body and does not risk falling into the deadlocks of the parliament of the Weimar Republic[175]. The upper chamber is instead the Federal Council (*Bundesrat*), whose members are representatives of the governments of the *Länder* and thus only represent the state-level political majorities (art. 51)[176]. The Council is, according to the Basic Law, the means through which Länder participate in the legislative and administrative processes of the federation (art. 50), thus representing a classical constitutional body of federal countries. The two chambers do not have equal powers, especially regarding the confidence relationship, which only exists between the federal government and the Federal Diet; nonetheless, the Federal Council needs

[174] The German electoral system is rather complicated and is regulated by the Federal Electoral Law (*Bundeswahlgesetz*). To summarise it, 50% of seats in parliament are awarded through single-member constituencies. The total number of seats was changed different times, but from the 2002 elections it was set at 598 so that since then 299 single-member constituencies have existed. Then, at the state level, all parties which reach the 5% national threshold or elect at least 3 MPs in single-member constituencies, receive additional seats in order to reach a proportional representation. The seats are assigned to each state according to its population, so that proportionality on the national level is basically also reached. In case a party has elected more MPs in single-member constituencies than the ones it should receive from the proportional distribution, it retains those seats (called overhang seats), so that it has happened that the final number of MPs was larger than the one initially set. Since 2013, thanks to a reform of the electoral law (BGBl. 2013 I Nr. 22), a further number of seats is awarded in order to fix the disproportionality created by overhang seats, so that the fixed number of MPs was even more ignored: for example, in the 2022 federal elections, the Federal Diet reached the record number of 736 MPs, 138 more than the fixed number of 598 MPs. In 2023, the parliamentary majority supporting the Scholz government passed an electoral reform to actually fix the number of seats at 630, eliminating both overhang and compensation seats (BGBl. 2023 I Nr. 147). The number of MPs for each party would only be determined by the proportional vote, with the 5% threshold being applied even in case a party has won in single-member constituencies. Specifically, in case of overhang seats or parties winning in a constituency without reaching the 5% threshold, the elected MPs would just not enter parliament. In 2024, the German Constitutional Court declared the 2023 reform partly unconstitutional (30 July 2024 Judgment – 2 BvF 1/23), in particular regarding the abolition of the clause which allows parties to participate in the distribution of seats in case they are below the 5% threshold but have won at least 3 single-member constituencies, so that the electoral reform is still under discussion.

[175] Nicholls (n 172) 82.

[176] The definition of the Federal Council as the upper chamber of the German parliament is disputed, as the Basic Law does not group it with the Federal Diet as part of a federal legislative body. However, given the functioning of the system, the Council can be easily equated to an upper chamber of a federal system, and will be treated in this way in this dissertation. See: Rasch, Martin and Cheibub (n 37).

to approve legislation affecting areas of concurrent competence between the *Länder* and the federation and on some of them has a suspensive veto power, which can however be overridden by an absolute majority in the Diet.

The powers of the President are much more limited regarding government formation as well, as they usually play no substantive role. Indeed, the President appoints the head of the federal government, the Federal Chancellor (*Bundeskanzler*), but the Federal Diet needs to confirm this appointment by an absolute majority vote. If the Diet does not grant confidence to the presidential candidate, it takes upon itself the power to elect the Chancellor: one-fourth of the members of the Diet can propose a candidate, who also needs an absolute majority to take office. In this case, the President is forced to install the Chancellor chosen by the parliament. If both rounds fail, candidates can be proposed again by one-fourth of the Diet and a subsequent one-round plurality vote is held. The candidate with the most votes is installed by the President if they receive an absolute majority of the votes, but in case they do not, the President has a discretionary power of deciding whether to install them or dissolve the Federal Diet calling for early elections (art. 63). It is worth noting that no Chancellor proposed by the President has ever been rejected by the parliament, as it is practice to held consultations in order to build a governing majority before the President chooses who to appoint to the office[177].

After the official instalment of the Chancellor, the President proceeds with the appointment of the cabinet ministers on the binding proposal of the Chancellor (art. 64). The prerogative to choose the members of the cabinet is thus considered to be exclusive of the Chancellor, with the President enjoying no discretion. However, party politics also plays an important role, as the proportional electoral law has never led to a one-party government[178]. Regarding the confidence relationship, this exists between the Diet and the government as a whole. The Diet can indeed pass a motion of no-confidence against the government, but the Basic Law prescribes the system of 'constructive' vote of no-confidence. This procedure does not really prescribe a vote of no-confidence for the incumbent government, but rather an investiture vote for a new Chancellor, which must be initiated by one-fourth of the members of the Diet and requires an absolute majority for it to succeed (art. 67). This provision is an obvious rationalisation of the confidence relationship and allows for governments to remain in power even when they have lost the support of an absolute majority of the Diet in case no new majority can be found, thus granting a successful way for minority governments to exist. This also applies to the case in which the Chancellor is elected without an absolute majority by a plurality

[177] Rasch, Martin and Cheibub (n 37) 71.

[178] ibid 68–70.

vote in the third round of voting and the President does not choose to dissolve the parliament, providing a way of actually making it a viable governing option.

The Chancellor can also pose a question of confidence in an abstract way or linking it to a specific bill or decision by the Diet. In case no absolute majority votes in favour of the confidence, the Chancellor could continue to govern as the head of a minority government thanks to the system of the constructive vote of no-confidence, and could also start a procedure to declare a state of legislative emergency, in which the government could circumvent the Diet and, in agreement with the President, have the Federal Council pass legislation. This procedure can however only be used once in the Chancellor's term of office and has never been used or even considered (art. 81). In case a question of confidence is rejected by the Diet, the Chancellor also has the power to ask the President to proceed with the dissolution of parliament (art. 68). This last procedure has been used as a way to dissolve parliament with questions of confidence designed to be rejected: the Basic Law does indeed not allow other ways to dissolve the legislature, so that political majorities have used this so-called 'dissolution-targeted' confidence vote[179].

One important note needs to be made about the German party system, which has proved to be reliable in assuring the country stable governments since the introduction of the Basic Law in 1949. In the early years of the Federal Republic, until the 1960s, there were two main parties competing for the executive power, the CDU/CSU and the SPD, with the liberal FDP playing the role of middle actor. Afterwards, in the 1980s and 1990s, new political forces emerged, such as the Greens and the Left Party, successor of the sole governing party in the former East Germany. Finally, in much more recent times, new extreme forces appeared, such as the far-right AfD or the far-left BSW. The proportional electoral law allows the growth of all these various political formations, and coalition building has thus become more complex in the last decades, with three-party coalitions becoming less unusual than before[180]. Nonetheless, the constitutional provisions aimed at rationalising the parliamentary regime in favour of governmental stability without undermining the authority of the parliament appear to work in the Federal Republic of Germany: only nine Chancellors have governed in its 75 years of existence, but the parliament has not seen his role and ability weakened, as has happened in more unstable parliamentary regimes such as Italy. The Basic Law also specifically allows the Federal Constitutional Court (*Bundesverfassungsgericht*) to dismantle parties deemed incompatible with the free and democratic order of the state (art. 21), a power that has been used pretty often in comparison

[179] ibid 72–74.

[180] ibid 68–69.

to other countries with similar constitutional provisions and to ban both far-right (neo-Nazi) and far-left (communist) parties since the 1950s[181].

Regarding the current German parliamentary form of government, one last aspect worth mentioning is that of coalition agreements (or contracts). These are written documents on which coalition governments base their political direction for a specific legislative term and are produced during the post-electoral formation process of the cabinets. The first of such agreements was drafted in 1961 for the formation of the fourth Adenauer cabinet at the beginning of the fourth legislative term of the Federal Diet. It was meant to remain secret, but its eventual revelation by the media sparked criticism from both public opinion and legal scholars: indeed, many saw it as a way of bending the Basic Law, in particular regarding the power of the President of the Republic in appointing a Chancellor and in the free mandate of MPs. This criticism was however later abandoned, as the nature of such agreements was deemed political rather than legal, without any real consequences on the powers invested upon various actors by the Basic Law. Some kind of agreement was also reached in later coalition talks, until they acquired an always more formal shape[182], becoming a custom since the late 1990s for all legislative terms until now. Such agreements/contracts have relied on an important characteristic of the German party system: a 'responsibility principle' towards constitutional customs to whom all major German parties accept to be bound. As said, such custom is not deemed as a forcing of the Basic Law (as is, for example, the use of 'dissolution-targeted' confidence votes previously described). Instead, it made the investiture procedures more efficient remaining within the limits imposed by the Basic Law and also had a stabilising effect on coalition governments, so that it has been described as a 'key constitutional custom of the German form of government'[183].

3.3 Israel: Directly Elected Prime Ministers (1996–2001)

3.3.1 The Creation of Israel and its Institutional System

In May 1948, the Declaration of the Establishment of the State of Israel was proclaimed, thus giving life to the current State of Israel. The Declaration stated the intention of drafting a Constitution for

[181] Nicholls (1997) *The Bonn Republic: West German Democracy*, 1945–1990, p. 83.

[182] The 1998 coalition agreement between the SPD and the Greens was the last one called *Vereinbarung* ('agreement'), a term which was replaced in 2002 by the more 'demanding' *Vertrag* ('contract').

[183] Giovanni Rizzoni, 'I contratti di coalizione nella Repubblica Federale Tedesca fra politica e diritto' (2014) 1 *Rivista AIC.*

Israel, and for this goal a Constituent Assembly was elected in 1949. The Assembly was however not able to reach an internal agreement on the constitutional question, so it instead decided to become the first Knesset, the unicameral parliament of Israel. In order to provide for an institutional system to govern the new state, the Knesset decided to undertake a course with two cumulative proceedings. The first one was the enactment of ordinary laws to deal with constitutional matters: a prime example is the 1949 Transition Law, whose provisions established some fundamental rules on the main political bodies of the state: the Knesset itself, the head of state (the President), and the government (made up of the Prime Minister and the ministers). The second course of action was instead meant to be a lengthier path towards the creation of a proper constitutional charter: the parliament was to approve Basic Laws on different constitutional matters, to be implemented as soon as they were approved and to be finally merged into the Constitution upon their completion. The first Basic Laws regarded, for example, the Knesset, the national territory, the President, the government, the military, and so on. However, the Knesset has not finished drafting the Basic Laws so far, so that currently Israel is one of the few countries in the world without a proper written Constitution, but whose institutional set-up is based on quasi-constitutional, but essentially ordinary, legislation. Indeed, the Knesset does not need a particular qualified majority to pass, amend, replace, or repeal these Basic Laws, so that they are in the hands of the various political majorities which alternate in power. Currently, only a small number of provisions of the Basic Laws is subject to a particular entrenchment, which is however provided by the very same Laws[184].

The Basic Laws which are most relevant to this dissertation are: 'The Knesset' (1958, updated in 1987); 'The President of the State' (1964); 'The Government' (1968, replaced in 1992, and restored with amendments in 2001). These all deal with the system of government of Israel, as they describe the roles of its main institutions. In particular, the 'Basic Law: The Government', its replacement, and its final restoration, will be central in this dissertation.

The 1958 'Basic Law: The Knesset' was the first Basic Law approved by the Knesset, and, as the name tells, regards its own regulation. Parts of the law were amended in 1987, date in which it reached its final and current form. According to this law, the Knesset is the unicameral legislature of Israel (art. 1), is elected for a four-year term (art. 8) 'in general, national, direct, equal, secret, and proportional elections' (art. 4), thus also giving guidelines as to how the electoral law is supposed to work. The law also contains a self-dissolution clause, according to which the Knesset can decide to dissolve itself before the natural end of the parliamentary term by a majority of its members (art. 34),

[184] Peter Elman, 'Basic Law: The Government (1968)' (1969) 4(2) *Israel Law Review* 242.

and a mandatory-dissolution clause, according to which the Knesset is dissolved should it fail to adopt the yearly budget law within three months from the start of the financial year (art. 36a). In 1964, the Knesset approved the third Basic Law, on the President of the State, the head of state of Israel (art. 1). The President is elected by the Knesset for a non-renewable seven-year term (art. 3) and can be removed by the parliament by a majority of two-thirds (art. 20). In the Israeli parliamentary system, the President does not hold particularly meaningful powers, as the presidency is mostly a ceremonial office (art. 11).

In 1968, the Knesset adopted the fourth Basic Law, regarding the government of the country. This law was later replaced by a new law on the same subject in 1992, but the analysis of this change will be dealt with in the next section. Indeed, already in 2001, the Basic Law was restored, only with some amendments which did not deeply alter its nature, and so the current version is the one that will be here described. According to this law, the government is the executive of Israel (art. 1) and 'holds office by virtue of the confidence of the Knesset' (art. 3), thus in line with classical parliamentary systems. The government is composed of the Prime Minister, who needs to be a member of the Knesset, and the ministers, who instead do not have to be members of the Knesset (MKs) (art. 5). In any case, the government is collectively responsible towards the parliament (art. 4). The President assigns the task to form a government to a member of the Knesset, who needs to form a government; the cabinet as a whole then presents itself to the Knesset in order to receive a positive vote of confidence and take office (artt. 7–8). There can be two successive attempts of government formation by two different MKs (art. 9); in case none of the two is successful, the Knesset can propose its own candidate (art. 10). In case this third attempt is not held or fails, the Knesset is automatically dissolved (art. 11). The Basic Law also provides for the possibility of forming a so-called 'rotation government', in which there need to be an 'Alternate Prime Minister' who takes the place of the Prime Minister at a stipulated date, which needs to be decided beforehand and approved by the Knesset in the confidence vote (art. 13a). After the government takes office, the Prime Minister cannot change the ministers or their duties, unless the Knesset grants its approval.

Regarding the power of the Knesset to dismiss the government, the 2001 reform of the Basic Law introduced the system of 'constructive' no-confidence: the parliament thus needs to vote in office a new government, granting it confidence by a majority of its members (art. 28). In case the Knesset decides to express no-confidence towards a rotation government, the Basic Law prescribes that the neither the Prime Minister nor the Alternate Prime Minister of the incumbent cabinet can be the head of the new government (art. 43h). The 2001 reform also granted the government the power to dissolve the Knesset, with the consent of the President, in case it loses the support of the parliamentary

majority. However, when this happens, a majority in the Knesset can request the President to appoint a new Prime Minister, thus blocking the dissolution in case the new government is granted confidence (art. 29).

