

Is Governability A Constitutional Principle? Italy's Electoral System

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ABSTRACT

Governability, intended as effectiveness in decision-making, is a key concept in law, legal theory and social sciences since the late seventies. In contrast to political representation, governability is often conceived as the standard for evaluating electoral systems. At the crossroad of «the 1st and 2nd republic of Italy» in the early nineties, the debate on governability was framed in terms of stability. The aim of this paper is (1) to analyse Italian electoral system in historical perspective in order to (2) assess the relation between governability and representation. After World War II the constituent assembly opted for a proportional electoral system, considered highly consistent with the overall parliamentary system. With the remarkable exception of the so-called «legge truffa» in 1953, this proportional system lasted four decades. In 1993 it was replaced by a single-member plurality system, making Italy the only advanced democracy in world history to pass from a proportional to a majoritarian electoral system. A few months prior to the general elections of 2006, the right wing majority in Parliament, strongly supported by the Berlusconi administration, adopted a new electoral rule: Basically proportional, it includes high thresholds and an additional seats system that needs to be assessed in a comparative perspective.

And therefore when any one of these pantomimic gentlemen, who are so clever that they can imitate anything, comes to us, and makes a proposal to exhibit himself and his poetry, we will fall down and worship him as a sweet and holy and wonderful being; but we must also inform him that in our city such as he are not permitted to exist; the law will not allow them. And so when we have anointed him with myrrh, and set a garland of wool upon his head, we shall send him away to another city.

Plato, Rep. 398a

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The image which recurs in these and other statement is one of the disintegration of civil order, the breakdown of social discipline, the debility of leaders, and alienation of citizens. Even what have been thought to be the most civic of industrialized societies have been held to be prey to these disabilities, as observers speak of the Vietnamization of America and Italianization of Britain.

Report to the Trilateral Commission¹

1. Introduction

The evolution of the Italian electoral system offers an exceptionally clear case study for testing the relation between the classical standard of political representation and that of contemporary governability practices. The Italian debate on stability that foreclosed the rise and the development of its electoral reforms is a way to critically assess the supposed positive trade-off between governability and representativeness. My aim is to show how the rhetoric of governability in the case of Italy's electoral reforms should be viewed in connection with the phenomenon of personalisation of politics, leading up to a subtle but substantial variation in the constitutional arrangement. Governability thus appears to strengthen executive power, consequently weakening the branch of government archetypically associated with political representation, i.e. the legislative power of Parliament.

In the second half of the seventies, the discourse on governability entered the scientific and political scene. The term was borrowed from the hard sciences and, from the analytical perspective, may be defined as «the quality of being governable, that is, capable of being controlled or managed.»² With the publication of the Trilateral Commission Report, drafted by Crozier, Huntington and Watanuki, on the risks involved in the loss of governability, the debate on theory of democracy underwent a radical turn: Focus switched from the lack of democracy to that of the excess of democracy.

¹ M. Crozier, S.P. Huntington, J. Watanuki, *The Crisis of Democracy: Report on the Governability of Democracies to the Trilateral Commission*, New York University Press, NY 1975, p. 3.

² I. Janin, *Governability*, in *Encyclopedia of Governance*, edited by M. Bevir, Sage, Thousand Oaks (CA) 2007, vol. I, p. 363.

Samuel Huntington states this in a crystal clear way:

views as to what constitutes the precise desirable balance between power and liberty, authority and democracy, government and society obviously differ. In fact, the actual balance shifts from one historical period to another. Some fluctuation in the balance is not only acceptable but may be essential to the effective functioning of constitutional democracy. At the same time, excessive swings may produce either too much government or too little authority. The democratic surge of the 1960s raised once again in dramatic fashion the issue of whether the pendulum had swung too far in one direction.³

The economic crises of the seventies spurred the debate on the economic and social changes brought about in the years immediately preceding the oil crisis. These debates evolved under the warning sign stressing the efficiency and effectiveness setbacks of government action, eventually resulting in loss of consensus in the electorate.⁴

This line of study progressively became hegemonic in the realm of social sciences, as well as in political debates. From here sprung the alleged need in contemporary societies to develop new solutions to problems facing democratic states overloaded by claims and unable to properly answer these.⁵ It has been stressed that such readings paralleled the rise of neo-liberalism following the election of Margaret Thatcher in the UK and Ronald Reagan in the US.⁶

This general tendency of political theory translated in Italy into a debate on institutional reform concerning both the form of government and the electoral rule. This debate generated a vast consensus in the public eye on the need to abandon parliamentary government and

³ M. Crozier, S.H. Huntington, J. Watanuki, *The Crisis of Democracy* cit., p. 63.

⁴ R. Rose, G.B. Peters, *Can Government Go Bankrupt?*, Basic Books, New York 1978.

⁵ The reference of course goes to F. Hayek, *Law, Liberty and Legislation*, Routledge, London 1973. See also R. Rose, *Ungovernability: Is There Fire Behind the Smoke?*, in «Political studies», 1979, XXVII, pp. 351-370. The vocabulary of new public management and the notion of governance were taken over from these debates: «To put it in Hegelian terms, we can think of governance as being the synthesis that supersedes both the thesis (legitimacy) and the antithesis (governability). Governance seeks, indeed, to combine the demand for participation and inclusion called for by the legitimacy reading of the social crisis with the demand for autonomy and self-regulation called for by the governability reading. However, it is a false synthesis, since it operates entirely within the governability framework» (B. de Sousa Santos, *Beyond Neoliberal Governance: the World Social Forum as Subaltern Cosmopolitan Politics and Legality*, in *Law and Globalization from Below*, Cambridge University press, Cambridge 2005, p. 35).

⁶ See P. Dardot, C. Laval, *La nouvelle raison du monde. Essai sur la société néolibérale*, La Découverte, Paris 2009, pp. 278 ff.

proportional electoral system. Both of these political arrangements had been chosen at the end of WW2.

Focus here is on the debate that developed around the electoral reforms. The aim of this study is to show that the rhetoric of governability, at the roots of the electoral engineering proposals, impacted determinedly on the evolution of Italy's political system. The first section will be dedicated to a brief theoretical reconstruction of the concept of governability (§2). In section two I suggest an assessment of the soundness of the functional argumentation on governability that we find in contemporary Italian history, from WW2 until today (§3). In section three, I shall shed light on the electoral system adopted at the end of 2005 for the election of MPs (§4).

