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# Making Laws Fit for the Present Day: the Government of Change and the precariousness of choices during Italy's Long Transition

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**Abstract**

This article retraces the events of the first Conte government from its difficult birth by contract through to its foreseen death and seeks to establish a connection between the political-institutional aspects of this unprecedented government alliance and the use of legislative instruments, as well as between the devaluation of Parliament and the successes of legislative parliamentary initiatives. This reconstruction also compares the first months of the 18th legislature with the first months of the preceding legislatures of the so-called 'Second Republic'. The conclusion will be that this legislature distinguishes itself from certain preceding long-term legislatures (the 13th, 14th, 16th and 17th) by an approach orientated exclusively to the present and to constitutional reforms that are very small in dimension but huge in impact (such as reducing the number of parliamentarians). Like the other legislatures, it will end with a government and a majority which are different from the original ones, but perhaps with the same prime minister. When that will happen is obviously unclear.

## 1. A slow gestation

Among the legislatures under the so-called Second Republic, the 18th took the longest time to become fully operational: seventy-five days to form a government and ninety to establish the permanent parliamentary committees. The 17th legislature, which also had a weak start, required less time despite undergoing elections for the President of the Republic. The first ballot for the presidential election took place more than a month after the start of the parliamentary term and the process was fast-tracked to a conclusion thirty-six days after the first meeting of the chambers, with the sixth ballot re-electing Giorgio Napolitano. The Letta Cabinet was formed ten days after the election of the President of the Republic and passed a vote of confidence forty-six days after the start of the parliamentary term; the permanent committees were formed one week later (fifty-three days after the start of the term).

In the 18th legislature, the first two and a half months were needed to untangle a complex political situation and form an unprecedented and unexpected parliamentary majority out of two parties (the Lega and Five Star Movement) which had been antagonistic during the elections, the one 'sovereigntist' and the other 'populist', or both differently populist (Caiani 2019). For the first time in the Republic's history, the two majority parties did not converge on a common agenda, i.e., forming a synthesis of their proposals, but


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signed a 'contract'. With the two parties constantly invoking the contract, an 'unprecedented phenomenon' was observed in which 'the populist-sovereigntist forces that have largely become the majority' used (or at least tried to use) parliamentary institutions 'against the system itself' (Manzella 2019).

## 2. To each their own: not a programme produced by synthesis, but a contract resulting from aggregation

Already the choice of the term 'contract' underlines the divide between the two partners in government, linked by a private document rather than a common political programme to sanction the birth of their political alliance. The government had a prime minister, chosen from outside either party (although closer to one of them), who acted as mediator and arbitrator rather than as the engine of the executive.[1] It had two deputy prime ministers who between them headed three ministries and who were also, respectively, the heads of the two political parties. This led to a progressive weakening of the boundaries between their roles as members of government and their roles as political leaders, something that has perhaps not been sufficiently noted by either mass media or academia. Nevertheless, an Interior Minister – in his constitutional role, the guarantor of electoral procedures – had never before been seen to be involved in such a harsh and prolonged electoral campaign. I believe that an official meeting of a political party (Five Star Movement) in the office of a Minister (Economic Development), evidently perceived by the party as the home of its leader – such as occurred in the aftermath of the European elections – has also never before been witnessed.

The contract did not synthesise but rather aggregated the aspirations of the two leaders and their parties, obliging one side reluctantly to accept the other's objectives in exchange for achieving their own goals. We saw this often-painful exchange continue throughout the fourteen months of the first Conte government, which, to be achieved, required procedures to be 'adjusted' quite a bit within both government and Parliament.

## 3. Placing all bets on two parties, four issues

The contract and all the government's efforts – albeit obviously facing many issues – focussed on four principal topics. The hobbyhorses of the Five Star Movement were citizenship income and a substantial elimination of cases to which the statute of limitations applied (part of a much larger theme concerning the justice system); and the Lega's prerogatives were security/immigration and the proposed 'Quota 100' pension reform. Probably, the Lega was better able to affect the government's policy priorities than the M5S (Giannetti, Pinto and Plescia 2020); the M5S focussed more on parliamentary initiative. Decree no. 4 of 28 January 2019 combines the first and fourth issues with the title *Urgent provisions for citizenship income and pensions*, to which Chapters 1 and 2 of the

[1] In every sector, the two majority parties had between them to cover three executive positions (the Minister and the respective Presidents of the Permanent Committees in both the Chamber of Deputies and Senate). Balance was therefore never possible, and in two cases the imbalance was evidently in favour of the Five Star Party: the Department of Health was entirely in their hands (Minister and both Committee Presidents), and the same applies to the Political Commissions of the European Union for both the Chamber of Deputies and the Senate.

decree are respectively dedicated. In Chapter 3, before the provisions on funding and the implementation date, there is one concerning gambling, useful for generating income.

