Bicameralism in Italy. 150 Years of Poor Design, Disappointing Performances, Aborted Reforms

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1. Introduction

I keep being surprised how certain issues tend to recur in similar ways in very different countries and jurisdictions. The issue we are discussing confirms that to my eyes.

A long time ago I realized how Japan and Italy (along with deep and notorious cultural and historical differences) share a large set of commonalities when it comes to political and constitutional issues. May be this has to do with the fact that both Nations made the effort to build a modern State much later than others and both only during the second half of the Nineteenth century.

Concerning in particular the second Chamber and how the House of Councillors on one hand and the Italian Senate on the other hand were born, one should note that in both cases the core feature has proven to be the same: the priority choice in favour of direct election in both instances brought the constitution makers to give the two chambers similar (in the Italian case *identical*) powers and produced two very little differentiated bicameral Parliaments. This not to mention the striking similarities between the two Upper Chambers of the Italian Statute of King Albert and of the Japanese Meiji Constitution.

Let me introduce the content of this article in a nutshell. At first I will submit a short set of general comparative remarks (par. 2); these will be followed by a part devoted to the origin and the evolution of the Italian bicameral Parliament (par. 3); this part will be subdivided in two paragraphs, one devoted to the Italian Parliament during the Kingdom of Italy, the other devoted to the design of the present Italian Parliament at the time of the Constituent Assembly (1948-1947); par. 4 will be a very short one reporting the one and only reform which rationalized the system in 1963; to the contrary the following part (par. 5) will introduce the reader to thirty years of failed attempts to reform the Italian Parliament, including the most recent ones. In the final par. 6 I will try to offer a set of remarks and conclusions that I believe do stem from the Italian experience and might be of some interest to both foreign scholars and practicioners.

2. General Comparative Remarks

Of the 27 present members of the European Union, half have a Parliament based on a single chamber system[1]. With the exception of Finland and Sweden, these 14 countries have a modestly sized population, are geographically smaller and enjoy a solidly centralised legal system.

The larger countries (France, Italy, Poland, Spain, United Kingdom) as well as some of the medium to smaller ones (Austria, Belgium, the Czech Republic, Ireland, The Netherlands and Slovenia) have a bicameral system. Germany is a partial exception: the *Bundesrat*, is not considered one of the two branches of a bicameral parliament, but something different. The legislative competence lies with the *Bundestag*. The present *Bundesrat* lies midway between the *Bundesrat* of the Constitution of 1871 and the *Reichsrat* of the Weimar Constitution of 1919 and is considered

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[1] These are Bulgaria, Denmark, Estonia, Finland, Greece, Hungary, Latvia, Lithuania, Luxembourg, Malta, Norway, Portugal, Slovakia, Sweden, and one could add Cyprus (where, next to the lower house there are two "*community rooms*", one Greek and the other Turkish).

the expression of both the democratic and the federal principle[2]. It is the instrument through which the *Länder* concur to the legislative process in the matters which are deemed to affect them.

By making a quick appraisal of the upper chambers of these twelve bicameral parliaments, six of them represent the nation divided in subnational entities (in Austria, Belgium, France, Germany, The Netherlands, Spain), two represent represent vested interests (in Ireland and in Slovenia), two are assemblies that are elected through an electoral formula substantially different from the one used to elect the lower house, and *not proportional* (Poland and the Czech Republic[3]), two - finally - can be considered exceptions more difficult to classify.

One is the *House of Lords* of the British Parliament, the first example of a bicameral Parliament, subject to more and more far reaching transformations stirred by the emergence of democratic representation about a century ago (the *House of Lords* has been subjected to no less than three radical reforms since then and remains at the center of attention, in view of a final transformation eliminating any remnant of class representation: its very essence for seven centuries, the very origin of bicameralism as such)[4].

The other exception is the Italian *Senato della Repubblica* (Senate of the Republic). Among all those considered above, it is the only one that combines these two features: same direct legitimation and exactly same functions as those of the lower house. This assertion is true even if, for the purpose of comparison, we look at other significant non-EU Parliaments: the United States Congress, the National Assembly of Switzerland, the Japanese Diet, the Parliament of South Africa.

One can say that the role of second chambers and hence the nature and the basis of justification of bicameralism have always been the subject of debate. Benjamin Franklin more than two centuries ago said that a bicameral parliament was like a carriage pulled by two pairs of horses in opposite directions[5].

In relation to second chambers, no single model does exist: the bicameral system is characterized by the heterogeneity of the existing samples. Each stands out by way of (A) composition and mode of election, (B) powers in relation to the Lower House, (C) duration, (D) relationships with the executive and (E) - more generally - representative capability, functionality in the institutional system and overall political relevance. Some, as we have seen, constitute an element of connection with local and/or subnational entities, other serve the purpose to allow a rethinking or refinement of the legislative product of the first Chamber, and in general an element of guarantee within a system featuring on checks and balances. Only a few are expected to represent something other than citizens at large: whether in search of a specific comptences or experiences or technical capacities, or matching interests or organized social groups worthy to be represented.

One thing is certain: with rare exceptions for over two centuries now, the bicameral systems in general have been characterized by the progressive unstoppable prevalence of the *Lower House*, representing the mainstream political outlook, at the expense of the upper chambers or *second* chambers, as they have (not coincidentally) been called after the affirmation of the democratic principle.

To conclude, while excluding the German case, among all the countries that are considered the only exceptions are the United States and Switzerland, the two classical models of federal states - without any differentiation in the Swiss case and with some differences in the American case (the only system where the differentiation, in the opinion of some, benefits the upper house[6]) where one

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[2] See Schadee P., *Grundgesetz mit Kommentierung*, Berlin-Bonn-Regensburg: Walhalla, 1995, p. 145 ss.