The methodology steams from the understanding that we need to keep together and bridge the outlooks and toolboxes of political theory, political science and constitutional law in order to provide satisfactory analysis of the concept of governability, and account for the theoretical problems inherent in the concept and explain the evolution that brought the notion into the limelight of science and media alike.

2. Governability as a Conceptual Problem

Of course, the Trilateral Report is not the first attempt to protect governability. The noble forefathers of the theory of governability may be found in the so-called functional theories of democracy, and even earlier in the considerations of Max Weber on the risks of «leaderless democracy.»⁷ These thinkers addressed the issue of measuring and understanding the efficiency of different forms of government and their electoral systems.

In a brief and selective overview of the (proto) functional arguments of the 20th century, mention has to be made, first and foremost, of Weber's critical remarks on «leaderless democracy» and his strong preference for plebiscitary solutions⁸ able to contrast the «excesses» of

⁷ M. Weber, *Politics as a Vocation*, in Id., *The Vocation Lectures*, Hackett, Indianapolis 2004.

⁸ See G. Roth, *Politische Herrschaft und persönliche Freiheit*, Surhkamp, Frankfurt a.M. 1987; A. Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt*, Cambridge University Press, Cambridge 2009, chapter 1.

proportional representation that give rise to «a parliament of closed, philistine minds, in no sense capable of serving as a place where political leaders are selected.»⁹

Secondly, we should not forget the considerations of Ferdinand A. Hermens¹⁰ on the fall of the Weimar Republic, inspired by Weber's ideas: Hermens criticized the inclusive consequences of the proportional electoral system that paved the way for the KPD's and the NSDAP's access to the Reichstag.¹¹

The major representative of functional democracy, still remains Joseph Schumpeter. In his *Capitalism, Socialism and Democracy* from 1942, where theory of democracy meets theory of elites, democracy is described as a procedural technique for leadership selection. It is often underlined that his model is radically opposed to that of his contemporary, Hans Kelsen.¹² According to the latter, in fact, democratic government amounts to a set of procedures grounded on the parliamentary form of government, proportional representation, a system of parties so as to include progressively the hurdled masses into the political life of the nation.

The relationship between representativeness and governability can thus be reformulated in terms of a contrast between political equality and social order. The link between governability and order could be explained through the problem of conflict neutralization: the overload of political demand could create a lack of efficiency of the institutions that prevents the possibility of answering with effective decisions and brings to social conflict. A political system that is not able to neutralize conflict puts in jeopardy the effectiveness,¹³ i.e. the stability and even the survival, of the state itself. On the other hand, with political equality we can intend the double democratic meaning of inclusivity (of larger groups of individuals in the political area) and equal weight of

⁹ M. Weber, *The President of the Reich* (1919), in Id., *Political Writings*, Cambridge University Press, Cambridge 1994, p. 306.

¹⁰ See in particular F.A. Hermens, *Europe Between Democracy and Anarchy*, University of Notre Dame, Notre Dame (Indiana) 1951; Id., *The Trojan Horse of Democracy*, in «Social Research», November 1938.

¹¹ There is a vast literature dealing with the topic. See, inter alios, G. Leibholz, *Die Auflösung der liberalen Demokratie in Deutschland und das autoritäre Staatsbild*, Duncker und Humblot, Leipzig 1933; C.J. Friedrich, *Constitutional Government and democracy. Theory and Practice in Europe and America*, Ginn, Boston 1950, pp. 275 ff.; R. Fenske, *Weimar. Der deutsche Liberalismus in der Krise*, Surhkamp, Frankfurt a.M. 1957; H. Schulze, *Weimar: Deutschland 1917-1933*, Severin und Siedler, Berlin 1982.

¹² For a reconstruction of Kelsen's theory of democracy and its links to law, see Lars Vinx, *Hans Kelsen's Pure Theory of Law: Legality and Legitimacy*, Oxford University Press, Oxford 2007.

¹³ In this case effectiveness is used in the meaning of Hans Kelsen's *General Theory of Law and State* (1945), The Lawbook Exchange, Clark NJ, 2007, pp. 121 ff.

every vote (as the French revolution claim of one vote per member, rather than one vote per estate).¹⁴

The classic theory of democratic government defended the instauration of an equalitarian order (from the point of view of equal participation of individuals in political decision making). It defended an order of inclusiveness by the means of a progressive extension of franchise. On the contrary, democratic functionalism advocated the idea of independence of the order guaranteed by the oligarchies' constant control over government and democratic equality as a source of legitimacy spurring the competition among elites.

With the Trilateral Report, the persuasiveness of governability strongly prevailed in the scientific debate as well as in the political debate. This led to the claim that there are desirable limits to political democracy. Dardot and Laval, for instance, hold that the three authors of the Report «se plaignaient de l'«excès de démocratie» apparu dans les années 1960, c'est-à-dire, à leurs yeux, de la montée des revendications égalitaires et du désir de participation politique active des classes les plus pauvres et le plus marginalisées».¹⁵ This is the core meaning of the thesis according to which there is a trade off¹⁶ between governability and representativeness; a thesis endorsed by Huntington to whom it is patent that «to assume that there is no conflict between these two requirements is sheer self-delusion.»¹⁷

The trade-off thesis (the growth of political equality entails the decrease of governability, with risks for the social order¹⁸) is today common sense; it denies the classic thesis of democratic supporters, according to whom the increase of political equality (in the double sense of inclusivity

¹⁴ See N. Bobbio, *Dall'ideologia democratica agli universali procedurali* (1987), in Id., *Teoria generale della politica*, Einaudi, Torino 1999, p. 381; M. Bovero, *La democrazia e le sue condizioni*, *festivalfilosofia*, Modena 2009, pp. 7-10.

¹⁵ P. Dardot, C. Laval, *La nouvelle raison du monde*, cit., p. 278.

¹⁶ For a well-argued overview of the major pros and cons of the different approaches to electoral systems, see the third chapter in P. Norris, *Electoral Engineering. Voting Rules and Political Behaviour*, Cambridge University Press, Cambridge, 2004.

¹⁷ M. Crozier, S.H. Huntington, J. Watanuki, *The Crisis of Democracy*, cit., p. 63.