This decree is possibly the most significant example of how the government operated. It derived from adding together one key objective from each governing party, accepted in exchange for an undesirable one from its partner, in order to achieve their respective objectives: citizenship income vs. Quota 100. To obtain these objectives all obstacles were overcome: the past was disregarded ('inclusion income') or denied (Quota 100), but in a transitional and experimental fashion (for the three years between 2019 and 2021), thereby also losing sight of the future; regional responsibility in social policy was not taken into account, initiating a clash with the regions; no study was made of the effects of the two measures, and they were approved (as almost always happens, with any government) regardless of any cost-benefit analysis.[2]

Concerning justice, the two government parties stood far apart but the Five Star Movement, being the majority shareholder, was able to achieve quite a few results. On the issue of immigration, the distance between the parties was more elastic, but it expanded when Conte's first government was succeeded by his second.

## 4. Moving on from the past, looking to the present, disregarding the future: the choice of fleeting legislation and a dislike of delegated legislation

Perhaps the most profound difference between the so-called First and Second Republic lies in their different relationships with the past. In the first, policy continuity prevailed: in the second, discontinuity. To highlight the discontinuity, policy interventions such as those used in the past are not needed, but smaller or greater reforms are, and thus we become entangled in continuous, inconclusive reform processes. Each new legislature generally tends to dismantle the reforms implemented by the preceding one: it begins again from scratch, making it difficult to achieve completed, tested and verified reforms. Overcoming or disagreeing with the past is the theme on which the electoral campaigns of the opposition parties are founded, who then must deliver results once they become the majority. Thus, the reforms follow one another without having the time to take root. The examples are numerous, but I will limit myself to narrating the reforms concerning the job market, education and public administration.

Up until the 17$^{th}$ legislative term, ambitions that included overcoming the past and focussing on the present did not preclude also looking to the future; on the contrary, in order to make themselves last, the legislatures were structured around extensive

[2] This is not the place to deal with impact analysis and the reasons for the absence of an evaluation culture in Italy. I limit myself to recalling an emblematic story. The Impact Assessment Office was established in the Senate in the seventeenth legislature, in the wake of the constitutional reform, rejected in the referendum of 4 December 2016, which attributed to Palazzo Madama competences in the evaluation of public policies. In the 18th legislature, the Office was initially very active, producing 12 documents between May and November 2018. After this date, there is evident stagnation. The web pages of the Office, also due to this stasis, give the overall idea of being still suspended between the XVII legislature and the current one, evidently at a stage in which the UVI model is subject to rethinking.
The UVI story and, more generally, the difficulties in implementing serious and effective impact analysis of the ex ante evaluation are accompanied by an inability to look ahead, typical of public policies in Italy, especially in this legislature.

constitutional and/or structural reform processes. The latter were based on a previously unknown use of delegated legislation.

The legislatures lasting approximately five years each (13th, 14th, 16th and 17th) experienced wide and challenging reform paths, and the 17th survived a resounding failure in constitutional reform.

Using the work of Di Porto and Piana (2019 I, pp. 9-12), I shall try to summarise what happened in the past for a comparison with the present.

In the 12th legislature, which lasted two years, the only delegation with any ambition – initially only short-term – was present in the law ratifying the acts implementing the results of the so-called Uruguay Round (Law no. 747 of 29 December 1994).

The 13th legislature revolved around reform processes – set in motion, less than a year from its beginning, by the so-called Bassanini laws (Laws no. 59 of 15 March 1997 and no. 127 of 15 May 1997) – which culminated in the final period of the parliamentary term in the reforms of Title 5, Part 2 of the Constitution.