[3] Aside from the fact that to be elected a candidate must be respectively at least 30 and 40 years old, as is the case of the Italian Senate

[4] I am referring to the *Parliament Act* of 1911 and 1949, and ultimately the *House of Lords Act* of 1999.

[5] See Negri G., *Bicameralismo*, in *Enciclopedia del diritto*, vol. V, Milan: Giuffrè, 1959, p. 350.

[6] Functions aside, what really reinforces the position of the US Senate's components, is the long term in office and thier limited number: one hundred members in all, representing an average of over three million citizens – and seeing it in relation to the consistency of individual states – some senators represent up to 35 million people!

cannot speak of a prevalence of a chamber over another and where bicameralism is truly equal (based on parity)[7].

But in both these cases (as in other somewhat similar cases ranging from Argentina to India via Australia), the semi-equal[8] or equal second chambers are an expression of the existence of sub-national jurisdictions. Noteworthy is the fact that while in the American and Swiss case, the form of government is constructed such that *there is no confidence relationship* (we are outside of a parliamentary regime because there is no vote of confidence), in other cases it is not so: even in the event of parity as far as the exercise of the legislative function is concerned, *only* the lower chambers have the power to dismiss the Cabinet. This confirms a difference in status and causes a relevant differentiation: parity is limited to the exercise of functions *not* connected to the life or death of the Cabinet.

Starting from the *compromise of Connecticut* in Philadelphia which gave birth to a second chamber with equal representative rights for each single state, the comparative panorama, especially in its historical evolution, shows that the survival and indeed the simultaneous assertion of the bicameral system is primarily bound to the need to acknowledge the role of the subnational entities which constitute the Nation as a whole.

The alternative model essentially serves the purpose to provide a guarantee in the form of a power transfer to the second chamber, making it part and parcel of the legislative process in a variety of forms. However, this does *never* prevents the lower house to ultimately have its way.

The various mechanisms devised in constitutional texts and practices are rather diversified and produce a variety of solutions, placing the balance on a *continuum* that goes from almost stand-off competition between equally powerful chambers to the smooth and peaceful prevalence of the lower chamber (as shown by Meg Russell in a recent study of hers[9]).

Such prevalence (the prevalence of the lower chamber over the other), even in cases where it only occurs at the end of a long, painstaking and politically costly process, is still of decisive importance: in fact, however complicated the mechanism devised may seem, in ordinary conditions, its mere existence has a value of deterrence that in most cases warrants the peaceful acceptance by the upper house of the prevailing options of the lower house, based upon the support of the national political majority.

Eminent scholars have come to the same conclusions: «...ultimately, the only type of jurisdictions in which a bicameral system seems to be necessary by definition, is one that is federal or that calls itself as such (or is in any event characterized by a strong degree of decentralization)[10]».

3. The Bicameral Parliament in Italy. Origins and Evolution

3.1. At the times of the Statute of King Charles Albert

Leaving aside the oldest precedents (in Italy the bicameral tradition originated with the Napoleonic constitution of Bologna of 30 October 1796, a constitution that was never enforced), Italy, together

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[7] This is true even if you consider other important jurisdictions: Argentina, Australia, Brazil, Canada, India, Russia or South Africa.

[8] *Semi-equal* can be regarded that bicameral system where one of two chambers prevails on the other, but only in accordance with a particularly complex and costly process (involving, perhaps, the dissolution of the chambers before a final decision is taken, as is the case provided for by section 57 of the Australian Constitution). In some cases, the solution has been found in leaving the approval of the controversial text to a joint session of the two chambers, effectively giving an actual prevalence to the largest of the two (which is almost invariably the lower) .

[9] Russell M., *Elected Second Chambers and Their Powers: An International Survey*, in "The Political Quarterly", vol.83, no.1, 117-129

[10] See Paladin L., *Tipologia e fondamenti giustificativi del bicameralismo. Il caso italiano*, in *Quaderni costituzionali*, n. 2/1984, p. 220.

with the Statute of King Charles Albert inherited the bicameral structure chosen by the Council Conference of February 1848 which decided to borrow, along with the other essential features of the legal system, the Standing orders of the House and the electoral law of the French Constitution of 1814 (as changed in 1830).

Members of the Council Conference referred to this model, itself an adaptation of the English one, on several occasions. De Ambrois in particular, stated the need for two chambers for the purpose of proper checks and balances and to ensure, through a sort of House of Peers appointed by the King («...not an hereditary Chamber, but such a Chamber where the most distinguished men would sit, those men more worthy of esteem and of the King's trust...»), «a large amount of influence to the Crown». Hence the wording of articles 6 and 7 of the Proclamation of 8 February 1848 («the legislative power will be exercised collectively by the King and by two Chambers: the first will consist of members appointed for life by the King, the second will be elected on the basis of a census to be determined»). It is notesworthy that in this text (and also in the minutes of the Council Conference) what was going to become the Senate is referred to as the *first* chamber, while the elected chamber is referred to as the *second* chamber, exactly the opposite to what the two chambers would be called later[11].

The bicameral structure that emerged from the text of the *Statuto* – reinforced through the trend towards a parliamentary form of government and the early and massive adoption of the practice of the so-called *infornate* (the King under the advice of the Cabinet would appoint dozen of new senators), meant to maintain the Senate in line with the government (at least in relation to the most important issues) - speaks of a differentiated and certainly not equal bicameralism (**"**attenuated**"** an Italian scholar called it[12]). It was made of a chamber with a representative character (which will gradually expand until universal male suffrage in 1912) and a Senate, consisting of lifetime members appointed by the King (*de facto* mostly by the Cabinet) and members by law (the princes of the Savoy family). Legislative power was exercised collectively and, in theory, on equal footing by the King and by both Chambers (Article 3 St. Alb.): but tax laws and budgets were to be introduced and approved by the lower Chamber first (Article 10 St. Alb.).