3.3.2 The Elected Prime-Ministerial Experiment and its Dismissal

Th system just described was more or less the one in place in Israel for the first decades of its existence. Until the 1970s, the political scene of Israel was dominated by the Labour Party, which had around 50% of the votes in each election: thanks to this situation, the actual drawbacks of the Israeli parliamentary system were kept hidden. However, from the 1970s to the 1990s, the elections became much more disputed, with the Labour Party and the conservative Likud fighting for the first position but not being able to reach a majority. This led to a more fragmented party system and the growing importance of smaller political factions, to which the proportional representation method gave high influence on the largest coalition partners in order to have stable governments. Furthermore, the party system generally became more polarised as well, because of the external instability of the country, almost constantly in a state of war, and of the disaffection of the electors towards the two main parties. This caused the sudden emergence of extremist or religious parties capable of influencing the actions of the Israeli governments. In the 1980s, the system was thus deemed flawed by all political actors, which started asking for institutional reforms.

After the 1984 elections, the Labour Party and Likud governed together in national unity governments, until 1990, when a crisis erupted. The political deadlock lasted three months and resulted in a Likud-led coalition of 11 parties, but popular unrest grew stronger and the demand for reforms was not ignorable anymore. Electoral reforms started being proposed in order to abandon the pure proportional system and institutional reforms were also envisioned by some. The instability of governing majorities however also reflected on the ability of the Knesset to find large enough majorities to change the electoral law or the Basic Laws, so that a lengthy parliamentary debate was started. After several difficulties and political conflicts, the Knesset finally passed the new ‘Basic Law: The Government’ in March 1992, whose effects were to begin only with the fourteenth parliamentary term starting in 1996. The new law was based on the idea that more governmental stability was needed, as well as a more direct link between the voters and the government. The main focus thus shifted from an electoral reform, which would have rationalised the fragmented composition of the Knesset, towards an institutional strengthening of the executive. Indeed, the 1992 ‘Basic Law: The Government’ introduced in Israel the elected prime-ministerial system of

government, which was analysed in the first chapter of this dissertation, the first – and, until now, the only[185] – country in the world to do so[186].

The 1992 Law thus provided for the Prime Minister to gain a direct investiture from direct elections (art. 3), thus eliminating the power of the Knesset in the appointment of the head of government. The term of the Prime Minister was equated with the term of the Knesset, so that elections were held concurrently every four years (art. 4). The prime-ministerial elections were however structured as two-ballot elections, with a runoff round in case no candidate had received the absolute majority of the valid votes (art. 13); parliamentary elections remained proportional, with a pretty low threshold set at 1.5%, as small parties in the Knesset opposed any further rationalisation[187]. After the election, the Prime Minister forms the government, with at least half of the ministers being MKs (art. 14), and presents it to the parliament for a necessary vote of investiture (art. 3). This last provision represents an anomaly that brings the system closer to parliamentary systems rather than presidential ones, as the parliament can influence the decisions of the Prime Ministers in appointing the members of the cabinet even if they enjoy a full popular investiture through direct elections. Thus, the cohabitation between a Prime Minister and a hostile parliamentary majority was basically impossible.

The 1992 Law also introduced the principle of *aut simul stabunt aut simul cadent* ('they will either stand together, or fall together). Indeed, on the one hand, the Knesset had the power to oust the elected Prime Minister by an absolute majority vote, thus not requiring any particular qualified threshold. However, a vote of no-confidence towards the Prime Minister would have also led to the automatic dissolution of the Knesset, with new elections (both prime-ministerial and parliamentary) to be held simultaneously (art. 19). On the other hand, the Prime Minister had the power to dissolve the Knesset with the approval of the President whenever it was clear that a majority of the MKs opposed the government. The dissolution of the Knesset would have however also led to early prime-ministerial elections, so that the two institutions remained linked by concurrent elections (art. 22). Israeli scholars have described this situation, in which each of the two institutions possessed a double-edged sword,

[185] As said in Chapter 1, the current form of government of Kiribati could also be described as 'elected prime-ministerial', but this example might be deemed irrelevant for the purpose of this dissertation as, on the one hand, it is a particularly small country (it has a population of around 100.000 people), and, on the other hand, the head of government is also the head of state.

[186] Reuven Y Hazan, 'Presidential Parliamentarism: Direct Popular Election of the Prime Minister, Israel's New Electoral and Political System' (1996) 15(1) *Electoral Studies* 21, 21–28.

[187] The proportional character of the Knesset election is deemed to be an irrevocable element of the founding constitutional pact of the State of Israel, so that the adoption of a majority bonus or a majoritarian system is not feasible, contrary to that of an electoral threshold. See: Severa (n 189).

as a 'balance of terror': collaboration was necessary for the survival in office of both[188]. In case of resignation of the Prime Minister (art. 23), incapacitation, death, removal from office for particular reasons or by a majority of 80 MKs out of 120 (artt. 26–28), special prime-ministerial elections were to be held, with the elected Prime Minister only serving for the remaining time of the Knesset parliamentary term. The Knesset also had the power to remove specific ministers from office by a majority of 70 of its members (art. 35). This complicated articulation of crossed powers between the head of government and the Knesset able to influence the overall functioning of the system (investiture, no-confidence, dissolution, dismissal, resignation, self-dissolution) were intended at providing for a way of overcoming political deadlocks. Resorting to the popular vote (or the threat to do so) was thus aimed at reducing the effects of the veto powers of small political forces in parliament, which were always growing in the country[189].

This new system of government was first experimented in 1996, when Benjamin Netanyahu (Likud) was elected Prime Minister. The parliament was however very fragmented, mostly because of the characteristics of the electoral law: a proportional method with a relatively low threshold and the possibility of split-ticket voting, since the ballots for parliamentary and prime-ministerial elections were different, so that no party or coalition was expressly linked to a prime-ministerial candidate. These results came in opposition to the hopes of those supporters of the reform who imagined that a direct prime-ministerial election would also carry with it a more bipolar party system. Netanyahu thus needed to build a governing coalition supported by a majority in the Knesset and he managed to form a six-party coalition government, which however proved not to be stable and early elections took place in 1999. Ehud Barak (Labour) won the prime-ministerial race, but both Labour and Likud lost support, leading to an even more fragmented parliament and forcing the Labour Prime Minister to form a coalition with religious and centre-right parties. Barak's government did not last long, as he resigned in 2001. He decided however not to dissolve the Knesset, and thus only prime-ministerial elections took place. Ariel Sharon (Likud) became the new Prime Minister, but was forced to head a national unity government allying himself with the Labour. The new system, whose main goal was to ensure governmental stability, clearly failed: Israel had three elections, and three different Prime Ministers, in five years and governing coalitions did not become less fragmented or dependant on junior coalition partners. The Sharon national unity coalition thus decided to repeal the reform, which was abolished in 2001 by a majority in the Knesset, ending this experiment. As mentioned in the

[188] Hazan (n 186) 30.

[189] Francesco Severa, 'L'elezione diretta del vertice del Governo e le sue possibili declinazioni materiali: il precedente israeliano e il nuovo modello italiano' (2023) 2 *Democrazia e diritto* 53, 65–66.

previous section, the 2001 reform reintroduced a parliamentary system, but also managed to implement some rationalising elements, such as 'constructive' vote of no-confidence, and left minor parts of the 1992 reform intact, such as the power of the Prime Minister to dissolve the Knesset. The 2003 elections thus marked the end of the national unity government and the return to the parliamentary system[190].

The main reasons why the Israeli elected prime-ministerial system failed and was soon dismissed are not difficult to identify. First and foremost, the lack of a concurrent electoral reform to be combined with the new system of government was striking. Indeed, for an elected head of government to be able to exercise power in such a system, there needs to be a clear parliamentary majority to support their actions. The complete abandonment of a proportional system in Israel is however impossible, while the introduction of rationalising measures of proportionality was a step that many Israeli political parties were unwilling to take: this was one of the main reasons why the whole system failed. The two elections (parliamentary and prime-ministerial) were designed to be held simultaneously, but such a mere temporal factor was not necessary. Instead, scholars are positive on the fact that there needs to be a coherence between the voters' choices in the two ballots, that parties need to be linked to a prime-ministerial candidate before the elections, without the need to find a governing coalition afterwards, and that at least some majoritarian corrections need to be added to the proportional electoral system. The parliamentary elections in Israel lacked all of these elements, and it became for this reason impossible for the elected Prime Ministers to govern[191]. Instead, direct prime-ministerial elections, when imposed in such a fragmented political landscape as the Israeli one without any 'correction' to pure proportional representation in the assembly, risks intensifying conflict and extremising opposing positions, as indeed happened in Israel during the years of the elected prime-ministerial form of government[192].

Another problematic element was the possibility of holding special prime-ministerial elections during the normal parliamentary term, thus watering down the principle of *aut simul stabunt aut simul cadent*. A more logical solution instead of special elections, to maintain the principle that parliamentary and prime-ministerial elections always need to be held together, might have been the presence of a Deputy Prime Minister to act in a caretaker capacity and lead the government until early general elections. The Israeli legislators instead chose to provide for special prime-ministerial

[190] Emanuele Ottolenghi, 'Why Direct Election Failed in Israel' (2001) 12(4) *Journal of Democracy* 109.

[191] Emanuele Ottolenghi, 'Israel's Direct Elections System and the (Not so) Unforeseeable Consequences of Electoral Reform' (2002) 18(1) *Israel Studies Forum* 88, 106–108.

[192] Severa (n 189) 68–69.

elections, which went against the principle of simultaneity of the two elections and provided for a way of manipulating the system for political purposes, as was shown by the 2001 special prime-ministerial election. Finally, the principle of 'balance of terror' between the Prime Minister and the Knesset was also weakened, because the Israeli lawmakers decided to leave to the Knesset also the power to dissolve itself, without however imposing some functional limitations so that this instrument would have not been misused. Indeed, the Knesset was able to initiate a self-dissolution legislative process without having to respect any time limits, thus being able to use it as a constant threat to the survival in office of the Prime Minister. This happened already in the first term of the new system, when the Knesset called for early elections after passing a self-dissolution bill[193].

The balances and mutual powers between the government and the Knesset that the reform provided for were thus insufficient in completely halting the degenerations of the system which the Israeli lawmakers aimed at tackling, only resulting in a slight containment of such drifts. This was however done at the cost of increased political conflict and divisions[194]. In general, however, the inability of the elected prime-ministerial system in Israeli in addressing the issues it was meant to solve, mainly governmental instability cannot be attributed to this system itself, but rather to some specific and peculiar choices that the Israeli legislators made while designing this system and the necessary related changes that it brough to other institutional legal areas[195].

3.4 The Italian Regional Form of Government

3.4.1 The Establishment of Italian Regions and their Initial Form of Government

When the Republican Constitution of Italy was drafted, the Constituent Assembly decided to introduce a model of territorial devolution intended at overcoming the centralism of the Kingdom of Italy, but at the same time keeping a unitary system, thus not embracing a federalist approach. In particular, it was decided that the so-called local bodies (*enti locali*), the already existing provinces (*province*) and municipalities (*comuni*), would have been kept and tasked with further powers. In addition, a new level of local government was created, the regions (*regioni*), with legislative and

[193] Ottolenghi, 'Israel's Direct Elections System and the (Not so) Unforeseeable Consequences of Electoral Reform' (n 191) 108–111.

[194] Severa (n 189) 69.

[195] Ottolenghi, 'Israel's Direct Elections System and the (Not so) Unforeseeable Consequences of Electoral Reform' (n 191) 111–112.

administrative competences[196]. The Constitution recognises twenty regions (art. 131), five of which have a status of special autonomy (art. 116) due to particular geographic or historical circumstances. While four of the latter had started functioning already in the late 1940s (the fifth one, Friuli-Venezia Giulia will only start to be effective in the 1960s due to unresolved issues with neighbouring Yugoslavia), the establishment of all the regions with ordinary statute was postponed through the years[197]. Indeed, even though the same Constitution, in transitory provision VIII, mandated that within a year from its entry into force the national parliament would have had to establish the regions, call for regional elections, and legislated on the transfer of function to regional administrations, in the following parliamentary terms this date was always postponed in various occasions. The parliament was indeed unable to find a common ground on the actual powers to be assigned to the new regional governments, being divided between those with a more centralistic view and those with a more autonomist one. In the 1960s, the new centre-left majority made it however a promise to go forward with the establishment of regions with ordinary statute and, finally, in 1968 the parliament approved a law (L. 17 febbraio 1968, n. 108) to regulate regional elections, to be called no later than the year 1970, with the favouring votes of the governing centre-left majority and the left-wing opposition[198].

The law was necessary because the 1948 Constitution only regulated the regional bodies and their election in a general manner. Firstly, it established three main organs: the regional council (*consiglio regionale*), the legislature of the region; the regional government (*giunta regionale*), the executive body; the President of the regional government (*presidente della giunta regionale*), the head of the regional executive (art. 121). Secondly, it mandated the President and the other members of the regional government be elected by the regional council among its members (art. 122), so that it practically created a parliamentary form of government at the regional level, with a directly elected legislature and an executive elected by and dependent on the political majority in the legislature. The new 1968 electoral law was thus only intended at precisely regulating the electoral process and largely followed the national electoral law for the Chamber of Deputies: a proportional system with preference votes for a maximum of three candidates of the same list. The Constitution (art. 126) also envisioned situations in which the regional council would have been dissolved: whenever it acts in violation of the Constitution or the law, or refuses to substitute the government or its President in case

[196] Antonio D'Atena, 'Regione' (1988) XXXIX *Enciclopedia del Diritto* 317, 317.

[197] Giancarlo Rolla, 'L'evoluzione dello Stato regionale in Italia: tra crisi del regionalismo omogeneo e aspirazioni a un'autonomia asimmetrica dei territori' (2019) 1 *Le Regioni, Bimestrale di analisi giuridica e istituzionale* 141, 146–147.

[198] Annamaria Poggi, 'Perché abbiamo bisogno delle regioni' (2020) *federalismi.it*, 4–6.

they have committed these same actions; whenever it is unable to function, because of resignations of its members or impossibility of forming a majority; for reasons of national security.