¹⁸ On the relationship between governability and order, Crozier stresses in the Trilateral Report that «order and efficiency may be more surprising items to put among the core political beliefs of West Europeans. [...] Whenever the development of freedom threatens to bring chaos, the demand for order is immediate, even violent. It is not a lost or dwindling part of core political beliefs whatever the possible evolution of its forms in the direction of more tolerance. The special West European form of order, however, has a more social and less juridical connotation than in the United States. Things (and people) have to be put in their proper place for society to operate. Due process is not the cardinal element of this belief. Furthermore, efficiency may be added to it inasmuch as it has a legitimating connotation of a well-functioning society. West Europeans still value the good 'efficient' scheme more than the concrete result. Order is the burden of the white man; efficiency may be the demonstration of it in a modern rationalized society» (M. Crozier, S.H. Huntington, J. Watanuki, *The Crisis of Democracy*, cit., p. 45).

and equal weight to every vote) could lead to social stability by allowing participation of the mass to political decisions.¹⁹

This is exactly what Huntington denies when he claims that consolidation of democratic, liberal and equalitarian values, during the sixties, led US to a dangerous overload of political demand (especially because of African-American's integration in politics and welfare policy increase).²⁰

From then on, just a few years after the clue date of 1975, Claus Offe speaks of a real «neo-conservative crisis theory.»²¹ According to Offe, criticizing democracy was a prerogative of Marxism in the aftermath of WW2 but this new crisis-theory emerged out of the void left by the great leftwing movements. The buzzwords are no longer class-conflict and uncompleted democratic inclusiveness, but rather the crisis of mass-democracy. The agenda setting moves from the issues focused on the clash between political democratic equality and market economy. The new agenda politicized the lack of proportion between citizens' claims on western democracies and the scarce response offered by governments.²² In the wording of the sociologist George Lakoff, the conservatives imposed the frame²³ of their worldview:²⁴ A «too equal» society (or a society that looks too much to the value of equality) would somehow become impossible to rule.

¹⁹ See the documents of the Association réformiste (Genève 1865), Proportional Representation League (New York 1867), Proportional Representation Society (London 1869), Associazione proporzionalista (Roma 1871).

²⁰ M. Crozier, S.H. Huntington, J. Watanuki, *The Crisis of Democracy*, cit., pp. 112-113.

²¹ C. Offe, 'Ungovernability': the Renaissance of Conservative Theories of Crisis, in Id., *Contradictions of the Welfare State*, MIT Press, Cambridge (Mass.) 1984.

²² Recently, Boaventura de Sousa Santos claimed that, with the *Trilateral*, «the crisis of government by consent was thereby transformed into a crisis of government *tout court*, and the crisis of legitimacy became a crisis of governability» (B. de Sousa Santos, *Beyond Neoliberal Governance*, cit., p. 33).

²³ As Erving Goffman explains in *Frame Analysis: An essay on the organization of experience*, a frame, in social and communication theory, consists of a schema of interpretation that individuals rely on to understand and respond to events. It relates to the construction and presentation of a fact or issue «framed» from a particular perspective. Framing is an effective heuristic, i.e. mental shortcut or cognitive bias, affecting the outcome of choice problems to the extent that several of the classic axioms of rational choice do not hold. See S. Plous, *The Psychology of Judgment and Decision Making*, McGraw-Hill, Columbus 1993; A. Tversky, D. Kahneman, *The Framing of Decisions and the Psychology of Choice*, in «Science», 1981, 211, pp. 453-458. In social sciences a frame defines the packaging of an element of rhetoric in such a way as to encourage certain interpretations and to discourage others: According to some sociologists, the «social construction of collective action frames» involves «public discourse, that is, the interface of media discourse and interpersonal interaction; persuasive communication during mobilization campaigns by movement organizations, their opponents and countermovement organizations; and consciousness raising during episodes of collective action» (B. Klandermans, *The Social Psychology of Protest*, Blackwell, Oxford 1997, p. 45).

²⁴ G. Lakoff, *Don't Think of an Elephant!: Know Your Values and Frame the Debate*, White River Junction, Chelsea Green 2004.

3. Governability and Electoral Reform in Republican Italian Debate

In Italy – as in the rest of the (Western) world – the end of the seventies and the beginning of the eighties marked a turn in the imposition of the frame of governability. This became particularly clear in the debates over institutional and electoral reforms. Nonetheless, the effects impacted exclusively the field of electoral rule, since the form of government and the institutional arrangement are regulated under the 1948 Italian constitution including aggravated mechanisms for amending the constitution (ex art. 138) and the possibility of confirmative popular referendum.²⁵

The «electoral issue» has for a long time been the favourite playing field of the affirmation of democratic functionalism. This was facilitated by a certain liberal tradition and the entrenched and well-rooted tradition of elitism going back to the pre-fascist era; two traditions of thought that had elaborated the classical themes in the criticisms of proportional representative democracy. It shall come as no surprise that, while the Germans were discussing the motives behind the fall of the Weimar Republic using similar arguments, in Italy, numerous studies were published attempting to establish a connection between the introduction of the proportional electoral system in Italy in 1919 and the consecutive rise of fascism.²⁶

3.1. 1943-1984: Proportional Representation and Parliamentary System

At the end of WW2, a vast consensus is formed in Italy around the parliamentary form of government and the proportional electoral system within the institutional system as well as in society at large. In this particular historical period, we could claim that the frame of representation clearly prevails.

The resistance movement and the post-fascist political organisation in the liberated territories were dominated by mass parties that had been forced into clandestine existence during the fascist regime. These parties were organised in the Committee of National Liberation. The

²⁵ The most blatant case is the constitutional reform that was strengthening the powers of the prime minister, elected by the majority of a centre-right dominated parliament in 2005 and then abolished by referendum in June 2006. Contrarily to abrogative referendums (ex art. 75), so-called constitutional referendums (ex art.138) do not require the quorum of 50%+1.

²⁶ G. Maranini, *Storia del potere in Italia (1848-1967)*, Vallecchi, Firenze 1967, p. 283.

important mass-parties (especially the Christian Democratic Party,²⁷ the Socialist Party²⁸ and the Communist Party²⁹) gain significant representation in the Constituent Assembly,³⁰ following the victory of the advocates of the Republic form of State over the monarchists in the referendum of the 2nd of June 1946. In fact, the Constituent power opted for the proportionality grounded electoral rule on the basis that it was the most compatible arrangement within the framework of parliamentary government.³¹ This was evidently a matter of political preference³² motivated by the aim to protect and include minorities in government processes. The preference also favoured the consolidation of a system of mediation between the great mass-parties, i.e. the essential components of the democratic form of government as depicted in Hans Kelsen in *Von Wert und Wesen des Demokratie* (1929).