The planned form of government was purely constitutional: the executive was imagined belonging "to the King alone" (Article 5 St. Alb.) and being accountable to only him. In fact, although the king maintained a decisive influence on matters such as foreign policy and defense, the government's responsibility before the Parliament and in particular before the Chamber asserted itself very soon. «The Senate cannot provoke a Cabinet crisis» was the motto: as Carlo A. Jemolo wrote «the Senate had no power to force the resignation of the Cabinet as long as it commanded the confidence of the King and of the Chamber of deputies»[13]. It should be noted that Camillo Benso Count of Cavour (Italy's most prominent leader, the father of the Unification) pronounced himself from the beginning in favor of two chambers, both to be elected, the second however in a way to guarantee "conservative instincts": in fact, this very proposal published on the 27 May 1848 issue of the *Risorgimento* (based on a lucid prediction: «the deliberations of a Chamber solely composed of lifetime members will never be deemed totally independent and will not have much authority»), originated the never-ending debate about the Italian bicameral system.

In fact, as noted by Giovanni Spadolini, statesman and chairman of the Senate in the Nineties of the XXtieth century, the bicameral system under the Charles Albert Statute mostly remained in the shadows; the Royal Senate was always acutely aware of its provisional nature, being under the permament threat of a reform: «the prediction of Cavour constantly weighted on its work».

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[11] For the minutes of the Council Conference see Ciaurro L., *Lo Statuto Albertino illustrato dai lavori preparatori*, Roma: Dip. Inf. Editoria, 1996.

[12] See Negri G., *Bicameralismo*, in "Enciclopedia del diritto", vol. V, Milano: Giuffrè, 1959, 352.

[13] See Jemolo A. C., *Camera e Senato: rapporti e contrasti*, in *Il centenario del Parlamento*, Roma, 1948, cit. in Negri G., 359.

3.2. What came out of the Constituent Assembly in 1946-1947

As for the debate in the Constituent Assembly on the form that bicameralism should be given, despite the undeniable legal wisdom of many constituents, it is difficult to hide the sense of disappointment with the way it developed: because of the randomness of most choices, the great confusion that characterized each phase of the discussion, the manipulative character of many decisions and the tendency to start from zero at each stage of the proceedings.

I believe that one cannot imagine a more effective propaganda in favor of a reform of the Italian Parliament than reading those proceedings. No other issue absorbed the founding fathers's attention more than the new regional structure and how to design the second chamber. These two aspects were closely related: the truth is that the anti-regionalists after having been defeated on the issue of the Regions took revenge making it impossible for the second chamber to respond to the most plausible rationale justifying its own existence.

In hindsight, the defect was embedded in the very origins of the debate. The Marxist left, with its jacobinic cultural fiber, wanted one and one only directly governing assembly (rejecting any form of rationalization of parliamentarism) and supported the choice of monocameralism from the start (also because of the conservative if not reactionary traditions of most second chambers; their idea was that sovereignty can only exist in one place); the Marxist left therefore also opposed an incisive and large political decentralization (regional or federal), opposed the establishment of a supreme court as guarantor of the Constitution capable of sanctioning the illegitimacy of laws: this would have dramatically reduced the otherwise unlimited exercise of sovereignty by the Parliament and by the parties which would have been the major actors within Parliament. In short, communists and socialists were confident to be able to seize power through the elections and therefore had no intention to include counterbalances destined to curb the radically reformist not to say revolutionary political direction they hoped to impose after having won the elections.

Leaving aside the rest (except regionalism, to which we will come back shortly), supporters of the unicameral and the bicameral parliament battled hard but briefly. The latter prevailed numerically over the first, and with some clarity: but they were divided. While agreeing that the chambers were to be two, they had different ideas on the role and the functions those two chambers should be given, and therefore on what they should represent.

The proponents of political decentralization through newly established "regions" envisioned a second chamber as the expression of the autonomous entities the nation would be made of (primarily the regions themselves, but also local municipalities); others were convinced that the integration of representation should be designed so as to ensure the presence of technical competences in the law making process; others yet saw the need for the organized expression of social interests (corporativism - fascism apart - was rather popular in the first half of the last century, stemming from the thought of influential progressive Catholic philosophers like J. Maritain in France[14]); still others wanted a second chamber, *whatever it was going to be*, just in order to delay the potentially dangerous revolutionary tendencies that might develop in the lower house; and finally there where those who just meant to reproduce the institutions of liberal pre-fascist Italy.

It so happened that the proponents of the two chamber system achieved what *appeared* to be a success because the single-chamber solution was dismissed: but the monochamber champions achieved a *substantial* success, imposing *de facto* universal suffrage and the direct election of both Houses of Parliament. If regions' supporters had not been so weak, a modern two-chamber system would still have been possible in order to guarantee the representation of autonomous entities. But this proved not to be the case.

Having opted for universal suffrage, the indirect election through the regional councils became impossible and with it it also died the notion of a Senate as the place where a nation now

[14] Modeled according to these ideas is the second chamber of Eire (*Seanad Eireann*), see artt. 18-19 Cost. Eire.

divided in new regional and local authorities would be represented. Another effect was that the idea of a strict functional equality of the two chambers was reaffirmed: if the representative legitimation was going to be the same, why should powers be different?