The statutes of the regions, approved by the regional councils as soon as they were first elected in 1970, regulated all other aspects regarding the functioning of the regional organs, so that it is difficult to describe an overall model which describes all situations given the differences between them. It is however instrumental to draw a picture of the main aspects of the relationship between the regional legislatures and their respective executives. Regarding the appointment of the regional executive, there was a variation on the secrecy of the ballot and on the contemporaneity of the appointment of the President and the other members of the regional government. All statutes however provided for the council to be able to withdraw its confidence from the executive, with some also forcing the dismissal of the President through the resignation of a certain number of the members of the government. The form of government was thus generally confirmed to be fully parliamentary, even with some differences, and was mostly created using the national one as a model. The regions thus also inherited other characteristics of the national government, first and foremost the brief longevity of the executives: between 1970 and 1995 (when the electoral law was changed, as will be discussed in the following section), all regional councils finished their five-year term; however, the average duration of regional executives was only 26 months, barely more than two years. This was slightly better than national cabinets (whose average was 14 months between 1946 and 1994), and alternation between parties was possible as well, as the PCI governed in a number of regions and expressed the presidency in some of them[199].

It might also be useful to make one final consideration on whether it is proper to use the term 'form of government' when referring to subnational entities, such as Italian regions. Many international scholars have rejected this idea, restricting the study of form of governments to the national level. In Italy, however, the study of this topic in general has been of great interest in academia since the birth of the Republic, probably because of the governmental instability that the national form of government has supposedly impressed to the country. This led to the application of the term to subnational levels of government as well, even though doubts still remained mostly because of the interdependence of regional politics to the national background and the lack of autonomy of the regions in shaping their own form of government, mandated by national legislation. The 1999 reform, which will be analysed in the following section, finally enshrined in the Italian Constitution the notion of regional form of government (art. 123), while scholars from other countries also started analysing

[199] Lorenzo Spadacini and Franco Bassanini, 'L'evoluzione della forma di governo regionale' (2023) 12 *Astrid rassegna*, 5–6.

and studying 'subnational constitutionalism' in other contexts, so that this field has developed and is now rich in contents[200].

3.4.2 The 1990s Reforms and their Effects

As already discussed in the previous chapters, the 1990s represented a period of deep transformation for Italian politics, especially in relation to party politics and the electoral system. These changes on the national level also affected subnational bodies, where the will of the new political class to create a majoritarian system of government found an actual and durable materialisation, contrary to the failed reforms of the system of government and the instability of the new electoral systems on the national level. A first step was taken in 1993, when the parliament passed a law (L. 25 marzo 1993, n. 81), which changed the system of government of the local bodies (municipalities and provinces), introducing the direct election of mayors and provincial presidents concurrently to the elections of the respective legislative assemblies, as well as a majority bonus of 60% of the seats for the winning coalition, with the exception of some rare cases. It is important to remind that in the same year the electoral law for the national parliament was also amended in a majoritarian sense, so that the two reforms were part of a larger picture of 'modernisation' of the overall political system[201].

Regarding the regions, it was impossible at the time to introduce the same system of the L. 81/1993, since the Constitution itself specified the President of the regional government to be elected by the council. However, in 1995 the new centre-right governing majority created a different electoral system which borrowed some elements of the local bodies electoral law. This new provision (L. 23 febbraio 1995, n. 43), known as Tatarella law (*legge Tatarella*), introduced a majority bonus of one-fifth of the regional council seats to the most voted coalition with a designated leader expressly indicated on the ballot. The goal was to award to the winning coalition at least 55% of the seats in the council, even by temporarily increasing their absolute number in case the one-fifth bonus would have not been sufficient. This system thus basically created a direct indication of the head of the regional executive by the electorate and at the same time introduced a majoritarian correction to the proportional electoral law to sustain the majority supporting the elected President. A further rationalising element was introduced in the form of an *aut simul stabunt aut simul cadent* principle to be in place for the first 24 months of the regional legislative term: in case of a clash between the regional executive and the regional council in the first two years after they had taken office, early elections would have been called to renew both institutions. This new electoral law was however

[200] Fasone and Piccirilli (n 136) 31–33.

[201] ibid 33–35.

considered problematic from a constitutional point of view, as it basically bypassed the constitutional provision of the election of the President of the regional government by the council among its members, relegating to the assembly a mere ratifying role of the electoral result[202]. In any case, the law appeared to be effective in stabilising the governing majorities: no regional council withdrew its confidence from the President within the first 24 months after the elections, while in three regions this happened after the end of this timeframe. It thus appears that the presence of the *aut simul stabunt aut simul cadent* principle was effective in acting as a threat to regional legislatures and guaranteed stable executives, even more than the direct election of the President by itself[203]. The loose character of the principle (i.e., its limitation at two years) was thus a major weak point in the rationalising attempts and was even more unconcealable with the electoral law which granted a majority bonus to the winning coalition, as no sanction towards those members of the regional councils who violated their electoral mandate withdrawing the confidence of the designated leader was envisioned[204].

The constitutional issues regarding this electoral reform were overcome in 1999 during the following national legislative term, when both majority and opposition agreed on reforming the regional form of government. This reform (L.Cost. 1/1999) left to the regions with ordinary statute the power to design their own form of government through their statutes, as long as these followed constitutional provisions, later granted also to regions with special statutes. However, in practice, the margin left by the new constitutional provisions was narrow, so that a common model was eventually created for regions with ordinary statute and also adopted by the majority of the ones with special statute[205]. Currently, the Constitution prescribes that '[t]he President of the regional government, unless otherwise arranged by the regional statute, shall be elected by universal and direct suffrage' (art. 122(5)). Other important elements of this reform were: the power of the President to change the composition of the executive without having to resort to the council (art. 122(5)); the power of the council to dismiss the President (art. 126(2)); the introduction of the *aut simul stabunt aut simul cadent* principle for the whole length of the regional legislative term (art. 126(3)). The possibility left to regional councils to modify this new system through a new statute soon proved to be practically impossible: on the one hand, after the introduction of the reform the regions became accustomed to the new system, while on the other hand the Constitutional Court decided to adopt a deeply narrow

[202] ibid 35–36.

[203] Spadacini and Bassanini (n 199) 6–8.

[204] Stefano Ceccanti, 'La forma neoparlamentare di governo alla prova della dottrina e della prassi' (2002) 1 *Quaderni Costituzionali* 107, 116–117.

[205] Fasone and Piccirilli (n 136) 36–37.

reading of the constitutional autonomy left to regional councils on this matter[206]. A new framework national law (L. 2 luglio 2004, n. 165) was approved to regulate regional elections, basically repeating the same principles as the former 1995 law: contemporary election of the President and the council and assurance of a majority in the council for the coalition of the elected President. Regarding the electoral system, it is important to notice that a main distinction can be traced among the Italian regions between those that allow split-ticket voting (9 ordinary regions and 3 regions with a special statute) and those that do not (6 ordinary regions and 1 autonomous province)[207]. The possibility of a split-ticket vote has three main consequences: opportunity for the electors to have a larger degree of choice, ability to measure the distance of popularity between candidates to the presidency and the respective supporting parties, limited differentiation of source of legitimacy for the council and the President[208]. In any case and whether split-ticket voting is permitted or not, the Italian regional electoral system is characterised by a so-called 'dragging' (*trascinamento*): it is the presidential election that has a more direct effect on the distribution of seats in the council, even more than the council election itself, because of the high majority bonus awarded to the coalition of the elected President. For this reason, it might also happen that the most voted coalition in the council does not get the majority of the seats when its candidate President is not the winner (e.g., Piedmont 2010 or Sardinia 2024)[209].

The 1999 reform of the regional form of government thus profoundly changed the institutional set-up of the Italian regions, basically introducing an elected prime-ministerial regional form of government. This system is similar to the one introduced in Israel between 1996 and 2001[210], previously analysed, with some structural and functional differences: the absence of a head of state in subnational entities, a strict application of the *aut simul stabunt aut simul cadent* principle, and a majoritarian electoral law. These differences are probably at the base of the deep difference in

[206] ibid 38–39.

[207] Those that allow it are Apulia, Campania, Emilia–Romagna, Friuli–Venezia Giulia, Lazio, Liguria, Lombardy, Piedmont, Sardinia, Sicily, Tuscany, and Veneto, while those that do not are Abruzzo, Basilicata, Calabria, Marche, Molise, Umbria, and the Autonomous Province of Trento. Aosta Valley and the Autonomous Province of Bolzano (South Tyrol) instead still have a parliamentary system and the head of the government is not directly elected.

[208] Andrea Michieli, 'Appunti sul sistema elettorale regionale a trent'anni dalla legge Tatarella, con uno sguardo rivolto al d.d.l. costituzionale in materia di elezione diretta del Presidente del Consiglio dei ministri' (2024) *Forum di Amministrazione in Cammino*, 18–19.

[209] Daniele Casanova, 'La rappresentatività del Consiglio nella forma di governo regionale di fronte alla sentenza n. 1 del 2014 della Corte costituzionale' (2016) *Osservatorio costituzionale AIC*, 14–19.

[210] Ottolenghi, 'Israel's Direct Elections System and the (Not so) Unforeseeable Consequences of Electoral Reform' (n 191) 92.

outcomes of the Israeli and Italian regional systems. While the former was abandoned after a short experiment because it failed to increase government stability, the latter proved to be effective in achieving this goal. The average duration of regional executives since the year 2000 is indeed 56 months (more than four and a half years), very close to the average duration of regional legislatures of 57 months and to the normal five-year term (60 months). An interesting fact is also related to a subsequent slight change in the electoral law, provoked by a law fixating the number of regional councillors (L. 14 settembre 2011, n. 148), which rendered impossible the increase of seats in case the one-fifth majority bonus would have not been sufficient to reach a majority in the council for the coalition of the President elect. This last case happened in Lazio in 2018, when the centre-left coalition was able to elect the President (Zingaretti) but could only count on 25 seats out of 51, managing nonetheless to arrive at the natural conclusion of the legislative term. A similar case happened in Sicily in 2012, which, even though it is a region with autonomous statute, can be considered relevant for this specific purpose: the coalition of the President (Crocetta) only had 40 seats out of 91, but no early dissolution of the assembly took place. These two cases seem to show that the *aut simul stabunt aut simul cadent* principle might be seen as an even more effective instrument than the majority bonus in assuring the stability of the executive, given the reticence of regional councils to force their own early dissolution by withdrawing their confidence from the head of the executive[211]. The stability provided by the *aut simul stabunt aut simul cadent* principle in such cases could however be biased if one only looks at the stability of the head of government. For example, regarding the Crocetta cabinet in Sicily (2012–2017), while the President never changed and managed to arrive at the natural end of his five-years term, there was an extraordinary turnover of the members of the cabinet, as 59 different people were named in only 5 years, so that the political situation cannot be seen as completely stable.

Another element to be considered are the actual causes for early dissolution which have been experienced in the last two decades. Considering the legislative terms concluded in or before 2023, 13 out of 65 had an early dissolution. None of these were however caused by political reasons: in seven cases the presidents were involved in legal proceedings and thus decided or were forced to resign, in three cases the elections were annulled and had to be repeated, in two cases the presidents were elected to the national parliament and thus automatically lost their position, in one case a president died in office. The early dissolution of the regional councils was thus always linked with

[211] Spadacini and Bassanini (n 199) 13–14.

causes regarding the person of the president, leading to an equation of the institutional instability of regional organs with the personal instability of the presidency[212].

As said, the elected prime-ministerial form of government at the regional level in Italy did have the result of strengthening governmental stability, especially in its 'formal' aspect (56 months between 2000 and 2023 versus 26 months between 1970 and 1995). However, some drawbacks of the system can also be observed. First of all, there was a marginalisation of regional councils, particularly in terms of control functions towards the government headed by the directly elected President and ability to deeply influence the political direction of the regional executives[213]. Furthermore, as anticipated, the whole institutional system became more rigid and strictly linked with the survival in office of the President, so that, even in the absence of a political crisis within the majority, dissolution and early elections have become necessary. Thirdly, the concentration of power in the hands of the monocratic body of the President has no equals in modern democratic form of governments, an issue even more intensified by the fact that the head of the regional government is also the institutional representative of the region as an entity (i.e., the function of the head of state at the national level)[214]. This problem is only mitigated by the fact that, usually, governing coalitions at the regional level are fragmented and contentious, so that moments of confrontation are needed even for the President, mostly within cabinet meetings. Fourth, alterations of the parliamentary majority which supports the regional executive are still possible and often tolerated, especially when they are needed to keep the President in their office in case parts of the incumbent majority decide to withdraw their support. Finally, there is an evident lack of transparency in the selection process of the candidates to the presidency: no regional electoral law prescribes primary elections to be held[215] and thus parties retain a major 'oligarchic' power over the President[216].

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[212] Spadacini and Bassanini (n 199) 14.

[213] Cesare Pinelli, 'La crisi dei Consigli regionali e i circuiti fra Stato e Regioni', in *Scritti in onore di Michele Scudiero* (Jovene 2008).

[214] Indeed, in the current Italian regional elected prime-ministerial form of government, the office of the President of the regional government has been characterized by the overlapping of two very distinct functions: the first one is that of an impartial organ with tasks of guarantee (e.g., the promulgation of regional laws), while the second one is that of the main representative of the 'most political' organ (i.e., the regional government). See: Federico Furlan, *Il presidente della regione 2.0 (tra Costituzione, fonti regionali e prassi)* (Giappichelli 2022) pt 3.

[215] It might be interesting to notice that centre-left coalitions have sometimes decided to hold primary elections to select the presidential candidate, and in the vast majority of those cases they also managed to win the presidential election. See: Furlan (n 216).

[216] Federico Furlan, 'Il Premierato elettivo è la strada giusta? La lezione di vent'anni di elezione diretta dei Presidenti di regione' (2023) III *ConsultaOnline* 1020, 1027–1032.

4 Critical Comparative Analysis

This final chapter will present a critical analysis of the proposals of reform of the Italian institutional system or its form of government in order to guarantee more governmental stability. The first part will focus on how a reformed (i.e., rationalised) parliamentary form of government might be able to solve Italy's institutional problems by tackling the deep causes of instability of the system. The second part will instead look at the possible effects of an elected prime-ministerial form of government, with a particular focus on the current Meloni proposal, which is intended at introducing such a system. The third part will attempt to analyse the possible effects of the introduction of a presidential or semi-presidential form of government, a solution which has also often been pondered. The analysis of all these possibilities will be carried out also by using a comparative method, specifically looking at the systems presented in Chapter 3[217]. Finally, the last part of the chapter will look into the possible threats to democracy coming from reforms of the Italian form of government.