Even in the Constituent Assembly, however, there were voices endorsing a functionalist view, especially among the liberals. Suffice to say that the great Italian advocate of liberalism and first President of the Republic, Luigi Einaudi, defended the introduction of a system similar to that in use in the UK. His arguments were based on a criticism of the lack of «personalisation of politics»: in other words, his claim was that focus had to be on single leaders at the vertex of the decision-making process. He also criticized the growing influence of parties in this process.³³ Indeed, the criticism of the mass-party system³⁴ is a Leitmotiv in functionalist discourses condemning proportional arrangements.³⁵ There are good reasons to believe that these influential voices within the Constituent Assembly are, in all likelihood, one of the motives behind the fact that the Assembly did not choose to include the proportional electoral rules in the constitutional

²⁷ From here on DC.

²⁸ From here on PSI.

²⁹ From here on PCI.

³⁰ The sum of the ballots cast in favour of the three parties reached 75% of votes.

³¹ For a detailed reconstruction of the use of the proportional system in Italy, see C. De Fioris, *Rappresentanza politica e sistemi elettorali in Italia*, in Id. (ed.), *Rappresentanza politica e legge elettorale*, Giappichelli, Torino 2007.

³² See M. Luciani, *Il voto e la democrazia. La questione delle riforme elettorali in Italia*, Editori Riuniti, Roma 1991, especially p. 27.

³³ L. Einaudi, *Contro la proporzionale* (1944), in id., *Il buongoverno. Saggi di economia e politica*, Laterza, Roma-Bari 2004. On the Italian statesman, see Roger Chartier, *Luigi Einaudi – between politics and history*, Ithaca, New York 1988.

³⁴ See S. Lupo, *Partito e antipartito. Una storia politica della prima Repubblica (1946-78)*, Donzelli, Roma 2004, where the so-called «Particracy argument» is analysed historically and in relation with the fascist ideological heritage.

³⁵ Besides Einaudi, a significant name in the debates in Italy in those years was Giuseppe Maranini and in particular his work *Miti e realtà della democrazia*, Comunità, Milano 1958. In the field of political science, in turn, the import of functionalist theories should be credited to Giovanni Sartori that defended many of Schumpeter's central theses as early as in his 1957 book *Democrazia e definizioni*. For Sartori, the true power of the electorate consists in choosing who will rule.

dictate. Hence, the proportional electoral system was relegated to the realm of technicalities, disciplined under ordinary legislation.

The political arrangement turned Italy into a case of «double majority» systems. This system ruled a historical situation marked by great hostility between the Catholics and the Communists, in the cold war international context of a world divided in two blocs, on the verge of falling back into war. This led to an extremely stable government, dominated by one and the same party for over forty-years. This situation was tempered by an even larger majority (the so-called «arco costituzionale») needed for constitutional amendments that had to be built between the big mass-parties which never really questioned the basic choices made by the founding father. The Communists were excluded from the government, but were necessary for changing the Constitution.

The failed constitutionalization of the proportional electoral system brought on a first modification in 1953 known as «Legge truffa»,³⁶ the swindle law. Just a few months after the 1953 general elections, the majority, under the leadership of the DC and its undisputed leader Alcide De Gasperi, approved a law according to which a significant bonus would be conferred to the party (or coalition) with 50%+1 votes. The electoral reform later became one of the central issues that the opposition parties (such as the Communist and the Socialist) campaigned on. To the opposition, the new law had the only effect of strengthening the already influential power of the DC. In the following general election, no party attained the notorious threshold of the bonus, leading to the abolition of the law in the next legislature.

However, the «swindle law» does not yet belong to the governability-centred context of later electoral reforms. Looking at the debates from the 50's, there is no trace of accentuation of leadership abilities or plebiscitary rhetoric's. Rather, we face a mix of the «Weimar syndrome», i.e. the fear of assisting passively to the growth of anti-system parties such as the PCI, and the desire to strengthen the centrist power that had until then dominated the political scene of post-WW2 Italy.³⁷

³⁶ Law 148/1953. See A. Renwick, *The Politics of Electoral Reform. Changing the Rules of Democracy*, Cambridge University Press, 2010, pp. 113 ff.

³⁷ C. De Fiore, *Rappresentanza politica e sistemi elettorali in Italia*, cit., pp. 35-38.

3.2. 1976-1994: The Crisis of Democracy?

The mid-seventies³⁸ turned out to be the breeding ground for the winds of change: until then, the electoral system, rooted in the proportional arrangement, had been shielded by all major political parties. From this point on, nonetheless, the debate drifted towards the new buzzword: «governability». Around this date, the term acquired two different meanings. The first meaning is a particularity of the Italian debate and indicates stability of the executive branch of government. The second meaning encountered a greater dissemination, making headlines in other countries as well. This second meaning stresses the loss of representativeness of mass-parties: These become the target of censure since they are held to be interest groups with the mere goal of partitioning political power.

Besides the aforementioned cultural climate dominating international relations,³⁹ the political life in Italy was irremediably scored by the tragic impact of extremist violence, i.e. left-wing as well as right-wing terrorism. This explosion of terror culminated in the kidnapping and murder of the Christian Democrat's leader Aldo Moro by the Red Brigades in 1978. Moro had been the advocate of the agreement known as the «historic compromise» between the DC and the PCI, that first proposed it. After Moro's kidnapping, Communists aimed to guarantee «national solidarity» in the worst days of the terror emergency. Some voices in the public opinion, nonetheless, understood this period in rather different terms: in fact, some saw this as the boosting of political «consociativism»; a category which would later serve to grasp the entire history of the Republican era.⁴⁰

This diffuse perception was reinforced by the successive rise of a new political player in Italy that would leave an important sign on the 80's. The socialist leader Bettino Craxi strengthened the PSI as the Third political party in Italy, making it an alternative to both the major parties: the Communist Party hitherto the opposition party par excellence allied with the PSI during the Fifties and the Christian Democrats, hitherto dominating player on the Italian scene, even though, starting

³⁸ See S. Tarrow, *Democracy and Disorder: Protest and Politics in Italy, 1965-1975*, Clarendon Press, Oxford 1989.