For what concerns the *regional basis*, from the outset of the debate and throughout all drafts and even still nowadays, the idea was that the notion of "regional territory" served only as the constituency where to elect senators, without implying any link between Parliament and the regions as institutions.

Thus was born the Italian unique undifferentiated bicameralism based on strict parity. All that remained to distinguish the two Chamber was: (a) the difference in the number of members (630 the lower Chamber; 315 the Senate): (b) the minimum number of senators each region was entitled to; (c) the different terms (five versus six years); (d) the different active and passive electorate (one must be 25 to be elected deputy and 40 to be elected senator; only citizens older than 25 can vote for the Senate); (e) the presence of an almost irrelevant number of 5-7 senators for life.

Such an outcome was highly unsatisfactory. The bicameral principle had been introduced and implemented to the point of completely equating the powers belonging to the two chambers, but stripping bicameralism from its very foundations. The differentiation between the two Houses of Parliament was randomly left to voters' choices, which of course did not prevent that both would be able to reflect the same political majority. An Italian scholar defined it «an absurd and cumbersome bicameralism» (Crisafulli, 1973); a famous American scholar, a system enigineered «merely looking for trouble» (Wheare, 1963). According to a recent interpretation[15] the true source of inspiration for some Italian founding fathers might have been the Norwegian Stortinget as it was until 2006 (after the elections the elected MPs would split in two chambers[16]), but things turned out in a rather different way.

4. Early problems and the relatively effective solutions of 1963

What followed confirmed the premises established in the Constituent Assembly.

It was not only a matter of bad will: the problem was and still is structural. Within a form of government articulated around a double or duplicated confidence relationship between the Cabinet and *two* separate chambers, and at the same time with a political system with a built-in fragmentation mechanism guaranteed and reinforced by electoral laws, it is clear that any element of differentiaton in the composition and duration of those two chambers can only undermine the already labourious stability of the political system.

With this in mind, it can be understood that the political parties soon would try to remove the residual elements that still distinguished the two chambers according to the model approved by the Constituent Assembly. Even before the Senate was born, a law was passed to safeguard the emerging political uniformity of the two Houses by substantially assimilating the two electoral formulas which were originally supposed to be different (one based on proportional representation, the other based on plurality). Later, in 1953 and again in 1958, obeying to the parties' suggestions, Presidents Einaudi and Gronchi dissolved the Senate a year in advance, for the sole purpose of allowing for the contextual re-election of both chambers, *de facto* amending Article 60 of the Constitution (which provided for the different duration and the progressive decoupling of elections for both chambers, a certain cause of instability).

[15] Argondizzo D., *Il bicameralismo in Italia tra due modelli mancati: Congress and Stortinget*, manuscript, Rome, 2012.

[16] In 2006 the Norwegian Constitution was revised and its Parliament has become unicameral.

Continuous attempts to amend the bicameral system during both the II and III Legislature confirm how it was regarded as unsatisfactory. With Constitutional law 9 February 1963, these attempts were finally crowned with success. Articles 56, 57 and 60 of the Constitution were amended. These amendments set a fixed number of deputies (630) and Senators to be elected (315); regulated the allotment criteria between districts and regions revising the minimum number of Senators (increased to 7, with the exception of tiny Valle d'Aosta Region and, after the constitutional law 27 December 1963, n. 3, of Molise as well[17]).

Since then (1963) the structure of the Italian Parliament has not changed: however, it has been influenced by ordinary legislation, the most important of which was the lowering of the majority age in 1974 (this choice widened the representative gap between the Chamber and the Senate with no immediate consequences, but with an impact that would increase over time). Electoral reforms in 1993 and 2005 introduced further changes in the electoral formulas, based on some kind of who wins gets all system. In combination with the different electorates and the changes in the party system, the elections outcomes in the two Chambers became less homogeneous than in the past and a couple of instances even featured opposing majorities.

This problem has become more serious after the entry into force of Law 270/2005, which has emphasized all previous problems.

In particular I refer to the fact that the 2005 electoral law (which is still in force) established not one but to "artificial majorities", that is to say bot the law for the Chamber and the law for the Senate grant to the party or to the coalition which wins the elections an extra number of seats meant to ensure a clear majority. However the law does so in two different electoral contexts: voters receive two distinct ballots, one for the Chamber and one for the Senate, voters are not the same (only those who are at least 25 vote for the Senate: the difference is around six million votes!), and the formula is slightly different. All this means that it is very possible that the electoral law "creates" two different majorities. This would be a problem even within the frame of other bicameral system: but is obviously a nightmare within a Constitution which expects the Cabinet to command a majority in both the two different Chambers.

To make a long story short the 2005 electoral law makes it even more likely than it has always been that the elections may produce a hung Parliament (hung not because there is not a majority in the lower House but because the are may be two opposing majorities in the two Houses). As a matter of fact this is exactly what has occurred after the elections of 24 and 25 February 2013[18].

5. Thirty years of failed attempts to reform the Italian Parliament[19]

5.1. From the Bozzi Committee to the Center-right Reform (1983-2006)

Not surprisingly, since when the difficulties of the constitutional system became evident, starting from the early Seventies, and were finally recognized by Parliament in the Eighties, the need to reform bicameralism has always been on the agenda. However, it is also not surprising that, to date, these efforts have not yielded any results (except for the change in the composition of the two chambers to allow for the representation of nationals living abroad, via distance voting). Let us briefly examine these attempts.

[17] Valle d'Aosta has a population of around 100,000 inhabitants; Molise of around 330,000.