In the 14th legislature, two phases of important delegated reforms can be identified: the first a few months from the start of the parliamentary term, in the autumn of 2001, the second, with a much slower maturation, during the central years (2003-2004). This second phase concerned itself with institutional structures, education, employment, social security, the environment, energy, agriculture and tax, and its implementation committed both chambers until the end of the parliamentary term. The so-called Environment Code bears the date of 3 April 2006 (no. 152) and was quickly and heavily modified in the following legislature (Decrees no. 284 of 8 November 2006 and no. 4 of 16 January 2008). A similar fate occurred to the Code for Equal Opportunities (Decree no. 198 of 11 April 2006, modified and above all integrated by Decree no. 196 of 6 November 2007).

The 15th legislature was born weak and did not approve any wide-ranging enabling acts. Instead, it was active in intervening through supplementary and corrective decrees[3] to reform what had just been approved by an opposition majority, proceeding with urgent decrees and budget laws, the size of which remains unsurpassed to this day.

During the 16th legislature, a little more than three months from its start, the government presented to the Chamber of Deputies a draft universal enabling law (no.1441), composed of 75 articles, which would be broken down and considered separately during examination. From it originated three laws of extensive size and breadth: no. 69 of 18 June 2009, setting out provisions for economic development, simplification and competition, as well as concerning civil proceedings (72 articles); no. 99 of 23 July 2009, setting out provisions for the development and internationalisation of businesses, as well as concerning energy (64 articles); no. 183 of 4 November 2010, delegating powers to the government regarding heavy and arduous work, leave entitlement, social welfare, employment services, the reorganisation of institutions, employment incentives, training and the employment of women, as well as measures against undeclared work and provisions for public works and labour disputes (50 articles).

[3] To amend the reforms approved by the preceding legislature, it is not necessary to modify the enabling laws' guiding principles and criteria, which are so loose that they leave room for quite different or even entirely opposite interpretations.

The chambers, while engaged in the review of the three laws mentioned above, also had the time to approve two important laws, no. 15 of 4 March 2009, *Delegation to the Government designed to optimise the productivity of public works and the efficiency and transparency of public administrations, as well as supplementary provisions for the operation of the National Council for Economics and Labour and the Court of Auditors*, and no. 42 of 5 May 2009, *Delegation to the Government concerning fiscal federalism, implementing Article 119 of the Constitution.*

The 17th legislature, after the failure of the constitutional reform, was able to unite around the reorganisation of public institutions laid down in much-cited Law no. 124 of 2015. In implementing the law, except for errors and omissions, 28 decrees were issued (eight corrective ones, of which two were issued during the 18th legislature). At the time of the referendum, many of the principal delegated powers had been exercised (14 decrees). During 2017, six principal and six supplementary and corrective decrees were issued, some concerning particularly important areas (such as affiliated companies).

The 18th legislature presented many similarities to and a few differences from the 15th. To move on from the past, the Executive, formed as the 'Government of change', used urgent decrees more than anything else. It ignored delegated legislation and introduced a significant number of provisions to the budget laws in a very brief, fast-tracked process.

In the first two years, no enabling law of significant impact on the legal system was approved. The first Conte government presented a package of draft enabling laws covering: tourism (Senate Act no. 1413, approved in the Chamber of Deputies); the simplification, rationalisation, reorganisation, coordination and integration of legislation concerning public contracts (Senate Act no. 1162); revision of the Civil Code (Senate Act no. 1151); the simplification and rationalisation of legislation concerning the military (Senate Act no. 1152); and modification of the Highway Code (Chamber of Deputies Act no. 1661). To date, the second Conte government has presented a draft enabling law regarding the efficiency of civil proceedings and the revision of the regulation of alternative dispute resolution methods (Senate Act no. 1662).

This is confirmation of a dramatic and compulsive focus on the present, and of the inability to and/or the impossibility of looking ahead, probably with the sole intention of capitalizing on the consensus obtained in the numerous electoral appointments that follow each other from year to year. Awareness of the difficulty of implementing long-term reforms and their precariousness in the presence of changes of government and legislatures also weighs heavily.