1 Sticking with a Parliamentary System: Understanding the Real Causes of Italy's Political Problems

In order to critically assess the proposed constitutional reforms of the Italian form of government, mainly intended at limiting the supposed governmental instability that the country has faced throughout its whole republican history, it is first crucial to understand what these reforms might actually be able to solve and what, instead, they might not. Generally speaking, one might summarise the main problems that currently affect the Italian institutional system dividing them in three categories: crisis of the political system, crisis of representativity, crisis of participation[218].

Regarding the 'political' crisis, this is mainly happening because of the party system, which has become more and more fragile. As previously highlighted, parties have always played a major role in shaping the functioning of the political institutions in the Italian Republic. While on the one hand this is normal for a modern Western democracy, on the other hand Italian parties have shown some

[217] cf Andrea Cardone, Paolo Caretti and Massimo Morisi (eds) *Premierato, Cancellierato, Semipresidenzialismo e Presidenzialismo: uno sguardo comparato* (2024, Seminario di studi e ricerche parlamentari «Silvano Tosi»), which proposes a deep analysis of the topic in a comparative manner, specifically referring to the Italian regional form of government, to the German parliamentary system, the French semi-presidential system, and American presidentialism.

[218] Mauro Volpi, *Quale forma di governo per l'Italia* (Mucchi editore 2023) 11.

specific behaviours which have created an Italian exceptionalism. As seen in Chapter 1, during the proportional era (1946–1994), the impossibility of alternation in government for the main political parties created a situation in which the only major political force 'allowed' to govern, the DC, started having the discussions which normally happen between different parties within its own ranks, as the alternation in the leadership of the party between its factions ultimately defined the limited changes in the political direction of the country. It is thus recognised that the 'blocked democracy' of the first decades of the Italian Republic is directly linked to 'formal' instability but 'substantial' stability (i.e., limited duration of governments but extreme stability of the political direction), since the DC would have always maintained power even after multiple cabinet crises. The bipolar era (1994–2013) was instead characterised by more stable parliamentary majorities, which only slightly changed during the same legislative terms (this does not apply to the two technocratic governments, which are however very particular cases and can be inserted in this discussion with difficulty); the main, if not only, element of instability here were the highly fragmented political majorities in parliament, which had to group a large number of small parties in order to support the government. The current political situation, the so-called 'volatile-tripolar' era (since 2013), also has as its main element the evolution of the party system, from large bipolar coalitions to less strict (i.e., more volatile) alliances.

It is evident that no constitutional reform can directly assess the 'political' crisis, which has instead to do with party politics and convenience and the credibility of political actors, as well as with the socio-political culture of the electorate. Constitutional reforms would thus need to go hand in hand with a direct action aimed at assessing such 'political' issues[219]. This would have to combine various elements, such as: the introduction of general legal and socio-political education, starting from schools and universities; the relaunch of the discussion on public financing of parties, which would undoubtedly need rules and should probably be aimed at forming an adequate political leadership class of high quality; the inclusion of other bodies of intermediation other than political parties (e.g., civil society, non-governmental actors) within the policy-making debate[220]; a stricter set of rules regarding the discipline and honour with which public officials need to fulfil their duties (in application of art. 54(2) of the Constitution)[221].

The crisis of representativity has instead to do with various issues, but mainly: the system of blocked lists in the current electoral system, so that electors cannot directly choose their representatives, but

[219] Cheli (n 78).

[220] Massimo Luciani, 'Questioni generali della forma di governo italiana' (2024) 1 *Rivista AIC*, 14.

[221] Volpi, *Quale forma di governo per l'Italia* (n 218) 11–12.

they need to go through the mediation of political parties, and the growing decentralisation of the parliament (the representative institution *par excellence*) in shaping the policy-making discourse, as also recalled in Chapter 2. Indeed, the activity of the Italian parliament in the last decades has mainly focussed on approving government bills, very often with a question of confidence, on delegating the executive to legislate, on approving pieces of legislation which do not present a cohesive character but instead concern a too large number of different topics. This has resulted in a so-called 'alternate unicameralism'[222], as oftentimes only one chamber actually discusses the piece of legislative, with the other one approving it without any meaningful discussion. The possible solutions to these issues should involve: new and more efficient parliamentary rules of procedure (even more so after the reduction of the number of members of parliament subsequent to the already mentioned 2020 constitutional reform)[223], also aimed at limiting political fragmentation and volatility within the parliament itself; a stricter delimitation on the powers of the government in terms of emanating decree-laws which are supposed to have an urgency nature (nowadays evidently abused without the actual presence of particular necessities[224]); a regulation of the subjects to which the question of confidence can be placed on, so that parliamentary discussion can take place on pieces of legislation which are most important in deciding the political direction of the country; and, possibly, once for all, the overcoming of the symmetric bicameralism, which has lost any justification after the various reforms which have equated the legislative terms and the electorate of the two chambers (briefly discussed in Chapter 1)[225]. In this last sense, many of the constitutional reforms which have been proposed in the past presented various ideas on how to abandon the symmetric bicameralism. Most of them (1994 Speroni committee, 1997–1998 D'Alema commission, 2005 Berlusconi reform, 2016 Renzi reform) envisaged the radical transformation of the upper chamber, the Senate, both in terms of composition and powers, leaving in the hands of the Chamber of Deputies the majority of the tasks, most importantly the confidence relationship with the executive.

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[222] cf Ilenia Massa Pinto, 'Il "monocameralismo di fatto" e la questione della perdurante validità della Costituzione' (2022) 3 *Costituzionalismo.it* 88, Andrea Vernata, 'Bicameralismo dimezzato, perimetro costituzionale e sostanzialità delle forme. Il monocameralismo come limite e fondamento' (2022) 3 *Costituzionalismo.it* 148 and Stefania Leone, 'Un Parlamento per metà, tra critica e proposte' (2023) 2 *Quaderni Costituzionali* 327.

[223] cf n 113, but also Andrea Cardone, Paolo Caretti and Massimo Morisi (eds) *I Regolamenti parlamentari dopo la riforma di riduzione del numero dei Parlamentari* (2023, Seminario di studi e ricerche parlamentari «Silvano Tosi»).

[224] The Italian Constitutional Court has often reprimanded governments for the abuse of this instrument with various decisions (e.g., the famous 22/2012) and lastly with the judgement 146/2024. On this topic, see among others: Federica Fabrizzi, 'Una sentenza necessaria per stabilire un punto di non ritorno. Corte cost. 146/2024 e l'equilibrio della forma di governo' (2024) *federalism.it*.

[225] Volpi, *Quale forma di governo per l'Italia* (n 218) 13–15.

Finally, the existence of a crisis of popular participation is tangibly demonstrated by the constant growth of abstentionism at all levels[226]. Regarding parliamentary elections, for example, participation was above 90% until 1979, it remained above 80% until 2008 and then rapidly started to fall, so that in 2022 it did not even reach 64%. The volatility of the electoral choices is also another element which characterises this crisis, showing the disaffection of the voters towards all the components of the political arch. Furthermore, abrogative referenda (they main instrument of direct popular participation in the law-making process considered by the Italian Constitution) have also been less and less useful, with the necessary threshold of participation for them to be valid (50%) which was reached only once out of nine times after 1997. The first two issues here presented are directly related to the crisis of the political system, so that the resolution of the latter is necessary to assess the former in a comprehensive manner. Nonetheless, some reforms could be adopted, taking inspiration from other systems, in particular to tackle the phenomenon of 'involuntary' abstentionism: voting mandates, e-voting, mail voting, early voting, or possibility to cast a ballot in a different polling station than the one assigned by legal residency[227]. Regarding the mechanism of referenda, some reforms are possible as well, such as the lowering of the validity threshold or the introduction of new instruments of direct popular participation (e.g., positive referenda to propose legislation, not only to amend the existing one)[228].

Moreover, it is evident that a rationalisation of the parliamentary system is needed, even using more classical instruments in this sense thanks to a comparison with more efficient systems. For example, as seen previously, the Federal Republic of Germany also has a parliamentary form of government, but government duration is much higher: since 1949, only 9 chancellors have alternated in office, with 16 legislative terms out of 20 seeing cabinets lasting for the whole duration of the term itself. Among the various institutional differences between the German and Italian systems, some might be identified as crucial: a basically proportional electoral law with a relatively high threshold (5% of the national votes), the existence of the constructive no-confidence, and the power of dissolution in the hands of the head of government.

Regarding the electoral law, this is different from any Italy has ever had: even in the proportional era (1946–1994), the lack of such a high threshold created fragmentation in parliament, while the

[226] On the topic of abstensionism, see among others: Giacomo Delledonne, Luca Gori, Giuseppe Martinico, Fabio Pacin (eds) *Il peso dell'assente. Il fenomeno dell'astensionismo elettorale in Italia* (Rubettino 2024).

[227] cf the white paper published by the Presidency of the Italian Council of Ministers in April 2022, *Per la partecipazione dei cittadini. Come ridurre l'astensionismo e agevolare il voto*.

[228] Volpi, *Quale forma di governo per l'Italia* (n 218) 15–16.

majoritarian systems have allowed really small parties to enter the parliament thanks to coalitions with larger political forces. It has been analysed how the 5% threshold in the German system has highly reduced party fragmentation thanks to both a mathematical effect (parties which are not able to collect a sufficient number of votes do not enter the parliament and thus do not participate in the law-making and policy-making processes) and a psychological effect (electors are not willing to take the risk of 'wasting' their vote for a party which might not reach the threshold and thus aggregate around larger political forces); in turn, reduced political fragmentation in parliament leads to more stable governing coalitions, be they pre- or post-electoral[229]. The electoral threshold was raised various times also in another analysed country, Israel, which is implementing various rationalising reforms of the parliamentary system after the elected prime-ministerial experiment (1996–2001): it went from 1% to 2% in 2003, and finally to 3.25% in 2014.

The constructive vote of no-confidence is instead one of the main rationalising mechanisms of parliamentarism, sometimes evoked in the Italian debate on institutional reforms but never implemented. As previously mentioned, this instrument is present in various European parliamentary systems and other countries are discussing on its possible adoption. The constructive vote of no-confidence undoubtedly has a stabilising effect on governments[230], since not only a parliamentary majority needs to agree on not supporting the incumbent cabinet, but it also concurrently needs to aggregate around a different name to substitute the head of government. This mechanism allows even minority governments to resist to votes of no-confidence. Another interesting example of adoption of the constructive vote of no-confidence comes from Israel. After the creation of the state, such mechanism did not exist, but it was introduced after the elected prime-ministerial system was abandoned in 2001 and the parliamentary system was re-established. At first, the Israeli constructive no-confidence was rather permissive, as parliament did not need to directly elect a new Prime Minister, but only a *formateur* tasked with heading the formation of a new cabinet. In 2015, however, the parliament passed a new reform which introduced a very restrictive form of constructive no-confidence, as not only the Prime Minister, but the whole cabinet needs to be voted in at the same time[231].

[229] Giovanni Capoccia, 'The Political Consequences of Electoral Laws: The German System at Fifty' (2002) 25(3) *West European Politics* 171.

[230] Rubabshi-Shitrit and Hasson (n 47) 576–590.

[231] Tal Lento and Reuven Y Hazan, 'The vote of no confidence: towards a framework for analysis' (2021) 45(3) *West European Politics* 502.

The possible effects of the introduction of a constructive vote of no-confidence in Italy are unlikely to produce important results outside the context of deeper concurrent reforms within the framework of a parliamentary form of government, since, as previously highlighted, the vast majority of government crises in Italy do not have a 'proper parliamentary' cause, but rather mostly come from extra-parliamentary political discussions (either linked with party politics, or institutional matters which fall outside the control of the Italian parliament, for example on the European or international level). A way of resolving this issue might be the so-called 'parliamentarisation' of government crises, a mechanism started during the Pertini presidency (1978–1985), which has manifested itself in the refusal of the head of state to accept the resignation of the head of government without a formal and public discussion of the parliament on the matter. During the 10th legislative term (1987–1992), the future President of the Republic Scalfaro proposed a constitutional reform aimed at engraving such principle in the Constitution[232], which however was not implemented[233]. Such a reform might indeed become a further element of stability for the Italian system, tackling the problem of the lack of 'proper parliamentary' crises and even rendering the introduction of the constructive no-confidence more effective. However, the principle of constructive no-confidence might be unconcealable with electoral systems which are not proportional and based on single party-lists (such as the Italian ones of the last three decades). Indeed, when the electors vote for a coalition of parties, or even more so when a designated head of government is present on the ballots, it would be much less justifiable to provide the parties for a way to ignore the expressed will of the voters[234]. A reform which might be even more effective than the introduction of constructive no-confidence might thus be instead to give the President of the Council the power to dissolve parliament before the end of its term, which as seen in Chapter 3 exists in Germany as a customary application of the Basic Law. In various other European parliamentary systems, the head of government possesses such powers as well, such as in the UK, Spain, or Sweden[235].

[232] The reform (AC5231), proposed to modify art. 94 by adding one last clause: 'Whenever the government intends to present its own resignation, it shall notify the Chambers through a motivated message. The pertaining discussion shall be concluded, if requested, by a vote.' This reform was combined with another proposal (AC5219), which was even stricter: 'The Government, before presenting its own resignation, shall notify in a motivated manner its reasons to each Chamber. On the basis of the communications of the government, each Chamber shall confirm or revoke the confidence'.

[233] Marco Cecili, 'Crisi del governo Draghi: tra una parlamentarizzazione e lo scioglimento anticipato delle Camere. Il Presidente della Repubblica ha fatto quel che poteva?' (2023) 1 *Osservatorio costituzionale AIC* 49.

[234] Ceccanti, 'La forma neoparlamentare di governo alla prova della dottrina e della prassi' (n 204) 113–116.

[235] Ceccanti, 'L'elezione del Governo e lo scioglimento anticipato delle Camere nei Paesi dell'Unione europea' (n 52) 334–338.

2 The Meloni Reform: An Elected Prime-Ministerial System in Italy

The current proposal of reform of the Italian form of government by the Meloni government aims instead at overcoming the current parliamentary system, setting new balances between the main republican institutions and strengthening the stability of the government. This section will examine various aspects of the reform, highlighting both possible advantages and drawbacks also thanks to a comparative analysis.