[18] On that occasion the centre-left coalition won a clear majority in the Lower House but was not able to do the same in the Upper House: as a consequence to form a government became very difficult and parties which had strongly opposed each other finally had to support together a kind of caretaker Cabinet (as if in Japan after the elections the Liberal Democratic party and the Democratic party of Japan would form and support the same Cabinet). This may explain why a change of electoral laws is one of the first items in the agenda of the present Italian Cabinet.

[19] See the Summary Chart attached at the end of this paper.

The first Parliamentary Commission for institutional reform was the one chaired by the liberal deputy Aldo Bozzi, a former member of the Constituent Assembly. It was established in October 1983 and its final recommendations were adopted in January 1985 by a majority of votes, all parliamentary communists abstaining.

With regard to the model, a *differentiated* bicameralism was being proposed. The premise was a functional differentiation of the two chambers: the Chamber of Deputies was entrusted primarily with the exercise of the legislative function, the Senate mainly with controlling the Administration (the change would have affected Articles 70, 71, 72 and 73). Laws would necessarily have been either *strictly bicameral laws* (apart from constitutional and conversion of decrees, it would have been laws concerning the following matters: elections, regulation of the constitutional bodies, budget and taxes, criminal law, protection of minorities, relations with religious denominations, fundamental principles under art. 117.1, general principles on local government, approval of regional statutes and ratification of international treaties) and laws emanating primarily from the chamber (all the others, the Government retaining the right to return to the Senate and the Senate retaining the right to recall, with predetermined timelines but final decision by the Chamber). As to the confidence relation, it would have been simplified, attributing it to both Chambers in joint session. In summary, then, not a differentiation in the way the members of the two chambers would have been elected and also no recognition of the need of a presence of the Regions at center of the system[20].

During the Xth legislature, a text of a reform was approved for the first time. Contrary to previous initiatives, this one was a much more trivial, so-called *procedural* reform of bicameralism, maintaining its parity based nature. The very modest revision maintained equal composition and functions of the two chambers, introducing procedural simplifications: it identified according to formal or material criteria (as in the Bozzi Commission's draft) laws which would be considered *necessarily bicameral* and *all others*. The latter would simply be transmitted by the House that had approved them first to the other House (according to the so-called "cradle" mechanism), which would - as is the case for the government – have the right to decide to make them fully bicameral within 15 days. Passed this delay, the law would be considered approved (with monocameral procedure). It follows that this was not a true *reform of the bicameral system*, but only a *reform of the legislative process.*

Later the political context changed: the Socialist Party decided not to leave the monopoly of federalism and regionalism to the Northern League and the Communist Party. So, the 1st Standing Committee of the Chamber, under the leadership of a socialist, Silvano Labriola, launched the most comprehensive draft revision of bicameralism up to 2005. While not touching the structure of the chambers, it introduced a *functional differentiation in legislative matters* under which all projects on matters reserved to the State were to be submitted to the House and all matters reserved to the Regions were to be submitted to the Senate. Among other innovations, it was also during this same legislative term, that the legislative powers under art. 117 (e.g. the identification of competences reserved either to the State or to the Regions) were reversed (as later actually introduced into the Constitution in 2001). But the debate in plenary around this project highlighted the persistant nature of the conflicting positions, and it was finally sent back to the Commission, and left to its fate.

[20] See IX Legislature, Doc. XVI-bis, n. 3 in three volumes. However all the proposals reported here from 1985 through 1997 can be found on the website of the Italian Chamber of Deputies. For the Bozzi Committee (1983-1985), see http://www.camera.it/parlam/bicam/rifcost/dossier/prec03.htm; for the De Mita Iotti Committee (1992-1994), see http://www.camera.it/parlam/bicam/rifcost/dossier/prec07.htm; for the D'Alema Committe (1997), see http://www.camera.it/parlam/bicam/rifcost/. All these as well as the texts quoted in the following notes 18 to 20 are in Italian; to my knowledge they have not been translated in English.

In 1992, the Italian political-institutional crisis exploded: the elections in April of that year marked a decisive turn. A second (bicameral) parliamentary Commission for institutional reforms was instituted, chaired by Ciriaco De Mita (Dc) and later by Nilde Iotti (Pds). The chair of the Committee on the Form of State (with reference to its center-periphery relations) was actually Mp Silvano Labriola. The final product of the Commission was a comprehensive project presented by Iotti on January 11, 1994, five days before the dissolution of the legislature, by which time the final hours of the old party system were being counted. The rapporteur reasoned that it was precisely the parliamentary structure that was once again holding up any possible agreement; for what concerned bicameralism, and besides the reduction of the legislative terms to 4 years - a radical revision of Art. 70 of the Constitution was proposed, basically along the lines of Labriola's previous proposal. The new text foresaw *the enumeration* of the matters that were to be the *exclusive* competence of the State and the attribution of all other matters of art. 117 of the Constitution to the *exclusive* competence of the Regions. As far as the competence on not enumerated matters was concerned, the Senate was to hold primary competence in the field of state laws containing the basic principles of concurrent legislation.

After the interval of the XIIth legislature (1994-1996), during which a Study Committee on institutional, electoral and constitutional reform had been formed within the Office of the President of the Council of ministers, the first part of the subsequent XIII legislature (1996-2001) was characterized by a new attempt to thoroughly revise the Constitution through a Third parliamentary Committee on constitutional Reform. In this case, within the framework of a quasi semi-presidential government and of a sharing of legislative powers between the State (for specific matters) and the Regions (for all other matters), the endeavor was for a *bicameralism that was no longer based on parity*, but which would be *differentiated* in powers and with a distinct *predominance* of the Chamber of Representatives. The Senate would no longer be the subject of the fiduciary relationship with the Cabinet and the Chamber would have the last word in the legislative process. However, the election by direct universal suffrage of both houses (an issue which has been taboo since the Constituent Assembly) was confirmed. State legislation would have been divided according to legislation that would necessarily be subjected to a bicameral proceedure based on an closed list of enumerated subjects (art. 90 of the draft) and all other legislative proposals: in relation to the latter the Senate retained the right to examine them, upon request and acting with a quorum of at least one third of its members and within ten days. The Senate would have a maximum of thirty days to propose amendments; on these the Chamber would ultimately decide (Article 93 of draft). Under a special procedure, bicameral bills initiated by the Regions or the people would first be taken into consideration by the Senate and subsequently by the Chamber.