A key difference from the 15th legislature is the succession of two governments led by the same prime minister, in which the Five Star Movement remains a majority shareholder (albeit declining sharply in all elections). However, the minority shareholders have changed: the Lega was succeeded by the Partito Democratico (growing electorally) as principal minority shareholder and two small minority shareholders, both formed, at different times, out of splits from the Partito Democratico (Liberi e Uguali and Italia Viva). The minority shareholders feel a strong need to mark discontinuity with the first Conte government, a need only partially shared and for the most part opposed by the majority shareholder. The result is substantial stagnation, exacerbated by the dramatic coronavirus that is monopolising attention and making the present problem so pressing

it leaves no room to look to the future. This at least solidifies the political majority, but constrains parliamentary institutions into inaction, relaunching – *mutatis mutandis* – the idea of digital democracy, so dear to the majority shareholder.[4]

The scarce attention given to the future is reflected, among other things, in one emblematic fact: in the fourteen months of the first Conte government, a marginal reference to the 2030 Agenda occurred in just four acts: Decree no. 97 of the President of the Council of Ministers of 19 June 2019, *Regulation of the organisation of the Ministry for the Environment and Protection of Land and Sea, by the Independent Body of Performance Evaluation and of the Offices for Direct Collaboration*;[5] Law no. 92 of 20 August 2019, *Introduction of Civic Education into School Teaching*; Law no. 42 of 8 May 2019, *Ratification and Implementation of the Accord of Political Dialogue and Cooperation between the European Union and its Member States and the Republic of Cuba made in Brussels on 12 December 2016*; and Law no. 145 of 30 December 2018, *Provisional Budget of State for the 2019 financial year and three-year budget for the period 2019-2021*.[6]

The first Conte government (imitated by the second) therefore made a precise choice: to focus on fleeting legislative instruments to overcome the past and regulate the present with measures that were often transitory, experimental and unstable. Hence the use of the urgent decree, particularly congenial to a government founded on a contract. The second Conte government, although founded on various government partners, does not look towards the future. The outbreak of the pandemic has plunged it into a dramatic present. The Government's response is through decree-laws and decrees of the President of the Council of Ministers (DPCM).[7] The prospects for a structural use of the resources deriving from the Recovery Plan do not seem the best.

Some figures are useful: during the period of the first Conte government, which lasted around fourteen months, 68 laws were approved, among which were three conversion bills and one ratification bill presented by the Gentiloni government. 46 were government initiatives (of which 22 were conversion bills), 20 were parliamentary initiatives (of which eight were ratification bills) and two were a mixture of parliamentary and popular initiative (Di Porto and Piana 2019 II).

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[4] In this case, the use of technology is considered necessary to 'save' representative democracy by allowing parliamentarians to discuss and vote remotely. Stefano Ceccanti, an MP and professor of comparative public law, is particularly insistent on this subject. An interview with him released by Radio Radicale on 12 March 2020 can be found at https://www.radioradicale.it/scheda/600718/emergenza-coronavirus-lintroduzione-del-voto-a-distanza-e-i-regolamenti-parlamentari. In recent weeks, a great debate has been taking place among politicians and academics. At institutional level, a confrontation is taking place that was initiated by the meeting of the Board for the Regulation of the Chamber of Deputies on 4 March 2020 and continued in the meeting of 31 March.

[5] Article 9 is limited to granting authority in the area of 'strategy for sustainable development at national and international level and verification of its implementation in accordance with the 2030 Agenda's Sustainable Development Goals and of other international instruments' to the Director General for Sustainable Growth and Quality of Development.

[6] Article 1(337) justifies the modifications made to Law no. 125 of 11 August 2014 with the objective to 'reinforce Italy's action in the field of international cooperation for development, including through strengthening the role of the Cassa Depositi e Prestiti SpA bank as a financial institution for international cooperation for development, also in accordance with the Sustainable Development Goals of the United Nations' 2030 Agenda'.

[7] The comments of the doctrine on the subject are very numerous. The latest released is Arcuri 2020, which contains a convincing reconstruction of the phenomenon.

**Table 1.** The laws approved during the Conte I government

| Laws | No. | With vote of confidence |
|---|---|---|
| Government initiative | 46 | 10 |
| Conversion of law decrees | 22 | 8 |
| Budget laws | 3 | 1 |
| Laws related to the Budget Law | 2 | |
| European laws and European delegation laws | 1 | |
| Ratification laws | 12 | |
| Other laws | 6 | 1 |
| Parliamentary initiative | 20 | |
| *Of which*: Ratification laws | 8 | |
| Mixture of parliamentary and popular initiative | 2 | |
| **Total** | **68** | |

Source: own elaboration.

