The Mechanisms Used to Review Existing Legislation in the Civil Law System

Case Study – Italy

Enrico Albanesi[*]

Abstract

*The aim of this article is to describe the mechanisms that are used in the civil law system to review existing legislation. The case study will be based on the Italian system. In the civil law system we are not familiar with the concept of law reform, in the sense used in the common law system, because there is no law reform agency in the civil law world. The mechanisms used to review the existing law in civil law systems are: codification, consolidation, repeal, law revision and legal restatement. To understand how the mechanisms used to review existing legislation work in Italy, an overview of the Italian law-making and drafting processes will be carried out here, underlying the bad impact that the Italian equal bicameralism has on the quality of legislation and also on the mechanisms to review existing legislation. After this, the article will focus on the specific tools that are used in Italy for codification and consolidation (*decreti legislativi*), for law revision (the so-called* taglia-leggi*) and for legal restatement (examining the role of the Consiglio di Stato). Particular attention will also be paid to the parliamentary scrutiny on the quality of legislation. Finally, the article will focus on the constitutional amendment process Italy carried out in 2014-2016 and that was expected to fundamentally change the Italian law-making process, superseding the equal bicameralism arrangement (a referendum on this was held on 4 December 2016, and the reform was rejected by the Italian people).*

Keywords: codification, consolidation, law revision, legal restatement, legislative scrutiny.

A Introduction

The main mechanisms used to review existing legislation in the civil law and in the common law systems are law reform, codification, consolidation, repeal, law revision and legal restatement.

* Lecturer in Constitutional Law at the University of Genoa (Italy) and Associate Research Fellow at the Institute of Advanced Legal Studies (IALS), University of London. Co-leader of the IALS Law Reform Project.

I Law Reform

In the United Kingdom and in the Commonwealth, law reform is first of all "an effect": "the alteration of the law in some respect with a view to its improvement". However, law reform is also a "process": "the process by which law reform is carried out, including the selection and application of values and the development and implementation of proposals for specific law reforms" and especially "the process in which [law reform] commissions take part".[1]

In the United Kingdom there is a Law Commission for England and Wales, a Scottish Law Commission and a Northern Ireland Law Commission. Law Reform Agencies are usually tasked with carrying out not only Law Reform Projects but also Statute Law Repeal Projects and Statute Law Consolidation Projects.[2]

These agencies are independent, but they work in cooperation with the Executive. They are tasked with drafting Law Reform, Statute Law Repeal and Statute Law Consolidation Bills. It is then up to the Executive to take the political decision whether to introduce the bill to Parliament or not.

In the civil law system we are not familiar with the concept of law reform: we have neither such a body as law reform agencies nor such a process as one in which law reform agencies take part.

II Codification and Consolidation

As far as the mechanism of codification is concerned, things are slightly more complex. The concept of codification was born in France with the *Code Napoléon* (1804). It was rooted in the philosophical ideas of the Enlightenment at the end of the eighteenth century. According to such philosophical ideas, a rational, clear and politically new legislation would supersede, through codification, the existing legislation of the *Ancien Régime*.

In the United Kingdom at the beginning of the nineteenth century, Jeremy Bentham was the main supporter of codification in the common law system. His

1 *Cf.* W.H. Hurlburt, *Law Reform Commissions in the United Kingdom, Australia and Canada*, Edmonton, Juriliber 1986, p. 8 *et seq.* For an updated overview of law reform, *see* G. Palmer, 'The Law Reform Enterprise: Evaluating the Past and Charting the Future', *Law Quarterly Review*, Vol. 131, 2015, p. 402 *et seq.*

2 The Law Commission for England and Wales and the Scottish Law Commission were established under the Law Commission Act 1965. The idea of such Commissions was proposed in 1963 in the book G. Gardiner & A. Martin (Eds.), *Law Reform NOW*, London, Gollancz 1963. For an updated overview of the Law Commission for England and Wales and of the Scottish Law Commission *see* D. Lloyd Jones, 'The Law Commission and the Implementation of Law Reform', *Amicus Curiae*, No. 94, 2013, p. 2 *et seq.* and G. Gretton, 'On Law Commissioning', *The Edinburgh Law Review*, Vol. 17, No. 2, 2013, p. 119 *et seq.* The Northern Ireland Law Commission was established with the Justice (Northern Ireland) Act 2002 and started working in 2008. However, *see* N. Faris, 'Law Commission – What Is the Essence of their Law Reform Role?', *IALS Student Law Review*, Vol. 2, No. 1, 2014, p. 52 *et seq.* for an overview of the problems the Northern Ireland Law Commission is currently facing.

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doi: 10.5553/EJLR/138723702016018003003

idea of codification encompassed the entire field of law (both statute and case law) with the aim of its reform.[3]

However, in the common law system, because there are both statute and case law, codification would mean eliminating the binding precedents within the area to be codified. This is the reason why Bentham's concept has always been looked upon with suspicion in the common law world.[4]

The concept of codification is used today across the civil and common law systems in a modern sense.[5] In fact, codification is today referred to as setting out in a single text the existing legislation in a specific area of interest, regardless of whether it simply aims at formal simplification and systematization of the law (which, strictly speaking, is consolidation) or a reform of the law, as an instrument of a political will to change the law on a large scale.

In Italy, we use the word *consolidamento* or *codificazione formale* (consolidation) in the first case and the word *riassetto* or *codificazione sostanziale* (codification) in the second case.[6] The tool to carry out *consolidamento* and *riassetto* in Italy is the same: we usually resort to *decreti legislativi* for both the purposes.[7]

In France they use the words *codification à droit constant* in the first case and *codification à droit non constant* in the second case. Some scholars use the words *codification-compilation* and *codification-modification*.[8] To carry out *codification à droit constant* is the specific task of the *Commission supérieure de codification*.

The difference between codification and consolidation is a matter of drafting, of course. However, it is not easy to say what drafters are allowed and not allowed to do in carrying out consolidation and codification.

From the work carried out, by Xanthaki, into the common law system, codification involves drafting on a large scale. The task of the drafter in codification is to identify a structure for the code, to identify and arrange the contents of each part in a logical sequence promoting clarity, to ensure that any problems arising from the compiling of existing law are resolved, and to address vagueness and ambiguity at the macro level of the code. On the other hand, consolidation involves limited drafting in the form of creating a new clear structure of existing and untouched parts. The task of the drafter in consolidation lies in pursuit of

3 *See* J. Bentham, *The Correspondence of Jeremy Bentham. Vol. 8: January 1809 to December 1816*, Oxford, Clarendon Press 1988, p. 464 *et seq*. According to Dinwiddy, Bentham introduced the word codification itself in the English language. *See* J.R. Dinwiddy, *Bentham*, Oxford, Oxford University Press 1989, p. 47.

4 *See* W. Geldart, *Introduction to English Law* (revised by D. Yardley), 11th edn, Oxford, Oxford University Press 1995, p. 16 *et seq*. An historical overview of codification in the common law system is in G.A. Weiss, 'The Enchantment of Codification in the Common-Law World', *The Yale Journal of International Law*, Vol. 25, 2000, p. 470 *et seq*.