The connection with the territory was entrusted to a sort of third chamber: the *Senate in special session*, that is to say the Senate integrated by 200 municipal, provincial or regional representatives, elected by special constituencies in each Region. In addition the Senate would have had more incisive powers for its investigations than the Chamber (art. 105 of draft) and it would have had the power to decide on the nominations the Italian Parliament is entrusted with, including the five justices of the Supreme Court (Article 88 of the draft).

The XIV legislature (2001-2006) was characterized by the fact that the center-right government, bolstered by a large parliamentary majority, launched a draft constitutional amendment without involving the opposition, the first such far-reaching initiative by the government. The approved text (significantly changed from the initial draft) contained several new features[21]. The

[21] See Const. Law concerning "Modifiche alla Parte II della Costituzione" approved by Parliament and published on the "Gazzetta Ufficiale" no. 269 of 18 November 2005. One can trace it on the web at: http://gazzette.comune.jesi.an.it/2005/269/gazzetta269.htm

Senate would become the *Federal Senate of the Republic*. The number of deputies would go down to 518, the senators to 252 (about 20% less). The latter would be elected (after a long transitional phase) the same day of the elections for the Regional Council (Article 60.2) and would have remained in office for the same terms as the Councils of each region. Minor ties with the regional base were also provided for (hold or have held elected positions in the Region or reside in the Region on the opening day of the election). The aim of all these plans was obvious: to pursue, while maintaining universal and direct suffrage, the maximum possible link between the senatorial delegation of a Region and the regional balance of power itself. Thus the Senate would become a permanent second chamber to be renewed partially and gradually. In addition, the federal Senate would have involved forty representatives of regional political institutions (regional councils and local: two per region) in some of its proceedings. As for law-making process, important elements of differentiation between the two chambers were to be found.

The *collective* (i.e. basically equal) carrying-out of legislative functions for the following list of matters was maintained: guaranteeing basic levels of services across the state; electoral law, governing bodies and fundamental functions of local authorities; the financial autonomy of regions and local authorities; the exercise of substituting powers by the government; the electoral systems of the two chambers; relations between the State and Regions and/or local authorities.

For new acts necessarily falling under the bicameral system, it was envisaged the possibility that the two Presidents of the Chambers would summon a *joint committee* (30 senators, 30 deputies) in charge of proposing a unified text to be submitted only to the final approval of the two assemblies.

All other matters which the Constitution considered the sole responsibility of the State would be predominantly allotted to the decision making power of the Chamber of Deputies: for these, the Federal Senate would only have had the power to "propose amendments" within 30 days (15 in case of a decree-law) on which the House would have given a final vote. As a counterweight, all concurrent matters would fall within the scope of the Federal Senate: the Chamber of Deputies would only have had the power to "propose amendments" within 30 days (15 in case of decree-law) on which the Senate would ultimately decide.

However, the government would have still been able to request the President of the Republic to allow the Prime Minister to urge the Senate to comply within a 30 days delay; not this being the case, the bill would be go to the Chamber of Deputies which would take the final decision by an absolute majority (half of the components plus one).

Finally, a mechanism through which a potential conflict between the two Houses over the appropriate jurisdiction: the decision was entrusted to an *agreement* between the two presidents of the assembly, the latter not being put into question "anywhere" (not even before the Constitutional Court).

Without getting into details related to the form of government, the reformed Constitution would have maintained the confidence relationship between the Cabinet (and its Prime Minister) and Chamber of Deputies but not between the Cabinet and the new Federal Senate.

This reform therefore outlined a far-reaching reform that would have created a *bicameralism that was no longer undifferentiated and certainly not equal* (at most "semi-equal").

The suppression of the double relationship of confidence with the Chamber of Deputies destined to become the only political chamber in the strictest sense (and therefore subject to dissolution, while the Senate - a permanent body – would, by definition, never be dissolved), the distribution of legislative powers between the two chambers and, in particular, the mechanism by which the government, with its majority, could have asked the Chamber of Deputies to reach a final vote even on matters that were predominantly reserved for the Senate, the methods of composition of both chambers, the significant powers held by the c Investigating Committees of the Chamber of

Deputies: everything pointed to the establishment of a distinct role of primacy of the Chamber over the Senate.

This Act, although passed by both Chambers in respect of Article 138.1 It. Const., was later rejected in a referendum on 26 June 2006 and never entered into force, leaving Italian bicameralism unchanged once again.

5.2. The most recent projects (2007-2012)

In October 2007, the First Committee (Constitutional Affairs) of the Chamber of Deputies approved the text of a law amending the Constitution which the House was supposed to examine in early November[22].

This set of amendments, if approved, would have changed over 28 articles of the Constitution, all belonging to Part II. Among other things, the following changes were featured: the overcoming of the undifferentiated bicameralism based on parity; a significant reduction of the number of MPs; the introduction of a sort of fast track for the Cabinet's proposals; the reduction of the minimum age to be elected MP (from 25 to 18 years).