## 5. To devaluate or respect Parliament? Parliamentary legislative initiatives and the forcing of procedures

The high percentage of laws originating from parliamentary or mixed parliamentary-popular legislative initiatives has an explanation in common with the forcing of procedures: the scope for parliamentary involvement during the first Conte government both shrank and expanded. It shrank when the two government partners were in total accord on certain topics; it expanded when agreement had to be reached, defined or perfected in the parliamentary chambers or when dealing with areas outside the contract. Often it shrank again, once agreement had been found, to strengthen the agreement, sometimes calling for a vote of confidence.

Reaching total accord across government is never easy: many decrees require long negotiations and are adopted with the formula 'unless otherwise agreed', which involves finalising the text weeks after formal approval by the Council of Ministers. The Committee for the Legislation of the Chamber of Deputies intervened in this practice on 9 October 2018, recommending to the government that, "in order to respect Article 15 of Law no. 400 of 1988, it should avoid an excessive time interval between the deliberation of a decree in the Council of Ministers and its coming into effect after publication in the Official Gazette. In this regard, a more consistent and systematic use of the possibility to approve the measures with the formula 'unless otherwise agreed' during the first deliberation by the Council of Ministers, followed by a second definitive deliberation, should be evaluated".[8] The government followed the Committee's suggestion on four

[8] Opinion regarding the bill converting Decree no. 109 of 28 September 2018, laying down urgent provisions for the city of Genoa, the security of the national infrastructure and transport grid, the seismic events of 2016 and 2017, work and other emergencies, in the preamble to which the Committee annotates that "the decree, approved by the Council of Ministers in the meeting of 13 September 2018, was published in the Official Gazette a good fifteen days later on 28 September 2018. In this legislature, a similar time interval between issue and publication in the Official Gazette, equal to or greater than ten days, occurred for Decree no. 86 of 2018 ('DL Ministers', ten days) and for Decree no. 87 of 2018 ('DL Dignity',

occasions.[9] When an agreement is reached, the texts are modifiable to a specified limited extent.

A vote of confidence was called for, in total, fifteen times in connection with ten laws: during the three readings of the budget law, during the two readings of Decree no. 113 of 2018 (Security and Immigration),[10] no. 34 of 2019 (*Urgent measures for economic growth and for resolving specific crisis situations*) and no. 53 of 2019 (*Urgent provisions for order and public safety*) as well as another five conversion laws and Ordinary Law no. 3 of 9 January 2019 (*Measures to combat crime against the public administration, as well as regarding the statute of limitations and the transparency of political parties and movements* – the so-called 'corruption-sweeping law'). Thus, the budget law and three conversion laws were approved on the basis of a 'take it or leave it' vote regarding one decisive part of the text (Article 1 of the budget law) or its entirety. Particularly interesting was the fact that a vote of confidence was called for ten times in the Chamber of Deputies, where the majority was able to count on an ample majority, and only five times in the Senate (where the majority was smaller).

Keeping this information in mind, some clear conclusions can be drawn. First, the government was clearly in difficulty when dealing with economic or financial issues, starting with the budget law, which had the difficult goal of reconciling economic and financial constraints with the parties' election promises (Codogno and Merler 2019). The two governing parties addressed the budget session with displays of suffering and intolerance towards the European Union's regulatory framework. Secondly, when the subject discussed was the hobbyhorse of one of the two governing parties, ill humour and arguments arose from the other party: decrees concerning security and immigration, and security and public order, with two votes of confidence in both the Chamber of Deputies and Senate; the 'corruption-sweeping' law with three passages through Parliament and a vote of confidence in the Senate; and the law concerning self-defence with three passages through Parliament.

These difficulties explain the unexciting numbers of the legislative activity of the first Conte government: while the propaganda conducted above all by the two deputy

eleven days) and it has now been repeated for Decree no. 113 of 2018, currently under scrutiny by the Senate ('DL Security and Immigration', ten days). In the previous legislature, the phenomenon was registered on another twenty occasions [...]; in this regard, it would appear opportune to study the consequences of this process, in terms of legal certainty and compliance with the requirement of immediate application of decrees under Article 15 of Law no. 400 of 1988".