³⁹ It should be stressed that the majoritarian turn started back in 1975 when the important Italian constitutional lawyer and legal theorist Costantino Mortati published a famous commentary on art. 1 of the Italian Constitution where he uncovers all main arguments for abolishing the proportional system that had been elaborated within the functionalist tradition. See C. Mortati, *Art. 1, in Commentario della Costituzione*, ed. by G. Branca, Zanichelli, Bologna-Roma 1975.

⁴⁰ For a critical outlook on the issue, see M. Revelli, *Politica italiana: le avventure del 'consociativismo'*, in «Teoria politica», 1994, 2, pp. 7-28.

in 1963, it shared executive power with the Socialist. Already in his management of the terror crisis, Craxi emerges as the voice offering an alternative to the two other big parties' intransigence in dealing with the terrorists and this soft line will meet with the favour of Moro himself who thanked Craxi in a letter from his prison.

Moreover, Craxi's Socialist Party presents itself as a new movement, strongly linked to its leader and marked by strong advocacy for the functionalist interpretation of democratic government that had until then been marginalized in the scientific debate. This is the starting point of the raging debates over the institutional and electoral reforms that will peak with the reforms of 1993. Actually, the first attempt to reform the institutional arrangement goes back to 1984 when the "Bozzi Commission" tried, unsuccessfully however, to open the public eye to the need to reform the system depicted as immovably stuck. In its Italian version, the argument for endorsing the notion of governability hinged on the call for a popular claim to stability.⁴¹ Clearly, such a claim has to be understood in the frame of a political system that frequently changed his government, even though the majority behind each of this government was constantly led by the DC since 1948.

A feedback loop between the public and the scientific debate took hold, due to the intervention of political scientists, historians and legal scientists in the public debate. These were the glory days of the Italian political scientist Gianfranco Pasquino, that, on the basis of the functionalist theory of Giovanni Sartori, claims that the time was ripe for giving back to the citizens the power to select its own leader while criticizing the partitioning of power and negotiation practices in use among mass-parties.⁴² Moreover, we should mention the prestigious Italian constitutional lawyer Augusto Barbera⁴³ and the catholic historian Pietro Scoppola that will go as far as to call for «the end of party-based democracy.»⁴⁴ Even the President of the Republic, Francesco Cossiga, declared himself sceptical of the party system. These were also the years when the party system went into a deep crisis following a strain of judiciary inquiries: the so-called

⁴¹ In the entry *Governabilità* written for the Treccani encyclopedia, Gianfranco Pasquino defined governability as «political stability + decision-making efficiency». See G. Sartori, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes*, Macmillan, London 1994, ch. VI, § 6.

⁴² G. Pasquino, *Restituire lo scettro al principe: proposte di riforma istituzionale*, Laterza, Roma-Bari 1985.

⁴³ A. Barbera, *Una riforma per la repubblica*, Editori Riuniti, Roma 1991.

⁴⁴ P. Scoppola, *La repubblica dei partiti: evoluzione e crisi di un sistema politico 1945-1996*, il Mulino, Bologna 1997, p. 436.

scandal of tangentopoli. This strain of investigations put high-level officials, including Craxi himself, on the bench of the accused. Many of these officials had, just like the socialist leader, made a number of criticisms to the party-based system⁴⁵, often blamed for the dysfunction of the proportional electoral system. In this context, two referendums were held on the abrogation of significant clauses in the electoral system.

The first referendum was held in 1991⁴⁶ and the second was held in 1993⁴⁷, leading to the new electoral law approved in the same year. The laws n. 276 and n. 277 dating August 4th 1993, radically impacted the electoral system by introducing a mixed system⁴⁸ for both chambers, in which 75% of MPs are elected through a single-member plurality system while only 25% are elected through a proportional system of lists elaborated previously by the parties without any possibility for expressing individual preferences for specific names. The system also includes a threshold of 4%⁴⁹ for the votes aggregated at the national level.

3.3. 1994-2006: The so-called «2nd Republic»

The 1994 general elections are commonly referred to as the start of the phenomenon that goes under the French-sounding appellation of «second Republic» that paved the way for the overturning of the traditional parties following corruption charges and different investigations (tangentopoli). This is the period in which the frame of governability emerged as the hegemonic frame for grasping the political life of Italy. In this phase governability appeared to be the key unlocking the doors of «democracy of alternation»⁵⁰ and bi-polarism, i.e. a two party (or two

⁴⁵ On the criticism of the party-system in the Italian socialist movement led by Craxi, see A. Mastropaolo, *Antipolitica. All'origine della crisi italiana*, l'Ancora, Napoli 2000, pp. 63 ff.

⁴⁶ The referendum on the provision reducing the number of preferences to a single one in the ballot electing the Chamber obtained 95,6% of the votes. This provision had been defended on the basis of arguments such as the need to combat «consociativism» among parties, i.e. power-sharing arrangements involving guaranteed group representation; and the very Italian phenomenon of «voto di scambio», i.e. the ballot cast regularly by a voter unmotivated by political preferences but rather motivated by the *do ut des* logic involving promised favours of personal kind.

⁴⁷ 82,7% voted in favour of the referendum introducing the first past the post system for electing the Senate.

⁴⁸ The Italian political scientist Giovanni Sartori defined this system *Mattarellum*, a latinization of the surname of its inventor. For a brief synopsis and analysis of this system, see A. Renwick, *The Politics of Electoral Reform* cit., pp. 169 ff.

⁴⁹ The systems for electing the two chambers differed as far as the modalities of attributing the proportional quota were concerned and in respect of the dimension of the electoral districts: the Italian Constitution explicitly declares that the Senate is elected on a regional basis (ex art. 57).

⁵⁰ See M. Bovero, *Democracia, alternancia, elecciones*, Instituto Federal Electoral, Mexico City, 2000.

coalition) political system.⁵¹ Bi-polarism was considered to be the only viable option for «normalizing» Italy's stormy political relationships and turning it into something «European».⁵²

On the 1994 campaign trail, the Christian Democrats appeared weakened and split, unable to form a strong centrist grouping. A name change made the split more evident: The party changed name to Popular Party, hereby recovering its pre-fascist appellative. The Communist Party changed its name to the Left Democratic Party, letting the traditional symbol of “the scythe and the hammer” in a tiny corner of their logo. Notwithstanding internal divisions, this latter party was the only one that maintained stability in the level of consensus within the electorate. The Socialist Party was basically swept away from politics.