2.1 The Origins and the Possible Advantages of the Reform

As seen in Chapter 2, the idea of reforming the Italian institutional system and, often, even its form of government has roots in the past decades. The initial hope that the historical turning point of the 1990s, which saw the overcoming of the concept of 'blocked democracy', the modernisation of the party system, and the introduction of a majoritarian electoral system, could have represented a new opportunity for the Italian institutional system to abandon the malpractices of the previous decades, especially regarding governmental instability, soon proved to be misplaced. Indeed, various scholars and politicians alike point out how parties managed to maintain a lot of power, also thanks to the lack of a reform of the functioning of the parliament itself (as seen, the last major reform of the parliamentary rules of procedure date back to the 1980s and 1990s), while they also see the problem of governmental instability as being aggravated by the volatility of the party system, which has not yet found a durable balance. They thus see the need to continue on the path of reforms in order to grant continuity and stability to the executives[236].

It is on this wave that the direct election of the head of government entered the debate, both political and academic. On theoretical grounds, a prime example of advocate for this solution was Costantino Mortati. Trying to balance governmental stability on the one hand and the constitutional need to avoid an exceptional concentration of powers in a monocratic institution, he reached the conclusion that the head of state (the President of the Republic) needs to maintain their role as a guarantor of the Constitution acting as a balance between government and parliament. It is thus the head of government, the President of the Council, who should gain more political power thanks to a direct election, thus actually putting the parliament and the government on the same level and avoiding that one of the two institutions might be able to excerpt too much power over the other. Two main

[236] Annamaria Poggi, *Le "virtù" del premierato: sistema politico e forma di governo in Italia* (Giappichelli 2024) 87–106.

elements are central in Mortati's vision for a reformed institutional system: concurrent elections of the head of government and the chambers and a majoritarian electoral law[237].

Mortati's idea of an elected prime-ministerial form of government in Italy dates back to the 1970s and 1980s, and various scholars have supported it in the subsequent decades. A further wave of support for this form of government has come from the deep transformations of the 1990s and the following delegitimisation of the political system in general, which has struck many Western democracies. In the view of the supporters of the elected prime-ministerial form of government, the transformed cultural conditions have brought along the need for institutional reforms to accompany them. When parties ceased to actually represent the class divisions of the population on the same level as they did before the deep global changes of the 1990s, both electors and politicians have started to ask for a transition towards democratic systems which are both more participatory and more directly linked with the popular will. This view, of which the direct election of the head of government represents a feasible outcome, has thus found prosperous ground to grow on[238].

The aims of the implementation of the elected prime-ministerial system through the Meloni reform are thus multiple. Overcoming the supposedly evident difficulties of parliamentary systems worldwide during the current time of crisis of democracy and parties. Strengthening the stability of governments *vis-à-vis* fractionalised parliaments and disunited coalitions, even when they are created before the elections. Giving the head of government an actual way of implementing the dispositions of art. 95(1) of the Constitution: 'The President of the Council of ministers directs the general policy of the government and is responsible for it. They maintain the unity of the political and administrative direction, promoting and coordinating the activity of the ministers'. Strengthening the country as a whole, giving its government the capability of having a durable and effective international standing, both on the European and global level. Giving the head of state, the President of the Republic, a less political role, which has been necessary in the last decades of high instability, and a more institutional one. Reestablishing clear roles for the governing majority and the parliamentary opposition, so that voters can clearly understand where responsibilities of the policies lie[239].

The current form of the proposed reform (i.e., the one approved by the Senate in June 2024, discussed in Chapter 2) presents both similarities and differences with the Italian regional form of government,

[237] Augusto Barbera and Stefano Ceccanti, 'La lenta conversione maggioritaria di Costantino Mortati' (1995) 1 *Quaderni Costituzionali* 67.

[238] Poggi, *Le "virtù" del premierato* (n 236) 87–106.

[239] ibid 107–166.

which was analysed in Chapter 3. An important aspect they have in common regards the pre-determined outcome of the electoral system, which in both cases has to (or would have to) provide the elected head of government with a parliamentary majority thanks to a majority bonus. This provision was completely absent in the Israeli elected prime-ministerial system, which instead maintained a proportional electoral system: this has been regarded as one of the main causes of failure of the system in Israel[240], and thus its presence in the Meloni proposal might represent an advantage.

The principle of *aut simul stabunt aut simul cadent* proposed by the Meloni government has instead different characteristics from both the current regional Italian form of government and the Israeli elected prime-ministerial one. In all three cases the assembly is (was, or would be) able to force its own dissolution by withdrawing the confidence from the head of the executive, but the powers of the latter vary in the three cases. In the Italian regions, whenever the head of the executive ceases to be in office, early elections need to be called, with no exceptions. In Israel, instead, the head of government had the power to dissolve the assembly and cause their own resignation in accordance with the head of state, but resignations, incapacitation, or removal from office did not cause an early dissolution of the Knesset, but rather led to special prime-ministerial elections in order to have a new elected head of government to serve only for the rest of the parliamentary term. The Meloni reform proposes instead another different version: the head of government would be able to force the dissolution of the parliament and their concurrent resignation, but they might choose to resign and not force early elections, leaving instead to the head of state the possibility to choose a new head of government, on the condition that they were elected within one of the lists supporting the former head of government at the time of the elections.

The version of the *aut simul stabunt aut simul cadent* principle present in the Italian regional form of government is thus the most stringent one, and has been regarded by scholars as a highly stabilising element, possibly even more than the majoritarian electoral system[241]. Its watered-down version in Israel has instead been seen as another weakening point along with the lack of a majoritarian electoral law[242]. In the Meloni proposal, the principle is not as rigorous as in the Italian regions, but presents elements of difference from the Israeli version which might be seen as positive. First of all, the Italian parliament has no self-dissolution power, nor the Meloni reform proposes to introduce one: in Israel,

[240] Ottolenghi 'Israel's Direct Elections System and the (Not so) Unforeseeable Consequences of Electoral Reform' (n 191) 107–108.

[241] Spadacini and Bassanini (n 199) 13–14.

[242] Ottolenghi 'Israel's Direct Elections System and the (Not so) Unforeseeable Consequences of Electoral Reform' (n 191) 108–109.

this power was instead used as a constant threat against the executive[243]. Secondly, the Italian proposal grants the head of government a full substantial power of forcing parliamentary dissolution (which is instead currently exercised in coordination with the head of state, as discussed in Chapter 1), as there is no need of presidential approval nor of a political crisis between the parliament and the government. This might thus be another element for which the Italian proposal positively differs from the Israeli elected prime-ministerial system as the power of dissolution in the hands of the government is seen as a stabilising element[244].

2.2 The Probable Drawbacks of the Meloni Reform

While some scholars and politicians highlight the possible benefits that the reform would bring to the Italian institutional system, others shed more light on the limitations and problems of the same reform.

The first possible negative point is related with the introduction of a constitutional provision on which the electoral law needs to be adapted, specifically a majority bonus for the lists connected to the winning President of the Council. At the beginning of the parliamentary discussion, this bonus was fixed at 55% of the seats in each chamber, but the number was later eliminated by the Constitutional Affairs committee of the Senate and would thus have to be fixed by the necessary electoral law which would have to be approved[245]. An important issue with this provision, also pointed out by the opposition parties during the discussions, is the lack of a minimum threshold to access this bonus[246]. Indeed, the 2005 electoral law (*legge Calderoli*) had a similar provision, which, as discussed in Chapter 1, was later declared unconstitutional by the Constitutional Court, as it clashed with the principle of equality of the vote of every citizen, in violation of art. 48(2) of the Constitution (judgement 1/2014). Of course, as this would be a constitutional provision itself, it could not be subjected to a constitutional review, unless the Constitutional Court recognised in it a violation of the supreme principles of the constitutional system. As the electoral law would however have to specify the bonus and, possibly, a threshold, this aspect remains controversial[247]. Furthermore, the very

[243] According to the Meloni reform, parliament would indeed only have an indirect power of forcing its own dissolution by withdrawing the confidence to the executive, but no direct power of threatening early prime-ministerial elections by initiating (and not concluding) a self-dissolution procedure, as was the case in Israel (ibid 110–111).

[244] Ceccanti, 'L'elezione del Governo e lo scioglimento anticipato delle Camere nei Paesi dell'Unione europea' (n 52) 334–338.

[245] Fabrizzi and Piccirilli, 'Un nuovo Osservatorio' (n 156) 39.

[246] ibid 12–13.

[247] cf Antonio Ignazio Arena, 'Revisione della forma di governo e rispetto dei principi fondamentali (riflessioni a margine della proposta di legge a.s. n. 935)' (2024) II *ConsultaOnline* 670, 687–690.

existence of a majority bonus on the national level for the election of the Senate could have also been problematic, as the Constitution itself states that '[t]he Senate of the Republic is elected on a regional basis' (art. 57(1)). During the approval of the draft reform in the Senate, however, the majority bonus has been specifically recognised as a limit to this provision by an addition to the same art. 57(1)[248], thus equalising even more the electoral derivation of the two chambers. In comparative terms, it is also worth noticing that, for example, out of the 27 EU member states, only 5 (including Italy) do not currently have a proportional electoral system, and only one (Greece) has a majority bonus for national elections (a principle, however, not enshrined in the Greek Constitution): the myth according to which a majoritarian electoral system is needed for modern democratic institutions to be able to fully carry out their tasks might thus be compromised by this mere fact[249]. Some also argue that a majority bonus would even be ineffective in stabilising the parliamentary support for the government (as shown, for example, by the experience in Italian regional councils between 1995 and 2000, even if in that case the head of government was not directly elected, but only pre-designated by electoral coalitions): instead, what might be useful are instruments aimed at allowing minority cabinets to govern (e.g., 'negative' majorities to be reached in order to withdraw the confidence, or possibility of approving government bills if the parliament does not concurrently hold a vote of no-confidence as in France)[250]. Finally, the majority bonus awarded to the coalition supporting the elected President of the Council would transpose the 'dragging' effect, which is already experienced at the regional level[251]: the national majority bonus would not be awarded necessarily to the coalition gaining the most votes, but to the one supporting the elected head of government, thus creating a parliament which is subjected to the head of government in its very formation[252].

The second critical aspect is the simultaneous existence of the principle according to which citizens should directly choose the leader of the government and the provision according to which a 'replacing' President of the Council might take office in some cases. This 'replacing' head of government would indeed lack the legitimacy deriving from a direct election that this reform aims at implementing, and would have to be appointed by President of the Republic among the members of parliament elected in relation to a specific group or coalition, only once during the same parliamentary term. If one accepts the principle according to which the head of government needs to be popularly

[248] Fabrizzi and Piccirilli, 'Un nuovo Osservatorio' (n 156) 40.

[249] Volpi, *Quale forma di governo per l'Italia* (n 218) 17.

[250] Ceccanti, 'La forma neoparlamentare di governo alla prova della dottrina e della prassi' (n 204) 120–121.

[251] Casanova (n 209) 14–19.

[252] Michieli (n 208) 22–23.

elected, it is difficult to conciliate it simultaneously with the possibility of selecting a person who was not chosen by the electorate for this office. Furthermore, as the 'replacing' President of the Council would 'only' need to be elected in the lists supporting the elected President of the Council, whenever an MP changes their political affiliation during the legislative term (as not rarely happens in Italy) it would be possible to have a different parliamentary majority supporting this 'replacing' head of government (who might also potentially be the same person who decided to bring down the first executive exactly by changing their parliamentary group)[253]. Lastly, and probably paradoxically, the appointment of a 'replacing' President of the Council, would lead to a strict application of the *aut simul stabunt aut simul cadent* principle, as no solution other than parliamentary dissolution would be possible in case they cease their term for any reason. This hybrid solution would thus present some critical aspects, both in ideological and practical terms, which might be problematic for the overall reform[254].

These formulations of the reform represent a watering down of the *aut simul stabunt aut simul cadent* principle, which, as highlighted in the previous section, is a major element of stability for elected prime-ministerial systems. Israel had opted for special prime-ministerial elections to be held, thus maintaining the principle of direct choice of the head of government by the people, and even in that case scholars have highlighted the shortcomings, both practical and ideological, of such an exception to the need of simultaneous parliamentary and prime-ministerial elections[255]. The *aut simul stabunt aut simul cadent* principle, deemed mostly effective in stabilising governments in terms of duration, might however also bring a negative effect, which has been sometimes observed at the regional level in Italy (as well as on the municipal level), that of transforming itself into a *simul fluctuabunt* ('they will stay afloat together'): indeed, in cases of discordance between the executive and the parliamentary majority, both might be tempted not to use their powers to cause simultaneous

[253] In practice, however, it appears difficult that the choice of the head of state regarding the appointment of a 'replacing' President of the Council would not have the approval of the outgoing 'elected' President of the Council, which could force early elections in case of a lack of agreement on their replacement. However, in case the President of the Council decides not to use the power of dissolution after their resignation, and leave the choice of their replacement to the parliament (thus letting the 'replacing' President of the Council' have a classic parliamentary legitimacy deriving from consultations among all parliamentary political groups), the possibility of changing the governing majority could take place.

[254] Aureli (n 154).

[255] Ottolenghi, 'Israel's Direct Elections System and the (Not so) Unforeseeable Consequences of Electoral Reform' (n 191) 108–109.

resignation and dissolution, but instead continue to remain in office even in a political deadlock, which would be an inauspicious situation for the country[256].

Another problem exists in the current version of the proposal (approved by the Senate in June 2024) with the existence of the 'replacing' President of the Council, as the new art. 92(5) would state: 'The President of the Republic confers to the elected President of the Council the task of forming the government; they appoint and revoke, on the latter's proposal, the ministers'. A literal – and, probably, intrepid – reading of this provision would mean that only the 'elected' President of the Council would possess the power to propose the appointment and revocation of ministers, while the 'replacing' President of the Council would not. This would mean a possible institutional impasse in the appointment of a new government in case of a replacement of the elected President of the Council[257].

Furthermore, it might be worth noticing that many practices which the current governing majority would prefer to completely dismiss (e.g., technocratic governments, change of parliamentary majorities) would still be somehow possible, even neglecting any possible legal criticism. Indeed, as previously mentioned, even though the 'replacing' President of the Council would need to be from a parliamentary group linked to the elected President of the Council at the time of the election, it is possible that them alone or their whole parliamentary group might decide to find a parliamentary majority which is different from the one supporting the government of the elected President of the Council. Furthermore, even though both the elected President of the Council and their possible 'replacement' would need to be members of parliament, nothing in this reform is said about ministers, so that in cases of emergency the 'elected' President of the Council, or their 'replacement', might choose technocrats as ministers[258]. In any case, the will to prevent the appointment of technocrats to the Presidency of the Council or to form governments of national unity with a non-political head of government generally seems to undermine a power of the President of the Republic which has so far been successfully used in cases of deep crisis, be it socio-economic or political. Abandoning the practice of political consultations to form a government of national unity, on which the head of state surely does not have a coercive power over parties but merely exercises their soft power, would thus

[256] Balduzzi (n 77) 161.