The new Parliament would have been composed of a Chamber of Deputies downsized to 500 deputies and a Federal Senate which would be elected indirectly: the 190 senators would have been elected by regional councillors, *amongst themselves*, for 138 seats, and by the councils of local authorities (not necessarily among themselves) for the remaining 52 seats. It would have been a permanent body, not subject to dissolution, as the one intended in the 2005 solution, to be partially renewed at the occasion of regional elections.

Removed the fiduciary relationship with the Senate, as far as the legislative function is concerned, the primacy of the Chamber of Deputies would also have been clear: there would have been a limited number of bicameral laws (constitutional laws, election laws, consolidated texts on local authorities, laws on Rome as a capital, future forms and conditions of autonomy, the exercise of substitute powers of government, state law establishing principles for the regional elections, new provincial boundaries); the Federal Senate would have had priority in examining the laws concerning state principles on concurrent matters as enumerated in Art. 117.3: but the second reading by the Chamber would have been final, although amendments would have been to be passed by an absolute majority; finally there was a general competence of the sole Chamber of Deputies on all other matters and projects, save the right of the Senate, at the request of one fifth of its members within 30 days, to approve changes, on which also the lower House would have had final say.

Even in the XVI legislature (2008-2013) attempts to revise the Constitution have been made. A text of a Constitutional Act amending a significant number of articles of Part II of the Constitution including the structure and powers of the two Chamber was approved by the Senate (on 25 July 2012) and was being considered by the Camera dei deputati at the time when Parliament was dissolved on 21 December 2012[23].

Once more we could witness the same pattern: a slight reduction in the number of MPs (there would have been 508 deputies and 250 senators); but still all would be directly elected; there

[22] Known as *Progetto Violante* by the name of the chairperson of the First Committee who prepared th first draft, it can be found at: http://leg15.camera.it/docesta/313/4457/documentoxml.asp (see AC 553 and connected projects).

[23] AC 5386 introduced 27 July 2012 (it faces its first reading at the Chamber after having been passed by the Senate). The proceedings began on Aug. 7, 2012 within the First Committee on Constitutional affairs. It can be found here: http://www.senato.it/leg/16/BGT/Schede/Ddliter/38693.htm

would be some changes in the right to vote and to be elected (all citizen of an age of eighteen would vote for both Chambers); the legislative process would be changed to accomodate a set of matters on which each Chamber might be the only one to examine and vote an act (while more relevant matters would remain subject to the approval of both Chambers on equal footing).

Who has been patient enought to read this presentation will notice that the set of proposals summarized above doesn't differ from the *less* courageous ones introduced since 1990: but even this rather modest attempt of rationalizing Italian bicameralism aborted. Still today it remains true that everyone (single MPs, political parties, authorities in charge) agrees in principle that something ought to be done, but no one has found the formula to accomodate strong vested interests with a potentially more efficient and more rational bicameral Parliament. The difficulties faced by the party system after the 2013 elections might prompt a more determined approach: but for the time being this remains a hope.

6. A few general lessons taking stock of the Italian case

There are some lessons which can be drawn taking stock from the Italian case and which might have some more general significance. In fact they seem to be confirmed by comparative research concerning other bicameral Parliaments. I allow myself to offer them to the reader.

Lesson no. 1: given that the reform of a Parliament is always and in every context an extermely difficult accomplishment to achieve (this is rather obvious), it is even more arduous and problematic to turn a directly elected chamber into an unelected but designated or appointed one, as long as the chamber in question is part of the constitution amending process (which is nearly always the case).

Lesson no. 2: the force of direct legitimation stemming from popular vote is such that once a directly elected chamber has been given certain powers it is just as arduous and problematic to limit, reduce or suppress the extent of those powers. It is also proven what Meg Russell says to the benefit of the British reformers: an elected House even with limited powers can be very influential; with strong powers can become decisive and extremely difficult to tame.

Lesson no. 3: in any instance as long as a chamber is part of the constitutional revision process, this ensures its ability to negotiate its "renouncing" to certain powers in exchange for different additional ones.

Lesson no. 4: the Italian case is particularly cumbersome because direct election plus identical powers - including of course being part of the constitution amending process - are the almost perfect insurance against any substantial reform. Any reasonable constitutional designer should avoid such an arrangement at any cost. The strict and immediate link between composition and powers of the two chambers has been permanently present in the Italian debate ever since the Constituen Assembly of 1946-47.

Lesson no. 5: there is a rather strict connection between form of government (political regime) and the main features of a bicameral Parliament. In particular parliamentary regimes - that is to say forms of government which are based on the confidence relationship between Parliament and the Cabinet - should ensure either a clear supremacy of the the lower Chamber in the legislative process (provided it is the Chamber holding the confidence relationship with the Cabinet) or some other arrangement which might grant that the Upper Chamber will eventully comply. In this direction, a presidential form of government can be much more flexible than a parliamentary one.

Lesson no. 6: what has just been stated in no. 5 is confirmed by another consideration. Relevant changes in the functioning of the form of government and of the party system may significantly impact on the role of the Second Chamber and therefore on the way a bicameral Parliament works.

Lesson no. 7: in any case a duplicate or double confidence relationship (like in Italy) makes electoral issues much more difficult to deal with as well as the issue of the composition of the each of the two Chambers. In particular it severely limits the electoral systems which might be effectively employed. From an abstract and purely logical point of view it is simply impossible to ensure the same political outcome in two diverse directly elected chambers (unless one of the two stems from the other as it has been for many years the Norwegian case or unless they are both elected with the very same ballot by the very same voters).

Lesson no. 8: constitutional designers should be well aware of the pros and cons of having a second chamber selected and therefore divided according to party lines just as the lower chamber; they also should be aware of the pros and cons of having a second chamber selected according to entirely different criteria (representing regional entities and/or local entities; representing vested interests or accademic competence etcetera).