The great novelty of these general elections was the businessman Silvio Berlusconi's decision to (in his own wording, with a soccer metaphor) «enter the playing-field» (discesa in campo). He was to become the undisputed protagonist of the next fifteen years of Italy's political life. Berlusconi appeared to be a successful businessman, an outsider of the political establishment, even though he had been intimately linked to the Socialist leader Craxi. Openly hostile to traditional parties⁵³, Berlusconi emerged as a tough promoter of an unprecedented approach to political debate that fluctuated between efficiency-focused rhetoric —characteristic of many so-called post-ideological approaches following the 1989 fall of the Berlin wall— and a strong thrust towards an uncompromising friend-enemy opposition to communism through the constant evocation of its ghost and the rediscovery of rhetorical tools belonging to the cold war period. This technique gave him the spotlight, transforming him into a charismatic leader of the first big leadership-based party in Italy.⁵⁴

Now, the rise of the so much talked about bi-polarism was supposed to offer the key to efficient government at the prize of representativeness. This led to the definitive abandonment of

⁵¹ For a brief synopsis about Italian case, see G. Sartori, *Il bipolarismo non si uccide*, in «Il Corriere della Sera», 21/11/2007.

⁵² See S. Ceccanti, S. Vassallo (eds.) *Come chiudere la transizione. Cambiamento, apprendimento e adattamento nel sistema politico italiano*, il Mulino, Bologna 2004.

⁵³ About anti-party arguments, not only in Italy, see the monographic issue of the «European Journal of Political Research», XXIX, 3, 1996, edited by S. Scarrow and T. Poguntke.

⁵⁴ M. Calise, *Il partito personale. I due corpi del leader*, Laterza, Bari-Bari 2010². At the first ballot using this new system (the general elections of March 1994), Berlusconi's *Forza Italia* imposes itself as the biggest party on the national level with its 21%. On Berlusconi's style of government in a comparative perspective with the later French case of Sarkozy, see B. Cousin, T. Vitale, *De Porto Rotondo à Wolfeboro. Vertus et faux-semblants de la comparaison Sarkozy-Berlusconi*, in «Mouvements», 2007, 52, pp. 105-113.

the «double majority system». On one hand, this enabled the heirs of the Communist Party to enter government. On the other hand, it brought anti-system parties —such as the re-styled ex-fascists (MSI) and the recently founded regionalist movement Lega Nord— into the democratic game of the nation.

The change of the electoral law occurred in parallel with the perception of charismatic leadership becoming a source of legitimacy within the democratic context.⁵⁵ Throughout the entire post-fascist era, this source of legitimacy had been deemed incompatible with democratic government. Unsurprisingly, these changes to the political climate had significant consequences on the form of government. Even though the Constitution had not been amended, the relationship between the Parliament and the executive took a new turn. The substantial strengthening of executive power in the name of governability,⁵⁶ with the consecutive sacrifice of the legislative branch and its representative function, is not a phenomenon restricted to Italy.⁵⁷ The process of legitimizing the leadership⁵⁸ seems inversely proportional to the loss of credibility of the party-system. This latter organisation, in effect, was increasingly held to be inefficient and unable to mediate between society and political institutions even though parties still provided the main mechanism for selecting candidates for high-official positions.⁵⁹

Nevertheless, the system of alternation of power between right- and left-wing forces that was strengthened and promoted by the plurality voting system⁶⁰ did not have the desired effect of reducing the number of parties. On the contrary, the number of parties increased, conferring to

⁵⁵ As early as 1991 an influential Italian intellectual called for a strong leader using arguments taken from Weber's «plebiscitary democracy». Back then a small minority would endorse such calls. See A. Panebianco, *Plebisciti e democrazia*, in «il Mulino», 1991, n. 3, pp. 427-435.

⁵⁶ Bovero recently said that «political life in real democracies seem today just a competition, with few and too little democratic rules, among few people called leaders, who look for investiture of a nearly autocratic power. We are playing another game, this is a different form of government: I suggest to define it electoral autocracy» (M. Bovero, *La democrazia e le sue condizioni*, cit., p. 16).

⁵⁷ See T. Poguntke, P. Webb, *The Presidentialization of Politics. A Comparative Study of Modern Democracies*, Oxford University Press, Oxford 2005. More specifically on the Italian case, see M. Calise, *Terza repubblica. Partiti contro presidenti*, Laterza, Roma-Bari 2006.

⁵⁸ One of the technicalities introduced to personalize electoral competitions is the insert of leader names on the parties' logos.

⁵⁹ Mastropaolo defined this as a passage from «Kelsenian parties» with strong representative and mediating functions to the «Schumpeterian parties» focused on electoral competition, candidate selection, interest protection. See A. Mastropaolo, *Crisi dei partiti o decadimento della democrazia?*, in www.costituzionalismo.it accessible on-line at: <http://www.costituzionalismo.it/articolo.asp?id=173>.

⁶⁰ Of the three ballots cast with the first-past-the-post system, the centre-right coalition led by Berlusconi won twice (in 1994 and in 2001) and the centre-left coalition led by Romano Prodi won once (1996).

very small aggregations of ballots the power of vetoing important policies. This kind of dysfunction were explained by several Italian political experts as an output of the proportional quota of 25% by which some MPs were elected. In an attempt to abolish this proportional quota, two further referendums were held in 1999 and in 2000 but did not lead to any change since they did not attain the required quorum.⁶¹

4. A Brand New Electoral System

In December 2005, after five years of government and three months before the general elections, the centre-right majority passed a bill on the electoral system,⁶² despite the protests of the entire opposition. In the phrasing of its proponents, this bill would have struck a balance between, on one hand, democratic representativeness, defended by the smaller parties that would have preferred to return to the proportional system of the early days, and, on the other hand, governability that would be guaranteed through the bonus-adjusted system and the threshold.

The new system is a strongly counter-tempered proportional rule. The lists of candidates for both chambers can be turned into a coalition, so as to increase the likelihood of obtaining the bonus. As far as the election of the Chamber of Deputies is concerned, the coalition that obtains the highest number of ballots at the national level automatically obtains 55% of the seats in the Chamber, regardless of how many votes the coalition as such actually obtained. As far as the Senate is concerned, the bonus is delivered on a regional basis. This implies that in every region the winning coalition brings home 55% of the seats reserved in the Senate for the respective region. In both cases, the lists are drafted by the parties. This means that, once the number of seats corresponding to each list is established, in every electoral district, the MPs will be selected on the basis of their position on the lists. The bill also allows plural candidatures: A candidate may present himself or herself in several electoral districts.