5 A modern approach to the concepts of codification is carried out by D. Tallon, 'Codification and Consolidation of the Law at the Present Time', *Israel Law Review*, Vol. 14, No. 1, 1979, p. 1 *et seq*.

6 *See* R. Pagano, *Introduzione alla legistica. L'arte di preparare le leggi*, Milano, Giuffrè 2004, p. 74 *et seq*. and p. 239.

7 What *decreti legislativi* are will be described *infra* in Section B.

8 *See* R. Cabrillac, *Les codification*, Paris, Puf 2002, p. 189 *et seq*.

clarity by means of structure alone.[9] In the United Kingdom, consolidation can involve some minor improvement of the text that goes beyond mere structural adjustment. Ordinarily, this textual improvement is accompanied by an explanatory note to guide parliamentarians on the changes being proposed. The basic substance of the existing law is not affected, though. The Tax Law Rewrite Project was an extension of this approach.[10]

In France, as Guy Braibant (Vice-President of the *Commission supérieure de codification* between 1989 and 2005) said, referring to *codification à droit constant*, "*codifier n'est pas modifier*". However, *codification à droit constant* might involve those changes to the law whose aim is improving the quality of the law itself.[11]

Similarly in Italy, from Pagano's point of view, drafters shall not change the substance of the law while they are carrying out consolidation, but they are allowed to do it while they are carrying out codification. Therefore, consolidation involves rationalizing the structure of the laws, which are arranged in the new text; amending any language mistakes and making every quotation uniform; adjusting the law in relation to constitutional adjudications or *referenda*; coordinating the existing law with new enactments that did not amend it explicitly.[12]

However, in Italy things are even more complex because it is not always easy to understand what the Government is allowed and not allowed to do: whether it can simply carry out *consolidamento* or also *riassetto* in issuing a *decreto legislativo*.[13]

III Repeal

Another mechanism employed to review existing legislation is that of repeal, which means removing enactments, which are obsolete, unnecessary or spent, from the statute book.

In the United Kingdom, repeal is usually carried out through bills (Statute Law Repeals Bills) that are based on periodic Statute Law Repeals Reports of the Law Commissions. Then, it is up to the Executive introducing such bills to the Parliament.

The concept of repeal is fairly similar to the Italian *abrogazione* and the French *abrogation*. However, we do not have a specialized body tasked with seeking out obsolete legislation and drafting Statute Law Repeals Bills. We do not even have a periodic mechanism to review and repeal obsolete primary legislation.

IV Law Revision

In other common law countries (but not in the United Kingdom), they resort to a different mechanism, namely that of law revision. This is a mechanism through

9 *See* H. Xanthaki, *Drafting Legislation. Art and Technology of Rules for Regulation*, Oxford and Portland, Hart Publishing 2014, p. 276 *et seq*.

10 *See* J. Teasdale, 'Statute Law Revision: Repeal, Consolidation or Something More?', *European Journal of Law Review*, Vol. 11, No. 2, 2009, p. 175 *et seq*.

11 *Cf.* G. Braibant, 'Le relance de la codification', *Revue Français de Droit Administratif*, No. 3, 1990, p. 308.

12 *See* Pagano 2004, p. 80 *et seq*. and p. 268.

13 *See infra*, Section D.

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doi: 10.5553/EJLR/138723702016018003003

which the repeal of the obsolete legislation is conducted in tandem with a programme of consolidation.[14]

In the Republic of Ireland, for example, the Office of the Attorney General has been carrying out a Statute Law Revision Programme (formerly, Statute Law Revision Project) since 2003. The aim of this programme is to repeal obsolete statutes and to consolidate the rest of the legislation.[15]

In Italy we resorted to a tool that was fairly similar to the Irish Programme. It was the *taglia-leggi* (legislation-cutting tool).[16]

V Legal Restatement

Finally, there is another mechanism, legal restatement, which means arranging a consolidated text of existing enactments as a private or an administrative exercise, without affecting existing law.

This mechanism is used especially in the United States of America, where it is carried out in the private sector,[17] and in the Republic of Ireland, where it has been carried out by the Office of the Attorney General as a starting point of the Statute Law Revision Programme.[18] Such mechanisms have no legal effect. In France this is also carried out in the private sector and is called *codification privée*.[19]

In Italy consolidated texts of existing enactments, carried out in the private or the State sector, are called *fonti di cognizione* (which means sources of law that are not *real* sources of law but are aimed at making the law more accessible). *Legge n. 69 del 2009* has recently established a specific tool (*testi unici compilativi*) to carry out restatement. This tool is carried out by the Government, which can ask the *Consiglio di Stato* to draft it.[20]

B An Overview of the Law-Making Process in Italy

To understand how the mechanisms used to review the existing legislation work in Italy, it is useful to carry out an overview of the Italian law-making and drafting processes.

Italy is a representative democracy, and its system of government is a parliamentary system. Voters elect their representatives in the Parliament, and the Parliament gives its confidence to the Executive.

14 About the concept of revision in the United Kingdom and overseas *see* Teasdale 2009, p. 157 *et seq*.

15 *See* E. Donelan, 'Statute Law Revision, Codification and Related Policies in Ireland', *International Journal of Legal Information*, Vol. 29, No. 2, 2001, p. 323 *et seq*.

16 *See infra*, Section E.

17 *See* C. Varga, *Codification as a Socio-Historical Phenomenon*, Akadémiai Kiadó, Budapest 2011, p. 163 *et seq*.

18 *See* Teasdale 2009, p. 177 *et seq*.

19 *See* C. Kessedjian, 'La codification privée', *in* A. Borrás *et al.* (Eds.), *E pluribus unum. Liber amicorum Georges A.L. Droz. On the Progressive Unification of Private International Law*, The Hague-Boston-London, Martinus Nijhoff Publisher 1996, p. 135 *et seq*.

20 *See infra*, Section F.

The Italian Chambers are the *Camera dei deputati* (Chamber of Deputies) and the *Senato della Repubblica* (Senate of the Republic). Our system is an equal bicameral system, which is an exception among the Western countries and which means that it includes both the following features for both Chambers: direct legitimation and exactly the same tasks.[21]

Speaking firstly about the legitimation, the *Camera dei deputati* and the *Senato* are both elected by direct universal suffrage (Sections 56 and 58 of the Constitution) for 5 years (Section 60 Const.): each Member of Parliament, therefore, represents the nation (Section 67 Const.). There is no substantial structural difference between the two Chambers.

The only differences between the *Camera dei deputati* and the *Senato* are not remarkable:

- the *Camera* has 630 members (12 of whom are elected in the overseas constituency), and the *Senato* has 315 members (6 of whom are elected in the overseas constituency) (Sections 56 and 57 Const.);
- the *Camera* is elected by voters who are at least 18 years old, while the *Senato* by voters who are at least 25 years old (Sections 56 and 58 Const.);
- voters who are aged 25 and above are eligible to be Deputies, while they are eligible to be Senators from the age of 40 (Sections 56 and 58 Const.);
- some life Senators sit in the *Senato* (former Presidents of the Republic, who are Senators by right, and five citizens, who have honoured the Nation, appointed by the President of the Republic) (Section 59 Const.);
- the *Senato* is elected on a regional basis (Section 56 Const.), which simply means that the constituency boundaries, in which the Senators are elected by direct and universal suffrage, are the same as the regional boundaries;
- the President of the *Senato* exercises the functions of the President of the Republic, in all cases in which the latter cannot perform them (Section 86 Const.), while the President of the *Camera* chairs the Parliament when it meets in joint session (Section 63 Const.).