[257] Fabrizzi and Piccirilli, 'Un nuovo Osservatorio' (n 156) 40, 43.

[258] However, such a type of government would not fall into the classical category of 'technocratic governments', which are mostly equated to 'technocrat-led governments' (n 88).

leave the early dissolution of parliament as the only way out, a possibility which does not appear as ideal in said critical circumstances[259].

Lastly, it is also important to stress that the enhanced powers of the head of government do in fact deteriorate the powers of other institutions. Regarding the parliament, the already existing trend of marginalisation of its activity as the legislative body *par excellence* would be even more aggravated, as the example of the Italian regions shows in relation to the loss of centrality of the regional councils[260]. The government could also use the threat of dissolution as a way of forcing the parliament to approve its proposals, thus subjecting it to an even deeper degree of 'submission' to its political will then now is done through the (ab)use of the question of confidence: the power of the President of the Council within the *aut simul stabunt aut simul cadent* principle would be indeed more effective than that of the parliament, as it is a monocratic organ capable of making decisions in a more rapid manner[261].

It would however probably be the Presidency of the Republic the most undermined institution, whatever the supporters of this reform might declare. Indeed, even though the textual passages of the constitutional revisions regarding the head of state are limited, the effects of the overall reform are not at all negligible. As a matter of fact, the President of the Republic would appear to act as a mere executor of the constitutional provisions regarding the formation of the government and the dissolution of parliament, which are currently the most important prerogatives of the office. Furthermore, such an atypical confidence relationship, not at all comparable to that of a normal parliamentary system, might create further imbalances among institutions, so that one single individual, the head of government, might appear to stand as the uncontested centre of political power[262]. Furthermore, the provision of the reform which eliminates the countersignature of some acts of the President of the Republic[263], which instead appears to strengthen the office, would actually probably be either useless or unreasonable (i.e., a consolation prize): such acts are already formally

[259] Lorenzo De Carlo, 'L'esercizio del potere di scioglimento delle Camere da parte del Presidente della Repubblica: per una ricostruzione diacronica' (2024) 2 *Nomos*.

[260] Furlan (n 216) 1036–1037.

[261] Simone Cafiero, 'La riforma sul «premierato» e la «tradizione parlamentare» italiana. Razionalizzazione o abbandono?' (2024) 2 *Osservatorio costituzionale AIC* 138, 145-146.

[262] Aureli (n 154).

[263] Such acts would be: the appointment of the President of the Council, the appointment of judges of the Constitutional Court, the grant of pardon and the commutation of sentences, the decrees calling elections and referenda, the messages to the chambers of parliament, and the rejection of laws.

and substantially presidential and forbidding their technical control could allow possible errors or misuses[264].

Regarding the distribution of the dissolution powers, some argue that the reform would introduce an important contradiction. The new art. 94 indeed lists all the cases in which the President of the Republic would be forced to dissolve the parliament and when, instead, they should appoint a 'replacing' President of the Council (or re-appoint the incumbent one). However, the reform would not abolish art. 88(1), which states that '[t]he President of the Republic may, in consultation with the presiding officers of parliament, dissolve the chambers'[265]. It thus appears that the head of state, not legitimised by a direct popular election as the head of government, would retain such power, even when the parliament has not withdrawn its confidence from the elected President of the Council (which would instead trigger a 'forced' dissolution). For example, the President of the Republic, guarantor of the unity of the nation, might use such powers whenever the executive or the parliament would put such fundamental value at risk[266].

In this context, it might also be interesting to compare the current proposal with the 2005 Berlusconi reform, which was not approved as it was rejected by the electorate through referendum. Indeed, the 2005 reform basically introduced an elected prime-ministerial form of government: the President of the Republic would have been forced to appoint the leader of the winning coalition, expressed on the ballot of parliamentary elections, even though the head of government would have not been directly elected through a different ballot. According to that proposal, the incoming government would have not needed the investiture vote of the Chamber of Deputies (the Senate would have been excluded from the confidence relationship, as symmetric bicameralism would have also been overcome by the reform, another very discussed point that the current proposal fails to meet). This would have resulted in an even more powerful head of government, without the need for direct elections. Furthermore, the *aut simul stabunt aut simul cadent* principle would have been stricter than the version proposed by the Meloni reform: dissolution of the parliament and dismissal/resignation of the head of government would have had to be concurrent in all cases but one: the same parliamentary majority would have had to choose a new head of government within 20 days of the vote of no-confidence towards the previous one, but this new head of government would have had to strictly follow the government programme of the dismissed cabinet. Thus, the 2005 Berlusconi proposal paradoxically appears to

[264] Antonino Spadaro, 'Dal "parlamentarismo" al "premierato": le quattro vie percorribili' (2024) 2 *Forum di Quaderni Costituzionali* 101, 111–112.

[265] The reform would only abolish the last parts of art. 88(1): 'or even only one of them'.

[266] De Carlo (n 259).

present an even stricter version of the principles from which the Meloni proposal stems, without however technically recurring to the direct election of the head of government.

In sum, the introduction of the elected prime-ministerial form of government in Italy[267] presents various problems, both in abstract theoretical terms and factual terms related to the current Meloni reform. Indeed, on the one hand, it would like to create a system which does not exist on the national level in any other country: Israel introduced it and abandoned it after five years because of its ineffectiveness. On the other hand, it proposes to transpose the Italian regional form of government to the national level[268], ignoring the different institutional settings (mainly, a dual balance on the regional level between executive and assembly and a triadic balance on the national level between executive, parliament, and head of state) and most importantly the different powers that the regional and national executives possess, which cannot really be compared. Furthermore, the independence of the parliament as a constitutional body in its very formation process might be compromised because of the 'dragging' effect of the prime-ministerial elections described above[269].

3 Going Even Further: Presidentialism and Semi-Presidentialism in Italy?

Since the times of the Italian Constituent Assembly, some have been proposing a presidential form of government for the country. For example, an important politician and scholar as Piero Calamandrei, member of the Constituent Assembly, opposed the idea that presidentialism would have led, sooner or later, to a dictatorship, arguing instead that the Fascist regime was born of an inefficient parliamentary system. However, fears of a strong leadership in the hands of a single person prevented further discussions on the topic and, as detailed in Chapter 1, a parliamentary form of government was chosen[270].

During all the republican era of Italy, other kept arguing in favour of a presidential form of government, mostly looking at the American system as a model. However, even in those political

[267] It might be worth noting that some do not see the current proposal as a different form of government, but instead talk about an iper-rationalised version of a parliamentary system. See: Alessandro Sterpa, *Premierato all'italiana: Le ragioni e i limiti di una riforma costituzionale* (Utet 2024). Many others, however, specifically talk about a different form of government, alternatively defined as elected prime-ministerial, semi-parliamentary, or neo-parliamentary (n 27).

[268] Spadaro (n 264) 105.

[269] Volpi, *Quale forma di governo per l'Italia* (n 218) 44–58.

[270] Calabrò and Cocchiara (n 82) 89–92.

environments where expanded powers of the executive, mostly deriving from a direct popular election, are seen favourably, most have not proposed a presidential system. Indeed, there are various reasons why a presidential form of government in Italy might be negative. First, it would deeply transform the office of the President of the Republic, whose role as an impartial guarantor of the Constitution in a highly polarised political environment is positively regarded on all political sides. Second, the powers of the parties and the parliament would be even more diminished in favour of singular political figures. Third, governmental stability and efficiency would not be guaranteed, as the 'divided government' that characterises presidential systems (i.e., complete independence of the parliament and the executive) would probably lead to conflict between the two institutions, even more so in such a fractionalised political system such as the Italian one. Lastly, this same polarised political system could cause a paralysis of the institutional setting, as shown by the American example, in which positive confrontation between opposite factions is necessary to the functioning of the system[271].

Given the various issues that a presidential form of government might introduce in an already problematic system such as the Italian one, the supporters of a direct election of a more powerful head of state have turned towards the semi-presidential system, especially looking at the model of the Fifth French Republic. Indeed, as explained in Chapter 3, in 1958 France adopted a new Constitution abandoning the previous post-war parliamentary system and choosing a semi-presidential one. The reasons for this deep reform have been analysed more in depth in Chapter 3, but they mostly related to the high governmental instability of the Fourth French Republic, often equated for this with the Italian Republic. According to some, the reform in France has solved the problem of governmental instability since the presidential term is fixed and not subject to parliamentary control; other contributing factors have been the adoption of a mixed proportional–majoritarian electoral system which has most of the times granted the presidents a favourable parliamentary majority and a bipolarisation of the political system (which might also arguably be seen as an effect of the semi-presidential system).

Proposals of introducing a semi-presidential form of government in Italy started to appear already in the 1960s and continued to be presented throughout all of the subsequent decades of life of the Italian Republic in various forms and in different waves: recently, Meloni's Brothers of Italy presented a proposal of constitutional reform to introduce this system in 2018[272], and the programme of the right-

[271] Volpi, *Quale forma di governo per l'Italia* (n 218) 31–33.

[272] ibid 41.

wing coalition for the 2022 elections envisaged the direct election of the President of the Republic, as discussed in Chapter 2. The attraction of Italian politics towards the French institutional system has not however appeared after the birth of the Fifth French Republic, but has deep historical roots which date back to even before the unification of Italy: the Savoy monarchy, on whose constitutional setting the later unified Kingdom of Italy was based, had France as its motherland and its institutions were clearly created using the French ones as a model. Thus, looking at France as a source of inspiration might not be unjustifiable and might instead have a historical significance[273]. Furthermore, it is important to notice that the French semi-presidential system has been itself subjected to various reforms through the decades, so that its current form can be seen as even more efficient than its first version of 1958. The advantages of the introduction of the updated French system might thus be the ones already discussed, especially regarding an increased governmental stability and an enhanced prestige to the political system as a whole[274].

However, the Fifth French Republic continues to present some degrees of governmental instability, as three periods of cohabitation took place, and 45 different cabinets have taken office in the 65 years of existence of this system. Furthermore, the parliamentary institution has lost centrality and relevance even in the eyes of the electorate, as shown by the high difference in electoral participation between presidential and parliamentary elections: 75% against 43% in 2017 and 72% against 46% in 2022. Finally, the political volatility and party instability that in the last years hit Italy has also appeared in France, shaking the two main pillars on which its semi-presidential system based its stability: bipolarism and a clear parliamentary majority. Indeed, the election of centrist Emmanuel Macron to the presidency in 2017 and his confirmation in 2022 clearly marked the end of right–left bipolarism; the parliamentary elections of 2022 and 2024 have also shown how the electoral law has become incapable of creating clear majorities in the National Assembly, while they strengthened the positions of extremist parties, on both ends of the political spectrum. This led the President to use his powers in an extensive way, bypassing normal parliamentary procedures and increasing even more popular dissatisfaction towards a system that is regarded as incapable of adequately representing large shares of the electorate[275].

Thus, even though the French semi-presidential system has been described as effective in addressing some issues which were common to the Fourth French Republic and the Italian Republic, it might not

[273] Carlo Fusaro, 'Ruolo del presidente della Repubblica e forma di governo in Italia. L'ipotesi semi-presidenziale' (2013) 1(30) *Civitas Europa* 9, 22.

[274] ibid 23–25.

[275] Volpi, *Quale forma di governo per l'Italia* (n 218) 34–39.

be able to face the current challenges that Italy is facing, which, as seen throughout this dissertation, have a lot to do with the current shape of the party and political system. Moreover, Italy currently lacks crucial historical circumstances such as the ones that forced France to adopt a new regime (e.g., decolonisation, the Algerian War, the role of De Gaulle), and a semi-presidential system in Italy might have the same drawbacks just described in relation to a possible adoption of a presidential form of government: too deep transformation of the Presidency of the Republic, possible deadlock in case of cohabitation or parliamentary fragmentation, reduction of representativity of the parliament and thus consequential disaffection of voters towards the democratic institution *par excellence*, even further decentralisation of parliament in the discussion on the general political direction[276].

4 Does a 'Democratic Problem' Exist?

The issue of the reforms of the form of government also needs to be framed within the context of evolution of representative democracy that has been taking place in various constitutional systems in the last decades. In particular, a pattern that can generally be observed is that of transition from consensus democracy towards majoritarian democracy, using the terms introduced by Lijphart (concepts already discussed in Chapter 1). Both types can be seen as different manifestations of pluralist and representative democracy, so that no threat should come by either as long as the mechanisms which regulate them provide for ways to avoid degenerations[277].

That said, in Italy the crisis of the form of government, which has always been a topic of debate and has exploded in the 1990s, is also strictly linked with the decline of some central values of representative democracy. In particular, this decline is determined by the crisis of a number of fundamental elements which characterise parliamentary form of governments, such as the relationships of representativity and political responsibility that should exist between the executive and the parliament and between the parliament and the electorate, the centrality of public parliamentary debate, and the exercise of the legislative function by the assemblies representing the electoral body. Some issues have already been discussed, such as the limitations to the activity of the parliament in terms of law-making processes and discussions on the political direction of the country, which have mostly been, directly or indirectly, transferred to the executive, but also the electoral laws have contributed, on the one hand limiting the power of voters in directly choosing their

[276] ibid 42–43.

[277] Poggi, *Le "virtù" del premierato* (n 236) 1–44.

representatives (e.g., blocked lists without the possibility of expressing individual preferences), and on the other hand in trying to transpose the power of investing the government and its head from the parliament directly to the electorate (e.g., coalition leaders present on the ballots, pre-electoral coalitions with prime ministerial candidates)[278].