The threshold limits are also of varying nature. As far as the Chamber is concerned, only parties that have obtained at least 4% of the ballots participate in the distribution of seats. In the event of a coalition obtaining 10% or more of the votes, all the parties belonging to that coalition

⁶¹ In 1999 the quorum was not reached by a very slight margin since 49,6% of the voters participated. In 2000 only 32,2% participated.

⁶² Law 270 from the 21st of December 2005.

that have obtained more than 2% will enter Chamber, as well as the first party below the 2% threshold. The system for electing the Senate is similar but the calculation is made at the regional level with an overall 8% threshold. For the lists of a coalition totalling 20% or more votes, the threshold is lowered to 3%.

Finally, the electoral system is not homogeneously applied throughout the country: special clauses are applied to the region of Trentino Alto-Adige, only for the Senate, and for both chambers to the region of Valle d'Aosta and the collegio estero, i.e. the so-called «foreign district» granting extraterritorial representation of Italians living abroad.⁶³ In fact, this electoral district was formed following the constitutional amendments of the 17th of January 2000 (n.1) and of the 23rd of January 2000 (n.1) that conferred franchise to all Italians who have taken up permanent residence abroad and are inscribed at the AIRE (Anagrafe per Italiani Residenti all'Estero). These expats are entitled to select by ballot 6 senators and 12 MPs on the basis of macro-districts.

In the general elections held on the 9th of April 2006 the centre-left coalition was granted a broad majority in Chamber but obtained a much smaller majority in the Senate.⁶⁴ The executive led by Romano Prodi – among the most crowded administrations in the history of the Republic⁶⁵ – was able to hold on to power for a little less than two years. Thereafter, the general elections brought Berlusconi once again to the top of the executive. As a matter of fact, the Prodi administration fell because of the obstructionism of the tiny party Udeur when it became public domain that Clemente Mastella, leader of the Udeur party and Minister of Justice, was being subject, together with his wife, of an investigation including corruption among the charges.⁶⁶ The Udeur party, that had obtained a mere 1,39% of the votes, enjoyed some 14 MPs and 3 senators in the Prodi administration.

Moreover, the investigation of Mastella added up to the uncritical plea for the existing electoral rule that was being challenged by three new referendums. However, none of them will

⁶³ On the electoral mechanisms, campaign trails, voters' profile etc. for the «foreign district», see G. Tintori, *Fardelli d'Italia? Conseguenze nazionali e transnazionali delle politiche di cittadinanza italiane*, Carocci, Roma 2009, especially pp. 118 ff.

⁶⁴ Pursuant to the Italian Constitution, government has to enjoy the trust of both chambers (ex art. 94).

⁶⁵ In this administration there were 26 ministers, 10 voce-ministers, 66 undersecretaries, totalling 103 members from 11 different parties to which we need to add other 11 parties that supported it without partaking in it.

⁶⁶ See <http://www.lastampa.it/redazione/cmsSezioni/politica/200801articoli/29316girata.asp>.

reach up to the quorum of 50%+1 and they were therefore declared null and void.⁶⁷ Even if we set aside the particular circumstances of Italy's political life, what is of interest with the new electoral law is the discrepancy between the reasons behind it and its consequences that were not only predictable but also explicitly foreseen.

Here I suggest four different criteria for assessing the law 270/2005 that was defined by its promoter – the minister Roberto Calderoli⁶⁸ – an «obscurity» (porcata). This appellative made the law go under the infamous name of Porcellum; latinization of the Italian swearword «swine» coined by the Italian political scientist Giovanni Sartori.⁶⁹

(a) Political suitability

A first observation that we should make is that it is neither appropriate, nor suitable to change the electoral law just a few months ahead of the general elections. To make matters worse, it is clearly out of place to pass such a bill in a parliament dominated by a majority fearing to be relegated to minority. To change the rules of the game while playing, without due agreement between players, is blatantly unfair, showing lack of respect for the principle of legality as such.

Even from the point of view of the governability frame, this element is incompatible with the «democracy of alternation» that the advocates of institutional change thought to be the output of bi-polarism or bi-partisanship.

(b) The rule of law

Following the 2006 general elections, the law known by the name of its main promoter – Calderoli – triggered a lengthy lawsuit concerning the attribution of some seats in the Senate. In fact, one of the clauses of the provision can be read in multiple ways: This is relevant for the

⁶⁷ These three issues, even though they left the law basically untouched, would have eliminated the privileges guaranteed to small parties by standardizing the required thresholds to 4% in the lower house and 8% in the upper house. A few months before the government crisis, Mastella declares at a press conference in Naples: «I am saying it clearly: we will not be there when the referendum comes. If there is the referendum, the risk is a government crisis [...] once governability is guaranteed the rest is boredom [...] Before the brutality of those who want a referendum just because things are not working we respond with equally strong determination». He resigned, officially because of lack of solidarity in the government following the scoop of the investigation on him, on the same day the supreme court declared the referendum admissible (16th of Jan 2008). In this Judgments (15, 16 and 17/2008) the Court censured, as an advise for the Parliament, several elements of the Law.

⁶⁸ Source: TV interview *Matrix*, 15th of March 2006.

⁶⁹ G. Sartori, *Il Porcellum da eliminare*, in «Il Corriere della Sera», 1/11/2006.

election of senators in a region where the coalition obtains more than 55%. This technical flaw had been stressed before the law came into force: During the debate in the Commission for Constitutional Affairs (Commissione affari costituzionali) in the Senate. The majority MPs preferred not to modify the text but rather to speedily carry on with the reform. The rule of law (Rechtssicherheit) was thus sacrificed on the altar of speediness.

Clearly the concern for legal security and rule of law is not a priority in political debate and it is often left to the lawyer to defend the gubernaculum per leges.⁷⁰ Yet, the problems that arose because of the technical flaws of the law, drafted in a clumsy and rushed manner, had weighty consequences on the institutional efficiency, contrarily to what governability advocates had hoped.