Such an equal bicameralism seems to negate the idea of bicameralism itself because bicameralism should allow the voice of social and territorial forces to be heard by the State[22] and enrich political representation and pluralism.[23] For example, in federal States, the second Chamber represents the federated States that belong to the Federation, as happens in Germany or in the United States of America. In the United Kingdom, the House of Lords contains high-profile and 'expert' members albeit selected rather than elected.[24]

21 *See* in English C. Fusaro, 'Bicameralism in Italy. 150 of Poor Design, Disappointing Performances, Aborted Reforms', 2013. Available at: <www.carlofusaro.it/in_english/Bicameralism_in_ITA_2013.pdf> (last accessed on 5 January 2017).

22 As stated by C. Mortati, *Le forme di governo*, Padova, Cedam 1973, p. 431.

23 On bicameralism from a comparative perspective *see* F. Palermo & M. Nicolini, *Il bicameralismo. Pluralismo e limiti della rappresentanza in prospettiva comparata*, Napoli, Edizioni scientifiche italiane 2013.

24 *See* M. Russell, *The Contemporary House of Lords. Westminster Bicameralism Revived*, Oxford, Oxford University Press 2013.

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doi: 10.5553/EJLR/138723702016018003003

The second feature of Italian bicameralism is that the tasks of the two Chambers are exactly the same. Legislative powers are exercised collectively by both Chambers (Section 70 Const.), and the Government is required to have the confidence of both of them (Section 94 Const.). This is a problem that, in the United Kingdom, was overcome with the Parliament Acts 1911 and 1949 and with the Salisbury convention (viz. the upper House is obliged not to block legislative proposals that the Government of the day had included in its election manifesto and consequently is mandated to deliver).[25] However, in Italy it seemed to be the natural consequence of the option of having two Chambers with the same direct legitimation.

Why did the Italian Constitutional Assembly choose such an equal bicameralism? After World War II, the Italian Founding Fathers rejected the option of introducing unicameralism (which was supported by the Communists and the Socialists), but they were not able to reach an agreement on what the *Senato* should represent. The final option, therefore, was a *Senato* that had the same direct legitimation of the *Camera*.

However, the deepest reason why the Constitutional Assembly chose the solution of such an equal bicameralism, was related to the 'tyrant complex'.[26] After the 20-year experience of the fascist dictatorship, the 'tyrant complex' saw the Founding Fathers introduce a bicameralism based on the power of veto of a second Chamber that could control (and in some way restrain) the action of the Government and of the political majority who would win the first elections after the passing of the Constitution in 1948.

We have to bear in mind that the Italian Constitution was passed at the beginning of the Cold War: one big party, the *Democrazia Cristiana*, supported the US, while the Marxist parties supported the USSR. Therefore, the 1948 elections were to decide whether Italy would belong to the Western alliance or not: every party wanted to be sure that, if it lost the election, the winner would not be too strong.

For this and for other reasons the development of the Italian political system during the *Prima Repubblica* (the historical period between 1948 and 1994) was unique among the other Western countries. The proportional-representation electoral system led to a very fragmented multipartyism.[27] The *conventio ad excludendum* (a kind of tacit agreement between the main parties that they would not make any alliance with the *Partito Comunista Italiano* to create a Government)[28] made any alternative Government impossible. However, it would have not been conceivable to exclude such a relevant political force, as that of the *Partito Comunista Italiano* (with its 30% of the votes), from managing the State at all: the

25 *See* V. Bogdanor (Ed.), *The British Constitution in the Twentieth Century*, Oxford, Oxford University Press 2003, p. 191 *et seq.*

26 *See* G. Amato, 'Dal caso italiano al capitalismo ingovernabile', *in* G. Amato (Ed.), *Una Repubblica da riformare. Il dibattito sulle istituzioni in Italia dal 1975 ad oggi*, Bologna, Il Mulino 1980, p. 37.

27 *See* G. Sartori, *Teoria dei partiti e caso italiano*, Milano, SugarCo. 1982.

28 The first scholar who deeply studied from a perspective of constitutional law the link between the way the Italian parliamentary worked and the political party system was Leopoldo Elia. *See* L. Elia, 'Governo (forme di)', *in Enc. dir.*, Vol. XIX, Milano, Giuffrè 1970, p. 634 *et seq.*

Democrazia Cristiana seek the *Partito Comunista Italiano*'s approval on the main bills, and this led to a consensus democracy instead of a majoritarian one.[29]

This led to Governments (supported by the *Democrazia Cristiana* and its allies) that were, politically speaking, very weak. Governments, in fact, used to rely on a coalition of many little parties that used to be formed after the elections or after the falling of a previous Government: so the Government would have to seek day-to-day political agreements on every single bill in both Chambers with the majority parties – and even with the *Partito Comunista Italiano*.

In this context, equal bicameralism was actually functional to the political system itself because it forced the *Democrazia Cristiana* to seek political agreements with the *Partito Comunista Italiano* in order to approve bills in both of the Chambers during the 'ping pong' stage.

However, the Italian parliamentary system started changing during the 1980s, and the powers of the Government increased. In the 1980s the Italian parliamentary system moved slowly from a system with a predominance of the Parliament to a system with a predominance of the Executive.[30]

Moreover, at the beginning of the 1990s three earthquakes hit the political system. The first one was a judicial inquiry (which the journalists called *Tangentopoli*) that started in 1992 and that showed to the Italians a huge deeply rooted system of corruption in which all the main leading parties were implicated. Lots of politicians were arrested, the main parties lost their votes in the 1992 political elections, and in 2 years the two main leading parties (the *Democrazia Cristiana* and the *Partito Socialista Italiano*) and their allies disappeared.

The second seismic change was the birth of new parties. Thanks to the end of the Cold War the *Partito Comunista Italiano* changed in 1991 into a social-democratic party (*Partito Democratico della Sinistra*). It was considered to be fit to create a Government, thus making the alternative Government possible. Then, in 1994, media tycoon Silvio Berlusconi founded a new centre-right party, *Forza Italia*.

The third earthquake was a *referendum* in 1993 that led to a new majority electoral system, namely *Mattarellum*. It was based on little constituencies, and it incorporated a first-past-the-post electoral system.

After these earthquakes, the new parties gathered in two main electoral coalitions, both fit to create a Government, and making alternative Government possible. This was a 'revolution' for the Italian system in which a single party (the *Democrazia Cristiana*) had ruled the Government for 50 years. Since the 1980s (for the reasons already mentioned) and since the 1990s (thanks to the new majority electoral system), the Governments have been stronger, and the Italian parliamentary system has been working as a system with a predominance of the Executive.

29 These are the models of democracies according to A. Lijphart, *Patterns of democracies. Government Forms and Performance in Thirty-Six Countries*, New Haven-London, Tale University Press 1999.