[9] These are the decrees that refer to the double passage through the Council of Ministers in their preamble: no. 199 of 2018 (Urgent provisions for fiscal and financial issues), respectively on 15 and 20 of October; no. 27 of 2019 (Urgent provisions for relaunching the agricultural sectors in crisis and for sustaining agri-food businesses affected by adverse atmospheric events of exceptional nature and for the emergency at the Stoppani plant in Cogoleto), respectively on 7 and 20 March; no. 32 of 2019 (Urgent provisions for relaunching the public contracts sector, for accelerating infrastructure interventions, urban regeneration and reconstruction following seismic events), respectively on 20 March and 18 April (thereby at a distance of about a month); no. 34 of 2019 (Urgent measures for economic growth and for resolving specific crisis situations), respectively on 4 and 23 of April.

[10] Decree no. 113 of 4 October 2018, Urgent provisions in the area of international protection and immigration, public safety, as well as measures concerning the functionality of the Ministry of the Interior and the organisation and operation of the National Agency for the administration and destination of assets seized and confiscated from organised crime, converted, with modifications, into Law no. 132 of 1 December 2018.

premiers announced epochal changes in many policies, there were not many legislative initiatives and they struggled to be approved.[11]

I shall limit myself to a simple recap from memory of the events relevant to the budget law of 2019, the draft of which was presented to the Chamber of Deputies on 31 October 2018, more than ten days late according to the terms provided by the Law of Public Finance and Accounting, and approved by the Assembly on 8 December, with a vote of confidence on the entire first part (once the subject of the Stability Law) which had been merged into a single article. The discussion in the Senate took place while tense negotiations intensified with the European Commission concerning the level of net debt (fixed at 2.4%; in the Economic and Financial Document approved in April it was equal to 0.8%). The Senate Budget Committee discussed – or rather, pretended to discuss, since many meetings were convened and then disbanded – a text that would have to be rewritten. The rewriting of Article 1 (already approved with a vote of confidence in the Chamber of Deputies) came with a major amendment whose approval the government sought by again calling for a vote of confidence (*ex multis*, Buonomo and Cerase 2019, Lupo 2019 II, Sorrentino 2019).[12] The Senate concluded its own work on 23 December; the Chamber of Deputies only had time for a rapid *pro forma* examination, which led to the definitive approval of the law with a third vote of confidence on 30 December (Lucianò 2019).[13]

The forcing of procedures (Ruggeri 2019 does not hesitate to speak of 'a black page for democracy and the Constitution') induced 37 senators of the Partito Democratico group to file a petition with the Constitutional Court to resolve a dispute about constitutional roles. The Court issued an order (no. 17 of 2019) defined by Nicola Lupo (2019 I) as 'arbitration, but which provides the foundations for a legislative procedure which is more respectful of the Constitution'. For Michela Manetti (2019), the order 'highlights the unresolved transition between two politico-constitutional cultures: the older one that reserves judgement over the legitimacy of parliamentary procedures entirely for the Assemblies; and the current one that calls the constitutional judge to the thankless task of deciding, case by case, whether a disputed issue is political or constitutional'. Finally, the order distinguished itself particularly – according to an authoritative commentator (Onida 2019) – "both through the clarity with which it has sought to reaffirm the right that the Constitution grants to individual parliamentarians to raise such a dispute in a court of law, as well as for the arguments with which, in a delicate balancing game, it has, on the one hand, substantially acknowledged the constitutional anomaly of the procedure followed in the Senate and, on the other, specifically avoided the interpretation

[11] Marangoni and Verzichelli (2019) use the title for a paragraph of their interesting essay Change without action. The initial months of the Conte government's legislative activity. Thus, they highlight the modesty of the initiatives taken compared to the striking announcements. I also refer to them for an analysis of the legislative and communication strategy used.

[12] From the petition presented by the Partito Democratico senators, cited widely by Sorrentino (p. 2), it seems that 'on the text of the draft budget law of 2019, approved in first reading by the Chamber of Deputies, considerable substitute amendments were presented by the Government (first amendment 1.7000 and then Amendment 1.9000) on which it gave notice of a vote of confidence, with the result that the responsible Fifth Budget Committee took little more than twenty minutes to express its opinion and that, in little more than six hours, the Senate approved the entire law (that is Amendment 1.9000)'.