(c) Democratic representativeness

The system through which the votes are transposed into seats in the Calderoli Act does not only result in a deformation of the political preferences expressed by voters at the level of Parliament. Such a deformation has been portrayed as the prize to pay for efficiency and governability. With this law, indeed, the logical connection between the distribution of votes and the composition of the two chambers is lost.

The absence of a minimum amount of votes required accessing at the bonus ends up in the paradox according to which 55% of the seats will automatically be attributed to the party or coalition that obtained more votes regardless of the amount of votes in excess. This, in turn, means that the misrepresentation is far worse than in the previous and highly criticised «Legge Acerbo» that Mussolini coveted in 1923, and the aforementioned «Legge truffa» from 1953. In effect, the first of these laws included a provision making the majority party obtaining automatically 2/3 of the seats in Parliament, in the event that party, however, would win at least 25% of the votes. The second law granted 65% of the seats to the coalition of the majority in the event it won 50%+1 of the votes.

In addition to this, the threshold system introduces different thresholds. This system enables small parties belonging to important coalitions to be granted a distorted weight. In fact, it is paradoxical that, in the Senate, a party attaining 3% may be enter while another obtaining 7,9%

⁷⁰ All classical theories of rule of law defended the characteristics of generality and abstraction that aim to guarantee the equality before the law and the possibility for the citizens to foresee the legal consequences of their acts.

may not, depending on which coalition it belongs to. A party having obtained merely 410.499 votes is currently in the Italian Parliament, while another having gained 1.124.298 votes was excluded.

Another issue, perhaps even more worrisome even if less noticed, concerns the autonomous region of «Valle d’Aosta». In the lower house, this region is entitled to one single deputy elected with a first-past-the-post voting method. The ballots cast by the citizens, resident in Aosta Valley, are the only ones that are not counted when it comes to attributing the bonus on the national level. This is highly problematic because the provision stands in stark contrast to the constitutional norm guaranteeing equal weight to every vote (ex art. 48).⁷¹

Finally, the extraterritorial vote given to Italian residents abroad through the system of an extraterritorial constituency (collegio estero) deepens the gap between Italians living abroad and legally resident migrants living in Italy but lacking franchise, i.e. taxpayers subject to a legal and political system which they have no means of influencing. Guido Tintori, among others, stressed this aspect: «The combined effect of the Italian laws on citizenship, the electoral law enabling extraterritorial ballot casting, and the 2006 electoral system have engendered a vicious circle in legislation and politics from which it will not be easy to escape. The electoral regulation makes it highly unlikely that those voting from abroad are Italians temporarily living abroad. On the contrary, holders of an Italian passport, third or fourth generation emigrants are automatically registered on the lists of voters of the AIRE, so they receive the ballot package directly in the mailbox. Those elected in the «foreign district», in turn, are often holders of dual nationalities and the Italian state does not require them to give up the foreign citizenship like elsewhere (...). To paraphrase: this can be summed up with no-taxation and overrepresentation.»⁷²

These problems tally up to the mechanism of the lists of candidates being drafted by the parties, a necessary requirement in an arrangement with macro-constituencies. The overall result is a frustrating stalemate for those that intended to promote governability and spoke up condemning the mass party system. The current mechanism, indeed, enables very high predictability of the outcome of the ballot before it is even cast.

⁷¹ Another problem of potential unconstitutionality is the introduction of a provision obliging any party to declare his prime minister candidate, even though it is not binding. In the Italian constitution, however, the President of the Republic, with the consecutive approval of both chambers, chooses the prime minister that is thus not elected directly by the people (ex art. 92).

⁷² G. Tintori, *Fardelli d’Italia*, cit., pp. 118-119.

(d) Governability as a form of stability

The arguments presented here would not offer a complete picture if we do not address the question whether the law guarantees at least the stability of government (which is considered the most serious flaw of Italian democracy). Since figures do not lie it is often stressed that from 1948 until today Italy has had 58 administrations and 24 prime ministers.

Moreover, it should be noted that the bonus-adjusted system translates into very different and heterogeneous majority coalitions in the lower and in the upper house. This leads to the risk of polarization within each chamber without nonetheless guaranteeing that a consensus will be found on the candidate for the prime minister.

Furthermore, the threshold system was intentioned to safeguard majorities from the blackmailing ability of small parties. This hoped effect has been cancelled through the differentiation between the distinct thresholds and the introduction of the bonus-adjusted system. These two systems have contrasting effects that cancel each others' potentiality. In fact, the lists drafted by the important parties have to include top leaders from tiny parties in order not to disperse the ballots. This was the mechanism through which the centre-left Democratic Party pulled-in 9 MPs from the Radical Party on their list.

It seems evident to the scholars analyzing the electoral rule that the aim of the law simply has not been attained.

5. Conclusions

The survey of the Italian electoral system, from its post-war emergence until today's provisions, that I have presented in this paper, enables us to underline three aspects that are worthy of further discussion:

- (i) What incidence does dominating political rhetoric have on the rules of the democratic game if these are framed in the procedural democracy tradition?⁷³

⁷³ As far as the procedural theories of democracy are concerned, besides the aforementioned Hans Kelsen and Joseph Schumpeter, see N. Bobbio, *Dall'ideologia democratica agli universali procedurali*, cit.; L. Ferrajoli, *Principia iuris, Teoria del diritto e della democrazia*, Laterza, Roma-Bari 2007, vol. II.

- (ii) To what extent has governability approaches concurred in the «crisis of democracy» and the erosion of traditional political parties, opening the door to populist or strongly anti-political movements?⁷⁴
- (iii) If we consider governability as a quasi-constitutional principle what do we make of the traditional democratic theories focusing on mass-involvement and citizen-participation in decision-making processes, the foundation of a civil covenant truly different in nature from that of autocracies?⁷⁵

⁷⁴ See P. Rosanvallon, *La contre-démocratie: La politique à l'âge de la défiance*, Seuil, Paris 2006; E. Laclau, *On Populist Reason*, Verso, London 2005; Y. Mény, Y. Surel, *Par le peuple, pour le peuple*, Fayard, Paris 2000; A. Mastropaolo, *La mucca pazza della democrazia*, Bollati Boringhieri, Torino 2005; L. Ferrajoli, *Rappresentanza politica e organicismo para-democratico*, in «Democrazia e diritto», 2003, n. 3, pp. 57-62.

⁷⁵ See in particular M. Bovero, *Contro il governo dei peggiori. Una grammatica della democrazia*, Laterza, Roma-Bari 2000.