30 *See* C. Chimenti, *Un parlamentarismo agli sgoccioli. Lineamenti della forma di governo italiana nell'esperienza di dieci legislature*, Torino, Giappichelli 1992, p. 19 *et seq.* and p. 221 *et seq.* *See* also C. Chimenti, *Addio prima Repubblica. Lineamenti della forma di governo italiana nell'esperienza di undici legislature*, Torino, Giappichelli 1995.

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doi: 10.5553/EJLR/138723702016018003003

However, this was not enough. The equal bicameralism was still present, putting a brake on the efforts of the Governments to carry out their political programmes. In fact, as already mentioned, the Government has to gain a vote of confidence of both the Chambers and has to deal with a cumbersome legislative process through both of them to carry out its political programme during the 'ping pong' stage. Both the Chambers have the power of veto over the legislative process.

In this context, Governments still also have to face a very fragmented multipartyism owing to the new electoral system, which leads to all-encompassing electoral coalitions.[31] That makes it even harder for the Government to get its bills passed in the Parliament.

The electoral majority system, which Italy adopted in 1993 and adjusted in 2005, has been leading to electoral coalitions composed of several parties (even tiny ones), each one with political programmes often very different from those of the parties within the same coalition. Every party that joins a coalition, even the tiny ones and those whose programmes are not homogeneous with the other parties of the coalition, is considered to be of great value for the coalition itself, because it might help it to win elections. However, it then proves to be a problem for the Government to deal with such a coalition after the elections.

Moreover, the electoral majority system in force since 1993 (the *Mattarellum*), and especially the electoral majority system in force since 2005 (the *Porcellum*), might lead (and once, in 2013, led) to different majorities between the *Camera dei deputati* and the *Senato*. It is typical of *every* majority system to distort the proportionality between votes and seats, and for this reason it is possible that *every* majority system leads to different majorities between the Chambers in a bicameral system. This obviously becomes a huge problem in a system with an equal bicameralism like the Italian one, where the Government requires the confidence of both Chambers and legislative powers are exercised collectively by both of them.[32]

In 2006 the centre-left wing coalition got the national majority premium for the *Camera* but only two seats more than the centre-right wing one for the *Senato*. Two years later, the Government had to resign because of a vote of no confidence by the *Senato*.

In 2008 the centre-right wing coalition got a strong majority in both of the Chambers, but its all-encompassing coalition collapsed after 3 years and then the Government fell.

In 2013 the centre-left wing coalition got the national majority premium for the *Camera*, but it did not get the majority in the *Senato*. Therefore, the President of the Republic had to appoint a Government that was supported by the main

31 *See* G. Pasquino, *Il sistema politico italiano*, Bologna, Il Mulino 2002, p. 93.

32 As recently stated by N. Lupo, 'Il premio di maggioranza nella legge del 2005 n. 270 e i suoi effetti sull'organizzazione e sulle dinamiche parlamentari', *in* A. Chiaramonte & G. Tarli Barbieri (Eds.), *Il premio di maggioranza. Origini, applicazioni e implicazioni di una peculiarità italiana*, Roma, Carocci 2011, p. 118 *et seq*.

centre-left wing party and by the main centre-right wing party. It was, politically speaking, a weak Government, and it had to resign 1 year later.

At the end of the day, very fragmented multipartyism and such an electoral system, in the context of an equal bicameralism, are the main causes of the still persistent weaknesses of the Government in the '*Seconda Repubblica*' (the historical period we have been living in since 1994).

Legislative process is still cumbersome, and the Government usually 'escapes' from the ordinary legislative process.[33] This means that the Government carries out most of its political programme not by introducing bills to be passed through the ordinary legislative process in the Parliament but by issuing:

- *decreti-legge*: emergency decrees that are primary legislation. They come into force immediately, and they shall be confirmed through an Act of Parliament and can be amended by this on a 'fast-track' procedure within sixty days after their coming into force;
- *decreti legislativi*: decrees that are primary legislation. They are issued by the Government after the approval of an Act of Parliament, which delegates to the latter the exercise of legislative powers by establishing the principles and criteria the Government shall follow in issuing the *decreto legislativo*, for a limited time and for specified purposes;
- *regolamenti*: these are fairly similar to the British statutory instruments.

The Government also often asks for confidence votes on its bills, because it needs to close ranks within its majority. As two Italian scholars stated, this is a symptom of weakness of an arrogant Government.[34]

This chaotic way of making the law through *decreti-legge, decreti legislativi, regolamenti* and confidence votes has a bad impact on the quality of legislation.[35] First, *decreti-legge* are drafted in a hurry: they come into force immediately, and this means that a roughly drafted piece of legislation comes into being.

Secondly, when the Parliament authorizes the Government to issue *decreti legislativi* and *regolamenti*, it does not establish the limits of the delegated powers clearly and strictly: this means that, from the point of view of the technicalities of legislative drafting, the Parliament does not give clear and strict political instructions to the Government for drafting them.

Thirdly, confidence votes are usually asked for by the Government on the approval of wide and miscellaneous amendments that are drafted very quickly during the legislative process: once again, this means that the Parliament is duty bound to pass pieces of legislation that are roughly drafted.

33 *See* R. Zaccaria (Ed.), *Fuga dalla legge? Seminari sulla qualità della legislazione*, Grafo, Brescia 2011.

34 *Cf.* V. Lippolis & G. Pitruzzella, *Il bipolarismo conflittuale. Il regime politico della Seconda Repubblica*, Soveria Mannelli, Rubbettino 2007, p. 47.

35 *See* E. Albanesi, *Teoria e tecnica legislativa nel sistema costituzionale. Prefazione di Paolo Carnevale*, Napoli, Editoriale Scientifica 2013 and N. Lupo, 'L'impossibile qualità della legge, specie con i procedimenti attuali', *in* M. Cavino & L. Conte (Eds.), *La tecnica normativa tra legislatore e giudici*, Napoli, Editoriale scientifica 2014, p. 229 *et seq*.

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doi: 10.5553/EJLR/138723702016018003003

C An Overview of the Drafting Process in Italy

In Italy (as in France) the drafting process is carried out by the legal officers of the *Ufficio legislativo* of each Department.[36] There is nothing similar to the British Office of Parliamentary Counsel (OPC).[37] Our *Dipartimento per gli affari giuridici e legislativi (DAGL)*,[38] which belongs to the *Presidenza del Consiglio dei Ministri* (a sort of Prime Minister's Office), is tasked only with supervising and coordinating the *Uffici legislativi* of the Departments, but it does not have the exclusive task of drafting bills and decrees as the Parliamentary Counsel does.

This system has two unfortunate consequences. First of all, this means that the relevant Department is essentially focused on dealing with policy and legal aspects of the bill or of the decree and not exclusively on drafting.

Secondly, this system does not allow our officers to develop specific expertise in legislative drafting (unlike those of the OPC) and the mechanisms used to review existing legislation (unlike those of the law reform agencies).

As far as the mechanisms used to review the existing legislation are concerned, the way the law-making and drafting processes work leads to a double paradox. First of all, these mechanisms are carried out by the Government using the same tools (*decreti-legge, decreti legislativi* and *regolamenti*) by which the ordinary day-to-day legislation is usually carried out. This means that they are carried out in the same chaotic way and with the same bad outcome. Secondly, such mechanisms are drafted by the relevant Department whose officers are not specialized in the mechanisms used to review existing legislation.