Lesson no. 9: it is to be questioned whether there still is room for a second chamber conceived as a *second thought Chamber* that is to say a Chamber meant to control, revise and re-do what the other Chamber has already done. Constitutional designers should carefully evaluate the price they believe it is worth paying in order to accomodate these kinds of checks and balances along with the other existing ones. The question is: which options might be suited for a world in which nimble decisions seem to be more and more requested?

Lesson no. 10: it is more and more difficult to strike the optimal balance between the primacy of democratic principles (in theory ensured by a lower chamber elected by the people along party lines) and the requested influence of other interests in any way represented within a second or upper chamber. Probably - set aside the direct legitimation of the latter which I would discourage - the solution lies in a carefully crafted procedure according to which the lower chamber ordinarily prevails while in a just as carefully selected list of other matters the balance between the two chambers might swing.

Lesson no. 11 and final: one has the sense that everything in this field has already been invented; it is not a matter of technicalities and brilliant solutions, but it is a matter of political will and determination. The Italian experience shows that the same proposals tend to come back recurrently with minimal changes influenced by political contingencies: but only in emergency the legislator may find the determination to act in certain matters. The composition and powers of a bicameral Parliament certainly are among them. I tend to believe than in Japan it is not and it will not be any different.

Comparative Chart of the Attempts to Revise the Italian Bicameral Parliament

Italian Constitution (1948-1963)	Bozzi Committee (1983-1985)	Labriola Project (1990-1991)	De Mita - Iotti Committee (1992-1994)	D'Alema Committee (1997)	Center-Right Reform of 2005	Violante Project (2007)	Present Project (2012)
630 MPs (Chamber)	less, but no figure	**unchanged**	**unchanged**	400-500 (*Chamber*)	518 (*Chamber*)	512 (*Chamber*)	508 (*Chamber*)
315 MPs (Senate)	less, but no figure	**unchanged**	**unchanged**	200 (*Senate*)	252 (*Fed. Senate*)[24]	196 (*Fed. Senate*)	250 (*Fed. Senate*)
5[25] + n Life Senators[26]	raised to 8 + more	**unchanged**	**unchanged**	Only former PdR	3 + n Life *Deputies*	**unchanged**	**unchanged**
Voting ages: 18/25[27]	**unchanged**	**unchanged**	**unchanged**	Both 18	Both 18	*Chamber* 18	18/18
Ages for candidacy: 25/40	**unchanged**	**unchanged**	**unchanged**	Age for candidacy: 21/35	25/25	18/18	21/35
Both directly elected	**unchanged**	**unchanged**	**unchanged**	**unchanged**	**unchanged**	only *Chamber*[28]	**unchanged**
Same term (5 years)	**unchanged**	**unchanged**	same term (4 years)	**unchanged**	Permanent *Senate*	Permanent *Senate*	**unchanged**
Vote of confidence by *both* Chambers	in joint session	**unchanged**	in joint session	By sole *Chamber*	By sole *Chamber*	By sole *Chamber*	**unchanged**
Legislative power: identical in all aspects	Differentiation according to matters	Differentiation according to matter	Slight differentiation concerning specific matters	Distinct differentiation, *Chamber*'s primacy	Differentiation according to matter	Some bicameral laws, differen-tiation	New procedure, basically identical powers
In case of conflict, no one prevails	*Chamber* prevails on some matters	Either House could prevail according to matter	No one can prevail.	*Chamber* prevails on bi-cameral laws	The *Chamber* prevails if Cabinet asks	*Chamber* prevails (but on bic. laws)	House where project is introduced has last say
Investigation Same powers	*Senate* with more powers	**unchanged**	**unchanged**	*Senate* with more powers	*Chamber* with more powers	**unchanged**	**unchanged**
Appointments (C. Court) Same powers	**unchanged**	**unchanged**	**unchanged**	Justices elected by the sole *Senate*	3 justices by *Chamber*, 4 *Senate*	**unchanged**	**unchanged**
Similar elector. laws[29]	Not a constitutional matter						

[24] To the activities of the Federal Senate would participate representatives of the Regions and of local entities.

[25] Up to five additional members of the Senate are appointed for a life term by the President of the Republic because of their particular achievements.

[26] Former Presidents of the Republic become life senators after their presidential term. The number cannot be determined but is obviously very low (one to three).

[27] All citizens as they reach the age of 18 vote for the Chamber; but one must be 25 to vote for the Senate. To be elected Deputy a voter must be 25; to be elected Senato 40. The voters for the Senate are *6 millions less* than for the Chamber. This enhances the risk of different outcomes of the two elections however held the same day.

[28] Senate would be formed by Regional delegations of 6 to 14 members.

[29] Up to 1993 the electoral laws for the Chamber and for the Senate were *de facto* identical: both proportional, the difference being that voters could also select their favourite candidate for the Chamber (within the party list), they could not for the Senate. Between 1993 and 2005 both electoral laws resembled the 1994 electoral law for the House of Representatives in Japan (Italy had 3/4 of the seats assigned by single member constituencies on the base of plurality, 1/4 of the seats assigned according to national proportional representation). Since 2005 the formula is proportional for both Chambers, but with thresholds and extra seats allotted to the winning party or coalition to ensure a clear majority (the difference is that for the Chamber the national vote decides the outcome, for the Senate there are 21 regional competitions: this concurs to the risk to make a lottery out of the elections (a party or coalition with *less* national votes may well win more seats in the Senate). Note that electoral systems are *not* considered constitutional matter (therefore constitutional acts may or may not contain electoral provisions).