[13] Lucianò reconstructs the budget sessions for 2017, 2018 and 2019, showing elements of continuity and new anomalies.

that, in this case, we are looking at a 'glaring' impairment in the powers of the petitioners". Other comments are much more severe: Curreri 2019, for example, defines the order as a 'lost opportunity'.[14] On the other hand, as has been noted by many commentators (Caterina 2019, Rossi 2019), there was a very strong reason preventing the Constitutional Court from assuming a clear position: the possible consequences of a finding in favour of the petitioners (leading to the annulment of the entire budget law and the necessity to resort to the provisional budget).

The petition filed by the Partito Democratico senators was nothing more than the latest episode in a series of several signals previously received regarding addressing the clash between majority parties and opposition in relation to correct parliamentary procedure (Fabrizzi 2019).

I would like to point out, incidentally, that the following year, the second Conte government presented the draft budget law in Parliament on 2 November. Definitive approval, after a tight and forced process, was received on 24 December (Gianniti 2020).

## 6. The laws initiated by parliamentarians: the Five Star Movement's monopoly and the perfect functioning of alternating bicameralism

If we analyse in detail the laws originating from parliamentary or mixed parliamentary-popular initiatives, we can note that, out of a total of 22 laws, only three were the outcome of a merger between bills sponsored by majority groups and bills initiated by opposition parties. These are two laws originating from mixed parliamentary-popular initiatives[15] and Law no. 99 of 2018 (*Establishment of a parliamentary inquiry committee dealing with mafia and other criminal organisations, including foreign ones*), the latter resulting from the confluence of bills sponsored by the Partito Democratico, Movimento 5 Stelle, Forza Italia and the mixed group.

The other 19 laws originating from parliamentary initiatives are as follows: 15 from members of the Five Star Movement, three from members of the Lega, and one from members of Fratelli d'Italia.

Regarding the 15 laws initiated by members of the Five Star Movement, three of them establish parliamentary inquiry committees, and four ratify international agreements (with Montenegro, Laos and Cuba, as well as with the International Development Law Organisation (IDLO) concerning the headquarters of the organisation). Another six deal with justice, the most relevant of which is probably the one about vote exchanges involving mafia (it is no coincidence that, among the laws originating from parliamentary initiatives, this law was the only one that required two readings in the Senate before

[14] Comments on the order of the Court are numerous and among them, obviously, there is no unified voice. Please refer to the bibliography at http://www.giurcost.org/decisioni/2019/0017o-19.html.

[15] One of these two laws is Law no. 36 of 2019 on self defence, a politically sensitive topic, which originated from a merger between eight different bills: one popular initiative and seven private members' bills (two initiated by members of the Partito Democratico, three by members of Forza Italia, one by members of Fratelli d'Italia, and one by members of the Lega). The other law is Law no. 92 of 2019 (Introduction of the civic education subject at school), which originated from a merger between 16 bills: one popular initiative, one bill sponsored by Fratelli d'Italia, one sponsored by the Partito Democratico, one sponsored by the Lega, five bills submitted by Forza Italia, four bills initiated by Movimento 5 Stelle, and three bills sponsored by distinct components of the mixed group.

approval). The remaining two concern, respectively, the entrusting of the management of transportation services in tourist railways (Law no. 71 of 2019), and the prorogation of terms to adopt additional and corrective measures for revising the pleasure boating code (Law no. 84 of 2019). Four of these 15 laws were signed (as first signatory) by Senator Patuanelli, who was deputy leader of the M5S parliamentary group, then leader (from 6 June 2018) of the same group, and later minister in the Conte II cabinet.

The three laws initiated by members of the Lega are really heterogeneous. Law no. 33 of 2019 deals with criminal law (*Modifications to articles 438 and 442 of the penal code. Inapplicability of simplified and shortened proceedings in the case of crimes punished with a life sentence*). Law no. 65 of 2019 is about declaring the bridge over the Brenta river (also known as the Old Bridge of Bassano) as a national monument. Law no. 73 of 2019 amends some previous provisions regarding compulsory boat licence and water rescue training.