D The Tools for Consolidation and Codification in Italy: The *decreti legislativi*

It is time to describe the specific tools we use in Italy to review existing legislation. The same tool is used to carry out both *consolidamento* and *riassetto* in Italy: we usually resort to *decreti legislativi* for both these purposes. As already mentioned, the *decreto legislativo* is primary legislation, and it is issued by the Government following the principles and the criteria that have been established by the Parliament through a Statute.

The *decreti legislativi* that are designed to carry out consolidation and codification are drafted by the relevant Department. However, the *Consiglio di Stato* is tasked with giving advice on the draft.

The *Consiglio di Stato* is the Italian High Administrative Court, which is also an advisory body to the Government. It is composed of Judges who are also

36 *See* B.G. Mattarella, 'Il ruolo degli uffici legislativi dei Ministeri nella produzione normativa', *Nomos*, No. 4, 1993, p. 119 *et seq*.

37 *See* D. Greenberg, *Laying Down the Law: A Discussion of the People, Process and Problems that Shape Acts of Parliament*, London, Sweet & Maxwell 2011, p. 19 *et seq*.

38 *See* C. Zucchelli, 'Il coordinamento normativo del Governo: il Dipartimento per gli affari giuridici e legislativi della Presidenza del Consiglio', *in* Associazione per gli studi e le ricerche parlamentari (Ed.), *Quaderno n. 14*, Torino, Giappichelli 2004, p. 199 *et seq*.

experts in legislative drafting. In fact, one of their tasks is to scrutinize, in general, whether administrative acts are in compliance with the rule of law or not and, in particular, whether the *decreti legislativi* (especially the ones that codify legislation) and *regolamenti* are properly drafted or not. Therefore, being an independent, prestigious and highly qualified body, the *Consiglio di Stato* plays an important role in the drafting process for codification and consolidation.

As far as the boundaries of *consolidamento* and *riassetto* are concerned, the Government should carry out consolidation only when the principles and criteria delegate this, while it could carry out codification when the principles and criteria allow it.

However, principles and criteria are not always so clear, and this often leads to confusion about what the Government is allowed and not allowed to do in issuing the *decreto legislativo*: whether it can carry out a formal simplification and systematization of the law (*consolidamento*) or a reform of the law, as an instrument of a political will to change the law on a large scale (*riassetto*). Therefore, the difference between *decreti legislativi* that carry out *consolidamento* and *decreti legislativi* that carry out *riassetto* is not always easy to understand.[39]

However, if the *decreto legislativo* is not consistent with the principles and criteria set out by the enabling Act of Parliament (for example, because it changes the substance of the existing legislation, while the principles and criteria only allowed the Government to consolidate it), the *Corte costitutionale* might declare it void.

Section 76 of the Italian Constitution states that when the Government issues a *decreto legislativo*, it shall follow the principles and the criteria that are established by an Act of Parliament. Therefore, if a *decreto legislativo* failed to comply with the principles and the criteria established by the Act of Parliament, it would be declared void because it would not be in compliance with the Constitution itself.

The Italian *Corte costituzionale* has recently declared void some *decreti legislativi* (see *Corte cost., sent. n. 80 del 2012* and *Corte cost., sent. n. 5 del 2014*) because they were changing the substance of the existing law, whereas the Parliament had delegated the Government simply to consolidate the existing law but not to codify it.[40]

E The Tools for Law Revision in Italy: The Experience of the *taglia-leggi*

The *taglia-leggi* (legislation-cutting tool) was introduced by *legge n. 246 del 2005* (then modified by *legge n. 15 del 2009* and by *legge n. 69 del 2009*). Its general aim

39 *See* G. Tarli Barbieri, 'La delega legislativa nei più recenti sviluppi', *in* Corte costituzionale (Ed.), *La delega legislativa*, Milano, Giuffrè 2009, p. 127.

40 *See* E. Albanesi, 'Delega legislativa e codificazione nella XVI e XVII legislatura a fronte dell'eclissarsi dello strumento della legge annuale di semplificazione', *Federalismi.it*, No. 3, 2015, pp. 1-25. Available at: <www.federalismi.it/nv14/articolo-documento.cfm?Artid=30573> (last accessed on 5 January 2017).

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was to repeal obsolete primary legislation and then to consolidate the existing law in single areas of interest.[41]

However, the *taglia-leggi* was a one-off and broad action that concerned the whole body of miscellaneous legislation that had come into force before 1 January 1970. Therefore, it was not easy for the Government (which means for the relevant Departments) to make an accurate assessment of all the consequences resulting from the repeal of so much legislation. On the other hand, as the process was carried out by the Government through *decreti legislativi* and even *decreti-legge*, it was not easy for the Parliament (which was called to give a report on the draft of the *decreti legislativi* and to confirm and amend the *decreti-legge* on a 'fast-track' procedure) to make an accurate assessment of all the consequences resulting from the repeal of so much legislation. Neither the Government nor the Parliament had the opportunity of resorting to the work of an independent body such as a law reform agency.

All this led to a chaotic process, with the repeal of some still useful legislation and even to some contradictions. In the end, a tool, whose aim was to simplify the existing legislation, paradoxically produced lots of complications for the Italian legal system because it was too broad and complex.[42] Instead of the precision of a scalpel, the result was much more similar to the action of a hammer.

By contrast, statute law repeals in the United Kingdom[43] are carried out through bills (Statute Law Repeals Bills) that are based on periodic Statute Law Repeals Reports of the Law Commissions.[44] Moreover, those bills are introduced by the Government to the Parliament, which passes them on a 'fast-track' procedure because the Parliament can put its trust in the authority of the Law Commissions. However, during the procedure a joint committee of both Houses scrutinizes the bill to ensure that no 'live' legislation gets repealed.[45]

In the Republic of Ireland the Office of the Attorney General has been carrying out a Statute Law Revision Programme (formerly: Statute Law Revision Project) since 2003 through the Statute Law Revision (Pre-1922) Act 2005, the Statute Law Revision Act 2007, the Statute Law Revision Act 2009, the Statute Law Revision Act 2012 and the Statute Law Revision Act 2015.

At first glance, it seems to be a tool similar to the Italian *taglia-leggi*. In particular, the Statute Law Revision Act 2007 repealed all pre-1922 public general pri-

41 For a detailed description of the tool *see* F. Pacini, 'The Italian "Legislation-Cutting" Tool', this *EJLR* Issue.

42 *See* N. Lupo, 'Le materie escluse e i decreti legislativi "correttivi"', and P. Carnevale, 'Sui problemi attuativi della norma "taglialeggi"', *in* N. Lupo & R. Zaccaria (Eds.), *La delega "taglialeggi": i passi compiuti e i problemi da sciogliere. Atti del seminario svoltosi alla Luiss "Guido Carli" il 1° aprile 2008*, Roma, Aracne 2008, p. 51 *et seq.* and p. 63 *et seq.*

43 *See* Teasdale 2009, p. 166 *et seq.*

44 *See* D. Lloyd Jones, 'The Law Commission and the implementation of law reform', *Amicus Curiae*, 2013, No. 73, p. 3.