Some have seen the calls for a reform of the form of government (specifically towards the direct election of the head of state or the head of government) as a possible further threat to Italian democracy, whose main defensive instruments have derived so far from the guarantee bodies provided for by the Constitution (mostly, the President of the Republic and the judiciary, especially the Constitutional Court)[279]. Indeed, it has happened that the supporters of such reforms have delegitimised some core mechanisms or institutions of parliamentary democracy, such as: political consultations in order to find post-electoral coalitions; parliamentary elections themselves in case they were not able to produce a clear majority in the assembly; the government when born out of post-electoral coalitions and thus not a direct expression of the popular will; the President of the Republic for calling early elections only as a last resort and thus leading the parliament towards the natural end of its term even with different governing coalitions[280]. Of course, the mere will of reforming the Italian form of government even outside the margins of parliamentarism, thus enshrining in the Constitution an elected prime-ministerial, semi-presidential, or presidential form of government cannot be seen by itself as an anti-democratic and reactionary offensive, as the Constitution itself does not prevent any change in the form of government and authoritative voices in favour of such reforms have existed even among the ranks of the members of the Constituent Assembly (as previously recalled as well)[281]. It is however undeniable that such reforms, especially in case of an elected prime-ministerial form of government (which, as seen, has very limited examples to draw from in order to prevent possible authoritarian degenerations) would undermine the balances that until now have kept Italian representative democracy alive even in its status of continuous crisis,

[278] Carlo Ferruccio Ferrajoli, 'Come esautorare il parlamento. Un caso esemplare del declino di una democrazia rappresentativa' (2020) 10 *Teoria politica* 155, 155–177.

[279] Examples of important interventions of such organs in the political arena in the last years might be: the rejection by the Constitutional Court of the electoral laws (in 2014 and 2017) providing for a national majority bonus without minimum requirements (thus possibly transforming mere relative majorities into absolute or over-sized majorities); the actions of the President of the Republic in 2019 in managing to find a new governing majority, even after the League caused the government crisis of the first Conte cabinet with the hope of an early dissolution of parliament with the explicit aim of acquiring 'full powers' (in the words of the party leader) thanks to favourable opinion polls. See: Ferrajoli (n 278)

[280] Ferrajoli (n 278) 177–179.

[281] Poggi, *Le "virtù" del premierato* (n 236) 1–44.

in particular regarding the checks on the executives coming both from the parliament and the head of state[282].

Any discussion on this topic cannot be however proposed without referencing the broader crises of constitutional democracies and rule of law which are taking place in various areas of the world, including in the European Union[283]. Pushes towards extreme majoritarianism and populism have been regarded as one of the main causes of such crises[284], and are thus deeply connected with the issues presented above regarding the current Italian political and institutional reality. Within the EU, Hungary is seen as the prime example of a country experiencing durable democratic backsliding thanks to an authoritarian transformation of its political and legal system since the early 2010s, when a right-wing coalition came to power. In particular, in 2011 Hungary adopted a new Constitution, the Fundamental Law of Hungary (*Magyarország alaptörvénye*), deeply changing the country institutional setting[285]. The acquisition of power by the right-wing Fidesz party, led by Prime Minister Viktor Orbán, was supported by a socio-economic crisis accompanied by rampant political disaffection, and was able to endure thanks to governmental ethno-nationalist propaganda. The major areas in which the authoritarian agenda operated were the control of the media, the weakening of an independent judiciary (especially, the Constitutional Court), the overhaul of academic institutions, and the obliteration of the National Assembly (i.e., the unicameral parliament of Hungary) as a law-making and control organ[286]. In particular, regarding the last point, the main reforms adopted were: a highly disproportional electoral system combined with a drastic reduction of the seats in parliament (from 386 to 199)[287], which facilitates the control over parliamentary groups by the government; the impossibility for the plenary session of parliament to adopt bills in the final reading, which can only

[282] Volpi, *Quale forma di governo per l'Italia* (n 218) 58.

[283] Cristina Fasone, Adriano Dirri, Ylenia Guerra, 'Introduction: Dissensus as a Trigger and Consequence of the Rule of Law Crisis in the EU', in Cristina Fasone, Adriano Dirri, Ylenia Guerra (eds) *EU Rule of Law Procedures at the Test Bench* (Palgrave Macmillan 2024).

[284] cf Giuliano Amato, Benedetta Barbisan and Cesare Pinelli (eds) *Rule of Law vs Majoritarian Democracy* (Hart Publishing 2021).

[285] Zoltán Szente, 'The Twilight of Parliament – Parliamentary Law and Practice in Hungary in Populist Times' (2021) 1(1) *International Journal of Parliamentary Studies* 127, 128.

[286] Daniela Huber and Barbara Pisciotta, 'From democracy to hybrid regime. Democratic backsliding and populism in Hungary and Tunisia' (2023) 29(3) *Contemporary Politics* 357, 363–367.

[287] These are the main characteristics of the new Hungarian electoral systems: 106 seats are assigned through single-member constituencies (gerrymandered in order to favour the governing coalition); only 93 seats are assigned proportionally on the national level with a 5% threshold for single parties, 10% for coalitions of two parties, and 15% for coalitions of three or more parties; preferential representation of national minorities is very difficult to reach. See: Huber and Pisciotta (n 286); Szente (n 285). For example, in the 2014 elections, the Fidesz-led coalition obtained 44.9% of the popular vote, but received 66.8% of the seats in parliament.

be done by committees (the only case in Europe); impossibility to vote, in the first reading, on single amendments to bills proposed by the committees, with the only possibility of rejecting or approving the proposal in its entirety; increased governmental control over the law-making procedures and abuse of 'omnibus' laws. These rules have made the Hungarian National Assembly 'a rubber-stamp parliament, which has, in legal terms, the weakest legislative power in Europe'[288]. Thus, in Hungary, the adoption of a new Constitution and the annihilation of both institutional and informal checks and balances (such as the weakening of the parliament *vis-à-vis* the executive), even formally remaining within a parliamentary form of government, has led to the current authoritarian regime in which the executive has concentrated all powers upon itself and which Prime Minister Orbán himself styled as an 'illiberal democracy'[289].

Going beyond the borders of the European Union, two other examples might be relevant in this discussion: Tunisia and Turkey. A major turning point in the history of Tunisia took place in 2011, when a popular uprising overturned the almost 25-year-long dictatorship of Ben Ali in the so-called 'Jasmine revolution'. A Constituent Assembly was elected and in 2014 the first liberal democratic Constitution of the country entered into force: this envisioned a semi-presidential system largely based on the French model. The new elites were however unable to tackle many intrinsic problems of the Tunisian society, such as corruption or failing socio-economic and justice systems, so that the political discourse soon became highly contentious and polarised. This eventually led to the election of populist Kais Saied to the office of President, who soon started showing his authoritarian stances in the context of the Tunisian political crisis, aggravated even more by the mismanagement of the Covid-19 pandemic in the country[290]. Finally, in July 2021 President Saied staged a self-coup, suspending the activities of parliament and dismissing the head of government, without the Constitution granting him such powers; in 2022, he dismissed the Supreme Judicial Council as well and finally dissolved the parliament, thus concentrating all powers in the executive at the expenses of the parliament and the judiciary. In July of that same year, he called for a referendum in order to approve a new Constitution, which was approved in an election with a turnout of only 30.5%; nonetheless, he promulgated the new Charter establishing a presidential form of government. In Tunisia as well, thus, a context of polarised political debate has led populist forces to alter the democratic system possibly beyond repair, approving a new Constitution (just as in Hungary) and

[288] Szente (n 285) 136.

[289] cf Zoltán Pozsár-Szentmiklósy, 'Informal Concentration of Powers in Illiberal Constitutionalism: The Case of Hungary' (2024) 16 *Hague J Rule Law* 289.

[290] Moncef Marzouki, 'Is Democracy Lost?' (2022) 33(1) *Journal of Democracy* 5.

even changing the form of government in order to centralise political power in the hands of the President, a head of state with complete power over the executive, while largely limiting the role of the parliament[291].

The democratic history of Turkey is instead less linear. Through various coups and three different Constitutions since the establishment of the Republic of Turkey in 1923, the current fundamental law of the country is the 1982 Constitution, which has however undergone several deep amendments. This constitutional charter was not seen as a prime example of liberal democratic values, especially since it posed a focus on the privileges of Sunni Islam over other sects and religions and somehow legitimised the political intervention of extra-parliamentary actors, especially the military[292]. Even though this rendered further democratisation of the country difficult, the early 2000s are seen as years of peak for liberal democracy in the country, also thanks to the efforts Turkish political elite put in complying with the Copenhagen criteria in order to be able to access the EU through to a number of constitutional amendments aimed at strengthening human rights and rule of law in the country (a so-called 'silent revolution')[293]. The first blow to this course was the 2007 presidential election crisis[294], which marked the end of political cooperation towards democratising reforms. In October of that same year a referendum was held and approved a constitutional amendment introducing the direct election of the President proposed by Prime Minister Erdoğan's Justice and Development Party (AKP). The 2007 presidential election was thus the last one to be held indirectly by the parliament and the reform impressed a first change to the institutional regime of the country in a process dominated by the executive. In August 2014, the first direct presidential election saw the victory of Erdoğan and marked a further step towards the majoritarian transformation of Turkey, also thanks to a provision which lifted the requirement that the President should be neutral, thus allowing Erdoğan to resume his membership of the right-wing AKP. The Turkish form of government thus remained formally parliamentary, but with a much stronger and politicised Presidency. This was eventually

[291] Huber and Pisciotta (n 286) 367–374.

[292] Sinem Adar and Günter Seufert, 'Turkey's presidential system after two and a half years: an overview of institutions and politics' (2021) 2 *SWP-Studie*.

[293] cf Levent Gonenc and Selin Esen, 'The Problem of the Application of Less Protective International Agreements in Domestic Legal Systems: Article 90 of the Turkish Constitution' (2006) 8 *Eur J L Reform* 485.

[294] The President of Turkey was to be elected by the Grand National Assembly (the Turkish unicameral legislature) by two-thirds of its members. Basically, only two parties were present in parliament at the time, with none reaching the threshold, so that an agreement needed to be found. The majority party, Prime Minister Erdoğan's AKP, proposed Gül as candidate, but the boycott of the opposition CHP, and its later successful claim to the Supreme Court to annul the vote, led to a political crisis. Erdoğan thus acted in two ways: on the one hand, he called for snap general elections, while on the other hand he had his party pass a constitutional reform in parliament to introduce the direct election of the President. After the July 2007 general elections, an agreement between AKP and CHP led anyways to the election of Gül.

changed in 2017, when a new constitutional reform eliminated the dual leadership of the President and the Prime Minister, with the abolition of the latter office and the re-election of Erdoğan in 2018. Turkey thus passed from a parliamentary form of government to a presidential one in the span of a decade, with the President being both head of state and head of government[295]. In the current Turkish system, the executive has a deep prevalence over other bodies, such as the parliament, whose legislative monopoly has been deeply watered down; furthermore, the President alone has complete control over the executive, as they appoint and dismiss their deputy, all ministers, and senior civil servants, and have complete control over the intelligence services, while the legislature has no power over the members of the executive and even its control function (expressed, for example, by parliamentary questions) is now non-existent. The conclusion is that the new system has transformed Turkey from a country successfully undergoing a democratisation process into an authoritarian regime, with no effective checks and balances, a weakened parliament, and a politicised judiciary[296].

These cases show how democratic or democratising systems can transform into illiberal or authoritarian regimes under certain conditions, which are particularly linked with unstable and contentious political and party systems. Constitutional reforms of the form of government which concentrate power within the hands of the executive, altering the checks and balances to the point in which they are not effective anymore, have been a central part of these examples of democratic backsliding as well. As anticipated, constitutional reforms *per se* cannot be regarded as a will of establishing an authoritarian regime, but it is nonetheless important to maintain a certain attention to such trends, which are spreading in various countries. Especially in the context of the Italian political and party system, which has been previously proven in this dissertation to be currently characterised by high polarisation and volatility, it might be dangerous to dismiss the objections to the proposed Meloni reform as senseless and equating them with a mere unwillingness to change[297].

[295] Thomas Krumm, 'A policy cycle of electoral reform: comparing directly elected chief executives in Israel and Turkey' (2022) 16 *Z Vgl Polit Wiss* 505, 515–519.

[296] Adar and Seufert (n 292) 9–12.

[297] Ines Ciolli, 'Le democrazie sotto stress e il pasticciaccio brutto del premierato' (2024) 1 *Costituzionalismo.it* 88.

Conclusion

This dissertation has engaged in a comparative manner the topic of the constitutional reforms of the form of government in Italy, a matter which has been central in the political debate of the country for decades, by trying to unpack the notion of governmental (in)stability, which is used as a standard of analysis.

In order to do so, a large variety of theoretical concepts has been presented and their applications in various institutional systems have been analysed. In particular, Chapter 1 has discussed some key knowledge on the concepts of parliamentarism, representative and liberal democracy, and forms of government. It has then analysed in depth the parliamentary form of government and its variations within different constitutional systems regarding a number of aspects (structure of the parliament, governmental investiture, confidence relationship, government dismissal, parliamentary dissolution, and electoral and party systems). It has then described more in depth the functioning of the Italian parliamentary form of government using these same analytical aspects.

A central concept which has been presented in this context is that of governmental stability within parliamentary systems. Thanks to an analysis of the scholarly sources on this topic, it has been clarified how the concept itself is not straightforward, but could probably be divided into two main sub-concepts: that of 'formal' stability, which is linked to the temporal duration of governments, and that of 'substantial' stability, which instead has to do with the efficacy and durability of the political direction ('*indirizzo politico*', another concept presented in this chapter). Both can describe the stability of a system, but only focussing on one of the two might be an analytical limitation. Such a theoretical discussion has then been linked with the particular situation of the Italian system, which has been described as showing governmental stability and instability concurrently: this last statement can be explained by using the two different definitions of governmental stability presented before. Indeed, while 'formal' instability has surely been a persistent problem of the Italian parliamentary system, extreme 'substantial' stability has been experienced for many decades (until 1994), even though it is also currently in a period of crisis because of the volatility and instability of the Italian political and party system.