The first to be approved among the laws originating from parliamentary initiatives was a law (the only one) initiated by members of a parliamentary party group that was outside the majority coalition (but close to the Lega). This law makes it compulsory to install acoustic and lighting devices in locked vehicles to prevent child neglect (Law no. 117 of 2018).

A further interesting aspect has to do with the legislative procedure of the 20 laws originating from parliamentary initiatives. Just one of these (the one about vote exchanges involving mafia) was approved after more than two readings in Parliament. The other 19 were enacted after one single reading in both parliamentary branches (of these, ten were introduced in the Chamber and nine in the Senate). This seems to be further evidence of the perfect functioning of alternating bicameralism, whereby usually only the House where a bill starts its process can revise it.

## 7. Divergent parallels: the turning point of the European elections

From the data presented so far, the picture of a non-cohesive but strong majority emerges, which continued thanks to mutual impositions, where the majority shareholder had difficulty in imposing itself at the government level but knew how to impose its own parliamentary initiatives. Perhaps the most robust element that the two political forces shared with each other was their anti-Europeanism, which marked the government's action[16]. The election campaign for the European elections of 26 May 2019 increased open competition between the two government partners. The European elections drastically changed the electoral balance between the two anti-establishment parties – the M5S and the League – and opened the way to a period of open conflict between the main government actors (Cotta 2020). In fact, there was a reversal of the electoral result as compared to the general election of 2018: the League exceeded 34% of votes while the Five Star Movement dropped to 17%.

After an initial post-election phase, the M5S adopted a less hostile attitude towards the European institutions and on 16 July it voted for the new President of the European Commission, which proved decisive in her election.

[16] The data concerning infringement procedures is also interesting: the Conte government inherited 59 infringement procedures from the Gentiloni government (51 for violation of European law and 8 for non-implementation) and closed its mandate with 81 procedures (of which 71 for violation of law and 10 for non-transposition). See Di Porto Piana 2019 II, p. 10.

The unifying element of the government majority was consequently lost, and a break-up seemed inevitable. The Deputy Prime Minister, Minister of the Interior and Lega leader Salvini immediately denounced the new 5Stelle-Renzi axis. There then followed a rapid fall towards the government crisis, apparently incomprehensible to most people, also due to the way in which it occurred.

## 8. A death foretold and the palingenesis of Conte

Almost a month passed between the announcement of the crisis and its epilogue, in which Matteo Salvini did not withdraw the League delegation from the government and listened, from the nearby government benches, to the harsh attack of Prime Minister Conte, who in this way carried out the first step towards his palingenesis. When Salvini was about to speak, he was invited by the President of the Senate to do so from the League benches. Thus, in those few steps from the government benches to the hemicycle, the transition of Salvini and the League from government to opposition was definitively accomplished.

The crisis of the Conte I government was a paradoxical event in many ways, but I will not pause to reflect on that in order to reach the conclusion: i.e., the birth of the Conte II government, in which the majority shareholder remained the same with a reshuffle of M5S Ministers, while the minority shareholders changed and became three.

This writing stops when Conte's palingenesis starts. The most recent events teach us three things about the legislatures of the 'second republic' that reached their natural term:

1. They developed around large delegation laws, approved or in any case at an advanced stage of examination already in the first year of the legislature.
2. Almost all of them – with the sole exception of the XVI legislature – saw ambitious and controversial constitutional reform projects (XIII legislature: Commission D'Alema and reform *in extremis* of Title V of the Constitution; XIV legislature: 2006 referendum; XVII legislature: 2016 referendum).
3. They came to an end with a government (and a parliamentary majority) that was different from the one appointed at the beginning of the legislature; only in the XIV legislature did the Prime Minister stay the same from beginning to end (while changing the government composition).

In this legislature Government and Parliament have chosen different paths: they do not seem to believe in the instrument of delegated legislation and are proceeding with the technique of micro/macro constitutional reforms: micro because they touch single points of the Constitution, macro for their impact (the reduction of the number of parliamentarians is a striking example). No long-term reform process has been launched, and today (end of March 2020) Parliament is dramatically stagnating due to the epidemic emergency.

The legislature will come to an end with a government and a majority which are different from the original ones. The Prime Minister could, surprisingly, be the same. However, making predictions about its duration is really impossible, given the number of variables involved.

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