45 *See* D. Greenberg (Ed.), *Craies on legislation: A Practitioners' Guide to the Nature, Process, Effect and Interpretation of Legislation*, London, Sweet & Maxwell 2012, p. 309 *et seq.* and M. Jack (Ed.), *Erskine May's Treaties on The Law, Privileges, Proceedings and Usages of Parliament*, 24th edn, London, Lexis Nexis 2011, p. 621 *et seq.*

mary legislation.[46] Schedule 2 of this Act lists 3,225 Acts, which were to be repealed; schedule 1 identified 1,364 Acts that should be retained.[47]

However, the Statute Law Revision Programme has been working well, while the Italian *taglia-leggi* did not. Why? The Irish Programme has been led by the Office of the Attorney General (actually, since 2012 by the Department of Public Expenditure and Reform), while the Italian *taglia-leggi* was driven by the relevant Departments. The Irish Programme has been focused, step by step, only on legislation that belonged to a specific period of time, while the Italian *taglia-leggi* focused on the whole pre-1970 legislation. The Irish Programme is based on lists of legislation, while the Italian *taglia-leggi* is based on lists of legislation and on general categories (so it is still up to the Judges in many cases to declare whether a piece of legislation had been repealed or not). The Irish Programme is being carried out through parliamentary bills and it has been a step-by-step process, while the Italian *taglia-leggi* was carried out by *decreti legislativi* and *decreti-legge*, and it was a one-off and broad action carried out quickly.

F The Tools for Legal Restatement in Italy: The Role of the *Consiglio di Stato*

Legge n. 69 del 2009 amended *legge n. 400 del 1988* and established a specific tool: the periodic *testi unici compilativi*. In fact, Section 17-*bis, legge n. 400 del 1988* authorizes the Government to restate periodically in *testi unici compilativi* the existing primary legislation relating to a specific area of interest.

Some scholars stated that these tools are secondary legislation, which can consolidate but (being secondary legislation) not amend primary legislation.[48] Other scholars underlined the limited task of these tools: making legislation more accessible to the citizens.[49]

I would say that these *testi unici compilativi*, being used for the compiling of existing primary legislation into a unique legal document that has not the force of primary legislation, are simply *fonti di cognizione* (which means, as already said, sources of law that are not *real* sources of law but are aimed at making the law more accessible). Therefore, their task is only to carry out legal restatement: they consolidate the existing enactments as an administrative exercise, without affecting existing law.[50]

Section 17-*bis, legge n. 400 del 1988* allows the Government to ask the Consiglio di Stato to draft these *testi unici compilativi*. This is a very important point.

46 1922 was the year in which Southern Ireland became the Irish Free State, a separate UK dominion.

47 *See* Teasdale 2009, p. 189 *et seq.*

48 *See* P. Zuddas, 'I testi unici compilativi (di cui all'art. 17-bis della legge n. 400 del 1988) tra possibili «sconfinamenti» del Governo e auspicabili «recuperi» del ruolo delle Camere', *in* P. Costanzo (Ed.), *La qualità della normazione nella dialettica Governo-Parlamento. Strumenti e tecniche nella XVI legislatura*, Napoli, Jovene 2011, p. 151 *et seq.*

49 *See* A. Morrone, 'Sul riordino della legislazione', *in* M. Cavino & L. Conte (Eds.), *La tecnica normativa tra legislatore e giudici*, Napoli, Editoriale Scientifica, 2014, p. 141.

50 *See* E. Albanesi, 'I meccanismi di semplificazione nel Regno Unito', *Rass. Parl.*, Vol. 57, No. 2, 2015, p. 503 *et seq.*

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Being the *Consiglio di Stato*, an independent, prestigious and highly qualified body, it could play an important role in carrying out such a technical task as drafting the *testi unici compilativi*. However, since 2009 the Government has failed to ask the *Consiglio di Stato* to draft any *testo unico compilativo*.

In June 2014 the *Camera dei deputati* approved a resolution and asked the Government to carry out a programme of consolidation and codification. The first step of this process, the *Camera* stated, should be approving *testi unici compilativi*, whose drafting should be undertaken for the Government by the *Consiglio di Stato*. Only after this, the Government should issue *decreti legislativi* for consolidation and codification.[51]

Therefore, in Italy, as in Ireland, restatement is now seen as a tool alongside law revision (and codification). However, since 2014 nothing has been done from this point of view in Italy.

G Legislative Scrutiny in Italy: The Experience of the *Comitato per la legislazione* and of the *Commissione per la semplificazione*

There are lots of problems in the way the law-making and drafting processes, as well as the mechanism used to review existing legislation, work in Italy. However, there is something that works quite well. It is the legislative scrutiny carried out by the Parliament, in particular by the *Comitato per la legislazione* and by the *Commissione per la semplificazione*.

This topic might be interesting for the British audience: first, because it is a good model, and second, because the matter of ensuring standards in the quality of legislation through a Code of legislative standards and by establishing a Legislative Standards Committee has been frequently debated in the United Kingdom.

The debate in the United Kingdom started with essays written by Professors David Feldman in 2002[52] and Robert Hazell and Dawn Oliver in 2004-2006[53] and from the experience of the Delegated Powers and Regulatory Reform Committee of the House of Lords (1992), the Joint Committee on Human Rights (2001) and the Select Committee on the Constitution of the House of Lords (2001).

The matter was debated within the Report of the Select Committee on the Constitution of the House of Lords in 2004, which proposed "the employment of a clear and transparent checklist by committees engaged in pre-legislative scru-

51 *See* XVII leg., *Camera dei deputati*, Mozione 1-00509, 18 June 2014.

52 *See* D. Feldman, 'Parliamentary Scrutiny of Legislation and Human Rights', *Public Law*, No. 2, 2002, p. 323 *et seq.*

53 *See* R. Hazell, 'Who is the Guardian of Legal Values in the Legislative Process: Parliament or the Executive?', *Public Law*, 2004, p. 495 *et seq.* and D. Oliver, 'Improving the Scrutiny of Bills: The Case for Standards and Checklists', *Public Law*, 2006, p. 219 *et seq.* On this topic *see* also R. Hazell, 'Time for a New Convention: Parliamentary Scrutiny of Constitutional Bills 1997-2005', *Public Law*, 2006, p. 247 *et seq.*; R. Fox & M. Korris, *Making Better Law: Reform of the Legislative Process from Policy to Act*, London, Hansard Society 2010 and J.S. Caird, R. Hazell & D. Oliver, *The Constitutional Standards of the House of Lords Select Committee on the Constitution*, London, The Constitution Unit-UCL 2014.

tiny, as well as by committees at other stages of the legislative process".[54] However, this proposal has not been implemented.