Chapter 2 started with a discussion on the reasons behind the proposals of constitutional reforms of the Italian form of government. The first to propose an overall reform of the system was Socialist leader Craxi, who launched the idea of a 'great reform' (*grande riforma*) in 1976. Indeed, the late 1970s and early 1980s were years in which the post-war party system was starting to experiment a significant shift, marked by the end of the era of consociationalism and the appearance of more

adversarial party politics. The discussions on the institutional reforms were not interrupted by the year 1994, a watershed in the Italian political history, but most of the attention started to be centred on the reform of the electoral system and only marginally by that of the parliamentary rules of procedure, which was however insufficient. Even after 1994, some core reasons behind the will of constitutional reforms of the form of government remained, mainly that of the supposed degeneration of the Italian parliamentary system. Nonetheless, it has been observed how, in that same period, the parliament itself started to lose centrality *vis-à-vis* the government, most importantly regarding its law-making power. After this general introduction, the various proposals of constitutional reforms which have undergone substantial parliamentary discussions have been discussed. Before 1994 they stemmed from the parliament: the Riz–Bonifacio panels of 1982 generally proposed to give more powers to the head of government and to simplify the parliamentary law-making and control functions, thus setting some crucial aspects of the subsequent proposals; the Bozzi bicameral commission of 1983–1985 proposed the abolition of symmetric bicameralism (however, only in terms of functions, not composition of the two chambers) and the parliamentary investiture of the President of the Council alone, thus giving the office even more preponderance over the rest of the cabinet; the 'Labriola project' of 1991 proposed a rationalisation of parliamentary activities by envisioning the so-called 'cradle principle' (*principio della culla*), establishing a functional differentiation of the chambers; finally, the De Mita–Iotti bicameral commission of 1992–1994 proposed again the investiture of the head of government alone and the introduction of the mechanism of constructive no-confidence. After 1994, the impetus of reforms mostly passed to the executive: in that same year, the first Berlusconi government established the Speroni committee, which proposed various options on the rationalisation of bicameralism and strengthening of the executive power. The parliament then tried again to impress its own will on the issue with the D'Alema bicameral commission of 1997–1998, which proposed the adoption of semi-presidentialism, the abolition of symmetric bicameralism transforming the Senate into a chamber of guarantee, and the differentiation of legislative procedures on different matters. Governments then became again the centre of initiative: in 2005 the Berlusconi government and its majority passed a constitutional bill (rejected however by a referendum) which basically aimed at introducing an elected prime-ministerial form of government (even though there was no direct election of the head of government, there would have been a mandatory appointment of the designated leader of the winning electoral coalition); it also proposed again the abolition of symmetric bicameralism, with the transformation of the upper chamber into the 'federal Senate'. In 2016, the Renzi government also managed to pass a constitutional reform bill (also rejected by referendum), which proposed again the abolition of symmetric bicameralism, with the Senate becoming a representative of regions and local authorities, and the strengthening of the executive

thanks to a fast-track legislative procedure for government bills. Finally, in 2023 the current Meloni government presented to the parliament its own proposal of constitutional reform of the form of government, which would introduce an elected prime-ministerial system: the head of government would be directly elected, but would also need the continuous confidence of the chambers to remain in office with an *aut simul stabunt aut simul cadent* principle (which would however be watered down mostly by the possibility of appointing a 'replacing' President of the Council under some specific conditions).

Chapter 3 has instead focussed on four different institutional systems, which have constituted the main benchmarks in order to carry out the comparative analysis of the proposed reforms in Italy, following the prototypical logic of case selection[298]. The first system analysed was the French one, in particular regarding the transition from the parliamentary system of the Fourth Republic, which showed high governmental instability (24 different governments in the 22 years between 1947 and 1959), to the current semi-presidential form of government. The Fifth Republic indeed has a semi-presidential system, specifically a premier–presidential one: in its current formulation, the President of the Republic and the National Assembly (the lower chamber of parliament) are elected at the same time every five years. The President is both the head of state and one of the two heads of the bicephalous executive, with the other one being the Prime Minister. The latter is appointed by the President in accordance with the parliamentary majority, as they are subjected to a possible withdrawal of confidence from the National Assembly. The powers of the President thus change according to whether the parliamentary majority supports them or not: in the former case, the Prime Minister is aligned with the will of the President, while in the latter case (called 'cohabitation') the President loses power as most of the executive function is exercised by the Prime Minister in accordance with the will of the parliamentary majority. The second system is that of the Federal Republic of Germany, which has drawn important lessons from the unstable parliamentary system of the Weimar Republic. Indeed, the German parliamentary form of government is highly rationalised, and this had a consequence on the stability of the system: only nine Chancellors (i.e., the heads of government) alternated in office since 1949, but the parliament has retained a central role in shaping the political direction of the country and in the law-making process. Major elements of stability of the system are the basically proportional electoral system, adjusted with a particularly high threshold at 5%, the mechanism of constructive no-confidence, the power of the Chancellor to dissolve parliament (technically not constitutionally granted, but derived from customs), the presence of a

[298] Again, see: Ran Hirschl, 'The Question of Case Selection in Comparative Constitutional Law' (2005) 53(1) *American Journal of Comparative Law* 125.

generally stable party system (which however is in crisis in the last years), and the key custom of coalition agreements/contracts which regulate the activity of coalition governments. The third system is the Israeli one, with a particular focus on the transition from the unstable parliamentary system envisioned at the time of the creation of the State in the late 1940s to the elected prime-ministerial form of government which entered into effect in 1996 with the intent of stabilising the overall system. Some choices of the Israeli lawmakers in designing such a system however proved to be counterproductive. In particular, these were the retention of a proportional electoral law with a very low threshold at 1% and the adoption of a watered-down version of the *aut simul stabunt aut simul cadent* principle (e.g., possibility of early prime-ministerial elections decoupled from concurrent early parliamentary elections). The elected prime-ministerial system in Israel thus failed to bring more stability and was abandoned in 2001, when a slightly more rationalised version of the parliamentary form of government was re-adopted. The final system that was analysed is that of the Italian regional form of government, which has also undergone a transition in the 1990s from a parliamentary form of government to an elected prime-ministerial one, also with the aim of stabilising regional executives. The choices made in the designing of such a system were however very different from those made in Israel: the electoral law was modified with a majority bonus for the coalition supporting the elected head of government and the *aut simul stabunt aut simul cadent* principle was applied in its stricter version possible. Some drawbacks of this system are the marginalisation of the role of the elected regional assemblies and the rigidity that the whole institutional system has acquired in equating its overall stability with the continuation in office of the head of the regional government, who has also seen a deep concentration of powers in their hands. Nonetheless, this institutional transformation is generally seen as having achieved its explicit goal, with the duration of regional executives going from an average of 26 months to 56 months.

Finally, Chapter 4 has been devoted to a critical comparative analysis of the proposals of reform of the Italian form of government, using all the theoretical knowledge introduced in the previous chapters. The chapter has been divided into four parts, analysing different aspects of the issue. The first part has focussed on the possibility of overcoming the problems of the Italian institutional system by rationalising and reforming its parliamentary form of government, thus not disrupting the overall existing checks and balances currently in place. The discussion has at first focused on three major problems that the country faces and their possible solutions. The first one is a 'political' problem, which is mostly linked to the party system and cannot be solved through constitutional reforms, but might be addressed thanks to other measures, such as general political education for the electorate, a return to public financing of parties with strict rules also aimed at forming an adequate political class, more participation of the civil society in the policy-making discussion, stricter rules on the discipline

of public officials. The second issue is a 'representativity' crisis, which has to do with the discussed constant marginalisation of the parliament and could be solved thanks to the abolition of symmetric bicameralism (which has lost most of its historical justifications), new parliamentary rules of procedure, stricter use of law-making power by the government and of the question of confidence. The third major problem is related to the crisis of popular participation, shown fore and foremost by the rapidly growing abstentionism. Some solutions might be reforms aimed at tackling 'involuntary' abstentionism (e.g., e-voting, mail voting, etc.) and a reform of the mechanism of referenda, introducing more possibilities of direct intervention in the law-making process other than that of abrogative referenda or the lowering of the existing validity threshold. Furthermore, important lessons which are more directly linked with the constitutional rules regulating the form of government can be learnt from the German system presented in Chapter 3: an electoral law which is able to tackle the problem of political fragmentation, the introduction of constructive no-confidence (preferably linked to a constitutional provision aimed at implementing the concept of mandatory 'parliamentarisation' of government crises), and more powers to the head of government in terms of control over the ministers and of power to force parliamentary dissolution.

The second part of Chapter 4 analysed instead the possible effects of the introduction of an elected prime-ministerial form of government in Italy, in particular looking at the provisions of the proposal of the Meloni government and thanks to a comparative analysis with the similar Israeli and Italian regional systems. At first, it has been discussed how the idea of such a form of government in Italy is not new, but instead dates back to decades ago and has had important supporters such as Costantino Mortati. The main idea would be that of strengthening the stability of the executive in the context of a fractionalised and unruly party system thanks to a more legitimised head of government directly elected by the citizens concurrently with the parliament, so that the former would not be subject to the instability of the latter anymore. Looking at the two systems already described (Israeli and Italian regional) one can see how the main differences regarded the electoral law and the application of the *aut simul stabunt aut simul cadent* principle. The Meloni reform proposes an electoral system similar to that of the Italian regions, thus overcoming the disadvantages that Israel met, and an *aut simul stabunt aut simul cadent* principle in a middle ground between the two systems: stricter than the Israeli version (e.g., no possibility of uncoupling the prime-ministerial and parliamentary elections), but more watered-down than that of the Italian regions (e.g., possibility of appointment of a 'replacing' President of the Council). Looking at these two points, the proposal might thus appear to have good possibilities of creating a more stable system than the one currently in place. However, a number of drawbacks coming from this particular reform can also be identified. First, the introduction of an electoral law with a majority bonus on the national level awarded to the lists supporting the

elected President of the Council could be problematic in light of the current doctrine of the Constitutional Court and could determine a further deterioration of the centrality of parliament, undermining its independence from the very moment of its formation. Second, as said, the existence of a 'replacing' head of government (appointed by the President and voted in by the parliament) represents a watering down of the *aut simul stabunt aut simul cadent* principle, which might thus result in a destabilising element, and also ignores one of the main aims of the reform, which is that of directly linking the head of government with the electorate through popular elections. Third, the powers of the parliament and the President of the Republic would be heavily affected, thus hampering the checks and balances which have worked in keeping the democratic nature of the Italian institutional system alive. In particular, regarding the President of the Republic, they would become mostly a mere executer of the constitutional provisions or the will of the government and would not have the power of solving institutional or political crises as they have successfully done in the last decades, for example with the appointment of technocratic governments. Finally, some formal problems could also exist (e.g., the retention of art. 88 of the Constitution which grants the head of state the power of dissolution without an agreement with the head of government, the new formulation of art. 92(5), or the abolition of countersignature for some presidential acts).

In the third part of the chapter, the possibility of introducing the direct election of the President of the Republic has been taken into consideration, either in the form of a presidential or semi-presidential form of government, respectively using as models the current American and French systems. This idea existed since the birth of the Republic in 1946 with some authoritative supporters, such as Piero Calamandrei. It was however discarded because of the fear of a strong monocratic organ being the undiscussed centre of the political arena. In the last decades, the idea of adopting a semi-presidential system based on the Fifth French Republic has been revamped various times (only lastly, it was proposed by Meloni herself in 2018). There are however some important aspects which are widely criticised: the politicisation of the Presidency of the Republic, the possibility of cohabitation or high parliamentary fragmentation (as is happening in France in the last years) leading to institutional deadlocks, further decentralisation of the parliament. Finally, the chapter has linked the discussion on the reform of the form of government in Italy with the current trend of democratic backsliding, which is happening in a number of countries globally, including some EU member states. The will of reforming the system cannot by itself be seen as an authoritarian trend, as many scholars point out, but it is nonetheless undeniable that the alteration of checks and balances and the centralisation of power in the hands of a strong head of government are common elements in systems experiencing such democratic problems (such as Hungary, Tunisia, and Turkey, which have been briefly analysed). Moreover, the current situation of the Italian political and party system, characterised by deep

fragmentation and polarisation on all sides, might be a further component in a possible trend towards a democratic backsliding, as the already mentioned examples also show.

After all these considerations, it is impossible to deny that the current Italian institutional system is highly unstable, and that constitutional reforms of the form of government might only bring some stability to it. Nonetheless, not all reforms might be positive for the well-functioning of the constitutional system[299]. Indeed, governmental stability needs to be balanced with the principles of liberal democracy, which regarding the form of government are mostly linked to efficient checks and balances between various institutions. As seen, the main problem that Italy is currently facing is not that of a degenerated parliament which has too much power over weak executives. Indeed, the opposite might be true. What is actually problematic is the lack of a vision in transforming the form of government in order to make it adapt to the changes that are happening, mostly regarding society and party politics. A rationalisation of the current parliamentary system through constitutional reforms, supported by adequate changes to the electoral system, the parliamentary rules of procedure, the regulation of the activity of parties, and the socio-political education of the country (as described in the first part of Chapter 4) might have highly positive results, maintaining the democratic characters of the Italian society alive and at the same time relaunching the activity of the political class. Implementing further reforms whose aim is only that of strengthening the power of already powerful executives, using a supposed high instability derived from inefficient constitutional provisions on the form of government as an excuse to do so, could instead have inauspicious and irreparable consequences on the very democratic nature of the Italian institutional regime, leading it towards the same path experienced in other countries because of right-wing authoritarian leaders, both currently and in the not-so-distant past.

[299] A very important contribution to the topic also comes from *Rivista trimestrale di cultura e di politica: Riforme necessarie e riforme sbagliate* (vol 3, Il Mulino 2024). The publication offers a number of insights proposing different visions on the debate of constitutional reforms of the form of government, as well as on other 'connected' reforms that this thesis has analysed mostly in Chapter 4, but generally stresses the need of impressing a change to a system which is showing all of its limitations because of the incoherent transformations, either institutional or customary, imposed or accidental, that its institutional structure has undergone during the decades.

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Ringraziamenti

A conclusione di questa tesi, vorrei brevemente ringraziare tutti coloro che mi hanno accompagnato e aiutato durante tutto il mio percorso universitario, ma anche e soprattutto nella vita di tutti i giorni che a questo si è affiancata. Ognuno di voi è stato, a suo modo, indispensabile.

Vorrei innanzitutto ringraziare i miei genitori, che mi hanno sempre supportato in ogni scelta che ho fatto e aiutato anche quando pensavo, ingiustamente, di non averne bisogno. Non posso non ringraziare tutta la mia famiglia, estesa e un po' particolare, e soprattutto i miei nonni Aldo e Maria, mia sorella Elisa e i miei zii Angela e Paolo, che mi servono tutti d'esempio e mi hanno saputo dare consigli essenziali nei momenti in cui ne avevo più bisogno. Ringrazio infine tutti i miei amici, da quelli con cui mi sento tutti i giorni a quelli che so esserci sempre anche se non ce lo diciamo: siete speciali, mi tirate sempre su e mi spingete a cambiare in meglio.