More recently, in 2013, the Political and Constitutional Reform Committee of the House of Commons proposed the adoption of a Code of legislative standards and the establishment of a Legislative Standards Committee but the Government rejected these proposals.[55]

Legislative standards "would not prevent Parliament passing legislation that did not meet the standards but it would secure that this was not done without Parliament being aware of the departure from normal expectation". They "would have an educational effect in that government ministers, members of the committees and other members of the two Houses would be able to learn from them what standards should be taken into account as relevant in a model scrutiny system".[56]

The need to ensure standards in the quality of legislation in the legislative process, as Professor Oliver stated, is "particularly important in the United Kingdom, given the absence of an enforceable, entrenched written constitution and of [...] a constitutional court with powers to pronounce on the compatibility of legislation with a constitution or basic principles to strike it down or disapply it". At the end of the day, "responsibility for the *quality* of primary legislation in the United Kingdom [...] lies almost entirely in the hands of government and the two Houses of Parliament".[57]

In Italy we do have an enforceable and entrenched written Constitution and our *Corte costituzionale* has the power of declaring void legislation that is not compatible with the Constitution. Therefore, the need to have such a scrutiny carried out by the Parliament is less strong than in the United Kingdom.

However, bear in mind that most legislative drafting rules are not set out in our written Constitution but in ordinary Acts of Parliament (for example, *legge n. 400 del 1988*, which sets out some legislative drafting rules concerning *decreti-leggi, decreti legislativi* and *regolamenti*); or in administrative guidelines (for example, the 2001 *Regole e raccomandazioni per la formulazione tecnica dei testi legislativi*, which sets out all the main general legislative drafting rules). Therefore, even though, according to some scholars, the nature of these rules is constitutional, the *Corte costituzionale* cannot resort to them as a standard to scrutinize legislation.[58] As a consequence, this task is carried out by the Parliament. As already mentioned, in Italy the drafting process is carried out by the Government and, more specifically, by the relevant Department, and results are of dubious quality.

The Parliament has developed a long tradition of legislative scrutiny of the bills and the decrees drafted by the Government. The clerks of the *Camera dei dep-*

54 *Cf.* House of Lords-Select Committee on the Constitution, *Parliament and the Legislative Process. Fourteenth Report of Session 2003-04*, Vol. I, October 2004, HL173-I, paras. 54 and 57.

55 *See* House of Commons-Political and Constitutional Reform Committee, *Ensuring standards in the quality of legislation. First Report of Session 2013-14, Volume I*, May 2013, HC 85 and the *Government Response* to it.

56 *Cf.* Oliver 2006, p. 239 *et seq.*

57 *Cf. Ibid.*, p. 226.

58 *See* Albanesi 2013, p. 66 *et seq.*

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utati and of the *Senato della Repubblica* are highly qualified officers who are tasked to scrutinize in depth the way in which bills and decrees are drafted by the Government.

Moreover, since 1997 two political bodies have been established and tasked with the power to scrutinize bills and decrees drafted by the Government with the aim of ensuring standards in the quality of legislation: the *Comitato per la legislazione* (1997) and the *Commissione per la semplificazione* (2006).

The *Commissione per la semplificazione*[59] is a joint committee whose main task is to scrutinize the draft of the *decreti legislativi* that consolidate or codify existing legislation, and to give a report to the Government.

The *Comitato per la legislazione*[60] is an unusual committee (for the reasons I am going to explain), whose task it is to scrutinize the quality of the bills and of the draft of *decreti legislativi*, with a view to providing a report to the committee that will debate the substance of the proposals. The *Comitato per la legislazione* has only been established in the *Camera dei deputati*, not in the *Senato*.

The *Comitato* is also required to give its report on the bills that confirm *decreti-legge* into law, and on the bills that delegate the Government to issue *decreti legislativi* and *regolamenti*, which are able to amend primary legislation. The *Comitato* might also be asked by the relevant committee to give its report on all the other bills and on the draft of *decreti legislativi*.

The *Comitato* gives its reports according to the following legislative standards: the 2001 *Regole e raccomandazioni per la formulazione tecnica dei testi legislativi*; *legge n. 400 del 1988* and some other Acts of Parliament; some other guidelines on the Preliminary Legal Analysis and on the Regulatory Impact Assessment. Its reports are technical, and they are drafted by the clerks of the *Camera dei deputati*.

Although its members are all politicians (not necessarily with legal skills), the structure and the approach of the *Comitato per la legislazione* is non-partisan. The *Comitato* consists of 10 deputies, five of whom are chosen from the majority parties and the other five from the opposition parties. This means that the majority parties cannot prevail over the opposition parties (as happens in the other committees) and that all its members have to make an effort to seek an agreement to have the reports passed. Moreover, the chair is chosen on a rotating basis for 10 months from among the majority parties and for a following 10 months from the opposition parties.

These are entirely new features of the Italian Parliament: the other committees are composed of deputies proportionate to the party share in the House as a whole, and their chairs are elected by the majority party in each committee. This is the reason why the *Comitato per la legislazione* is an unusual committee.

59 On the *Commissione per la semplificazione, see* F. Abballe, 'La commissione per la semplificazione della legislazione ed il "meccanismo taglia-leggi"', *Rass. Parl.*, Vol. 49, No. 4, 2007, p. 1093 *et seq.*

60 On the *Comitato per la legislazione, see* L. Lorello, *Funzione legislativa e Comitato per la legislazione*, Torino, Giappichelli 2003.

For all these reasons, for the first time in Italy the quality of legislation has carved out for itself a role in the legislative process that is separated from the political issues and is non-partisan.

The reports of the *Comitato* do not have any legally binding effect, so the relevant committee is free to accept or reject them (nearly 50% of its reports are accepted by the latter). However, as Professor Oliver stated about the proposal of adopting legislative standards in the United Kingdom, the main aims of the *Comitato* are to raise awareness in Parliament of the problems linked with the quality of legislation and to play an educational role within the Government and the MPs.

H The 2014-2016 Constitutional Amendment Process in Italy

As has already been shown, equal bicameralism has played a negative role in the quality of the legislation and in the way the mechanisms employed to review existing legislation work in Italy.

Italy has been trying to amend the sections of its Constitution related to the structure of the Parliament, the law-making process and the relations between the Parliament and the Government for about 35 years. Some important constitutional amendments related to other topics have been passed in recent years, *e.g.* the reform of the legislative powers of the *Regioni* (Regions) and the *Province autonome* (Autonomous provinces) in 2001 and the insertion of the balanced budget rule in the Constitution in 2012. However, every attempt to amend the Constitution to reform the structure of the Parliament, the law-making process and the relations between the Parliament and the Government has always failed.[61]

On 8 April 2014 the Italian Government introduced a Constitution Amendment Bill in the *Senato* (A.S. 1429). The bill was amended and passed by the *Senato* on 8 August 2014 (A.C. 2613).[62] The *Camera dei deputati* amended and passed it on 10 March 2015 (A.S. 1429-B), and the *Senato* amended and passed it on 13 October 2015 (A.C. 2613-B). Finally, the *Camera dei deputati* passed it with no amendment on 11 January 2016 (A.S. 1429-D). As the *Senato* and the *Camera* are required to pass the same constitutional bill twice after a period of 3 months, the *Senato della Repubblica* passed the bill on 20 January 2016 (A.C. 2613-D) and the

61 For an overview of all those attempts since 1979, *see* V. Lippolis, 'Le riforme istituzionali: trent'anni di sterili tentativi parlamentari e di modifiche alla legislazione elettorale. Dall'articolo di Bettino Craxi su l'Avanti del 28 settembre 1979 al discorso programmatico di Matteo Renzi del 24 febbraio 2014', *Rass. Parl.*, Vol. 56, No. 1, 2014, p. 103 *et seq*.

62 On this version *see* in English L. Violini, 'The Reform of the Italian Bicameralism: current issues' and G.E. Vigevani, 'The Reform of Italian Bicameralism: the First Step', *Italian Journal of Public Law*, No. 1, 2014, p. 33 *et seq*. Available at: <www.ijpl.eu/archive-result> (last accessed on 5 January 2017).

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Camera dei deputati on 12 April 2016.[63] A *referendum* was held on 4 December 2016, but the Italian people rejected this reform.

It is important to focus on the content of this reform anyway because its main aim was to supersede the equal bicameralism, which is one of the main causes of the poor quality of Italian legislation and of the bad results of the mechanisms for reviewing existing legislation.

There were two main areas of this constitutional reform. First, the structure and the tasks of the Parliament and its relationship with the Government. Secondly, regionalism. The main amendments to the Constitution, which regarded the structure and the tasks of the Parliament, were the following:

- the *Senato* would have become an indirectly elected Chamber, representative of the *Regioni*, the *Province autonome* and local authorities (Section 55, subsection 5, Const.). Therefore, the Italian Chambers would not have had the same legitimation any more;
- the membership of the *Senato* would have been 100: 95 Senators would have been elected by the Regional Assemblies and the Assemblies of the *Province autonome* from their members and, one for each *Regione*, drawn from the Mayors of the *Comuni* of their territories; 5 Senators would have been citizens, who have honoured the Nation, appointed by the President of the Republic as Senators for 7 years (Section 57, subsections 1 and 2, Const. and Section 59, subsection 2, Const.);
- the Regional Assemblies would have elected the Senators according to the choices expressed by the voters on the occasion of the elections of the Regional Assemblies (Section 57, subsection 5, Const.);
- the number of the Senators appointed by each *Regione* would have been in proportion to its population; no *Regione* would have had less than 2 Senators, and each *Provincia autonoma* would have had 2 Senators. The length of their mandate as Senators would have been the same as the body in which they would have been elected (Section 57, subsections 4 and 5, Const.);
- the Government would not have set up a confidence relationship with the *Senato* anymore but only with the *Camera* (Section 55, subsection 4, and Section 94, Const.). The Italian Chambers would thus have ceased to exercise identical tasks;
- the *Camera* would have had the general power of definitively approving the bills, which means that it would have been able to reject definitively the amendments passed by the *Senato* (Section 70, subsections 2 and 3, Const.);
- the general power of the *Camera* of definitively approving the bills would have had some exceptions. For such bills as constitutional or electoral ones,

63 *See testo di legge costituzionale approvato in seconda votazione a maggioranza assoluta, ma inferiore ai due terzi dei membri di ciascuna Camera, recante Disposizioni per il superamento del bicameralismo paritario, la riduzione del numero dei parlamentari, il contenimento dei costi di funzionamento delle istituzioni, la soppressione del CNEL e la revisione del titolo V della parte II della Costituzione (G.U., Serie Generale n. 88, 15 Aprile 2016).* On the final version, from the perspective of the Italian membership of the European Union, *see* E. Albanesi, 'The New Italian *Senato* in Light of the EU Constitutional System', *College of Europe Policy Brief*, No. 10, 2016. *Cf.* <www.coleurope.eu/cepob> (last accessed on 5 January 2017).

the legislative powers would have been exercised collectively by the *Camera dei deputati* and the *Senato*, as happens nowadays (Section 70, subsection 1, Const.). For bills through which, in some extraordinary circumstances, the State could have legislated in the matters reserved to the legislative powers of the *Regioni* and the *Province autonome*, the amendments made by the *Senato* on an absolute majority could have been overruled by the *Camera* on an absolute majority (Section 70, subsection 4, Const.);
- a 'fast-track' procedure would have been introduced for Government bills: the Government could have asked the *Camera* to vote on a bill within seventy days from receipt of the request (Section 72, subsection 7, Const.);
- electoral bills could have been challenged before the *Corte costituzionale* by one-quarter of the members of the *Camera* or one-third of the members of the *Senato* before promulgation by the President of the Republic (Section 73, subsection 2, Const.);
- the 'secondary rules' about the way of making and drafting *decreti-legge* (which lay down, for example, that the contents of *decreti-legge* shall be homogeneous and immediately enforceable), today ruled simply by the *legge n. 400 del 1988*, would have been moved into the Constitution. A specific rule would also have laid down that the confirmation Acts shall be homogeneous (Section 77, Const.). Therefore, those rules would have become actually binding for both Government and Parliament;
- the President of the Republic (who is nowadays elected by the Parliament in joint session with a two-thirds majority and with the absolute majority of the members of the assembly from the fourth ballot) would have been elected from the fourth ballot with a three-fifths majority of the members of the assembly and from the seventh ballot with a three-fifths majority of the members who are present (Section 83, subsection 3, Const.).

On the other hand, the main amendments to the Constitution, which apply to regionalism, would have been the following:
- the local administrative authority level of *Provincia* would have been abolished (Section 114, Const.);
- the State would have exercised exclusive legislative powers in an increasing number of express matters (Section 117, subsection 2, Const.). Concurring legislation (which means that in some other matters the *Regioni* exercise legislative powers but the establishment of the fundamental principles in those matters is reserved for the State) would have been abolished. At the end of the day, the *Regioni* would have exercised legislative powers only in some express matters and in such matters that were not specifically reserved to the State (Section 117, subsection 3, Const.). A clause would have allowed the State to legislate in matters reserved for the *Regioni* and *Province autonome* in cases of overriding and national interests (Section 117, subsection 4, Const.).

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I Conclusions

At the end of the day, the constitutional reform could have improved the Italian law-making process. Superseding the equal bicameralism could have helped Governments in resorting to the ordinary legislative process instead of *decreti-legge* and *decreti legislativi* with their undesirable impact on the quality of legislation. The mechanisms used to review existing legislation, which are carried out today through those same tools, would have worked better too.

Apart from this, the Italian system should learn some principles from the experience of law reform that are followed in the United Kingdom and elsewhere. First of all, consolidation (a mechanism for formal simplification and systematization of the law) should be considered as something different from codification (an instrument of a political will to change the law on a large scale). When the Government is delegated to issue a *decreto legislativo*, the boundaries of such activity (consolidation or codification) should be drawn more clearly than today.

Secondly, Statute Law Revision should be carried out periodically by examining in depth all the consequences of every single repeal, as happens in Ireland, and not through a one-off and broad action concerning the whole miscellaneous legislation, like that of the *taglia-leggi*.

Thirdly, the *Consiglio di Stato*, being an independent, prestigious and highly qualified body, could play an important role in drafting the *decreti legislativi* that carry out *consolidamento* and also the *testi unici compilativi* that carry out restatement. The Government should resort to the *Consiglio di Stato* more than it does today.

By the same token, legislative scrutiny that is carried out by the Italian Parliament might be a good model to study for the United Kingdom, where the matter of ensuring standards in the quality of legislation through a Code of legislative standards and by establishing a Legislative Standards Committee has been debated over a period of years.