

## RETRACING SOME “FOOTSTEPS” ON THE ROAD OF THE ITALIAN REPUBLICAN CONSTITUTION

by Silvia Illari

1. *The start of the 1948 Constitution between the “Cold War” and the cohabitation among different political parties*

The 1948 Constitution is defined as the “fundamental law” of the Republic, according to the last words of the Charter itself, included in the XVIII final provision, so that it is prescribed to “faithfully” observe the text voted by the Constituents “as a fundamental law of the Republic”. As far as said by eminent constitutional scholars, the main aim of “the fundamental law of the Republic” is to be recognized in the Constituents’ intention to grant to the most the cohabitation and the capability of peaceful collaboration among different political groups, with opposite ideologies, and linked to the two world powers, United States and Soviet Union, divided by radical conflicts<sup>1</sup>. And this also at the risk of weakening the effectiveness of the Government action in a broad way. For this the term “the Republic of political parties” was suggested<sup>2</sup>.

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<sup>1</sup> In this respect see the observations made by C. ESPOSITO, *La Costituzione italiana. Saggi*, Padova, Cedam, 1954, p. 14, pp. 52ff.; L. ELIA, *Perchè l’Italia si è tenuta e si tiene questo sistema di governo*, in F.L. CAVAZZA, S.R. GRAUBARD (edts.), “Il caso italiano”, Milano, Garzanti, 1974, I, pp. 224ff.

<sup>2</sup> This term is indeed the title of book written by P. SCOPPOLA, *La repubblica dei partiti. Evoluzione e crisi di un sistema politico, 1945-1996*, Bologna, il Mulino, 1992.

The spirit of compromise has featured, within different happenings, both the drafting and the implementation of the Constitutional Charter. In order to understand completely, it is imperative to keep in mind the inevitable links with yesterday reality. The Italian republican Constitution was conceived in particular political conditions, above all as far as the international relations is concerned and consequently inner too. It's important to remember that the Republic birth and the beginning of works for the Constitutional Charter' building happened in an historical period of some truce between United States, at the head of the liberal democratic Countries, and the Soviet Union, at the head of the Countries of real socialism. In the meantime, the Governments formed by the previous antifascist coalitions remained in office and the drafting of the republican Constitution was made together with the three major parties<sup>3</sup>.

Due to its own geographical position, the Italian State was included in the Western part, as stated in the Peace Treaty at the end of the Second World War<sup>4</sup>. It is to be observed that the Italian State always remained faithful to the western alliance but at the same time it kept on being the siege of the strongest and largest communist party in the West.

In June 1947, with the start of the "Cold War", the international relations became more deteriorated<sup>5</sup>. In this way the problems concerning the relations with the two world blocks of Countries, also linked to the opposition between the liberal-democratic conception and the social-communist one, were added to the divergences both of ideological thought and of political programs among different parties.

<sup>3</sup> It has to be remembered that, during the transitional and provisional constitutional period, starting from the spring of 1944, the Governments were made up as an expression of CLN (*Comitato di liberazione nazionale*). Even with some innovation, a continuity in such way happened after the 2 June 1946 elections of the Constitutional Assembly and up to the 1947 spring. Ministers from the Italian Communist Party, Socialist Party and Catholic Democratic Party, all together, took part of the first republican Governments. See S. ILLARI, *About the Genesis of the Italian Republican Constitution* in "Il Politico", nn. 2-3, 2018, pp. 28ff.

<sup>4</sup> Art. 15, Legislative Decree by the Provisional Head of State, 28 November 1947, n. 1439, "Esecuzione del Trattato di pace tra l'Italia e le potenze alleate ed associate. Firmato a Parigi il 10 Febbraio 1947".

<sup>5</sup> "An iron curtain had fallen on Europe." With these words, uttered to in a speech held at Fulton's College in Missouri by Winston Churchill, on 5 March 1946, the climate of "icy hostility" had started for the first time at the end of World War II, separating the United States and its allies from the communist bloc led by the Soviet Union.

The breaking between the Christian Democratic Party and the centrist parties, on one way, and the Italian Communist Party and the Socialist Party, on the other way, grew in a short time. The cooperation at the Government of the antifascist parties ended, instead the communal work in the polls of the Constitutional Charter kept on inside the Constitutional Assembly.

## 2. *The constitutional liberal democratic model*

The Constituents did not elaborate any new constitutional charter model *ex novo*. There were rather applications derived from texts of Constitutions based on the liberal democratic principles, introduced in the Countries of continental Europe. This is the real common ground on which the political forces of the Constituent Assembly have found unity<sup>6</sup>. Moreover, the purpose of bringing Italy fully back into liberal democratic regimes was predominant, after the period of “constitutional isolation” determined by the parenthesis of the fascist regime. We must take in consideration that the second post war period in Europe strictly depended on the first post war period, even if readjusted. When in 1944 the “democratic reconquest” began, one of the most important features of European constitutional history was that the Constituent Assemblies of 1946-47 often developed on the European continental model, taking inspiration from the formulas and the techniques of the constitutions written in the intermediate period between the two World Wars<sup>7</sup>. The Italian Constitution too is inspired by the models of that period, especially the 1919 Weimar Constitution<sup>8</sup>.

<sup>6</sup> “Mass-produced Constitutions” o “photo-copied Constitutions”, drafted by a few, following theoretical conceptions and schemas. See B. MIRKINE-GUETZÉVITCH, *Le costituzioni europee*, 1954, Milano, Edizioni di Comunità, p. 17.

<sup>7</sup> See B. MIRKINE -GUETZÉVITCH, *Le costituzioni europee*, cit., pp. 17ff.

<sup>8</sup> Many important Italian Constituents were law professors and were formed with the parliamentary doctrine of the Weimar Constitution. In particular, Costantino Mortati and Egidio Tosato. It's important to remember also the comparative researches by the Ministry for the Constituent Assembly, that published among other things, a wide series of Constitutional Charts, with meaningful comments by jurists of the time *Testi e commenti costituzionali*, Firenze, Nuova Italia, 1946. For deepening see S. ILLARI, *About the Genesis of the Italian Republican Constitution*, cit., pp. 35ff.

In accordance with the “Weimar model”, which is characterized by “long” and “rationalized” written constitutions, the categories proper to constitutional State had been re-proposed with explicit, rationalized, didactic statements: the fundamental rights; the division of powers; the plurality of constitutional bodies; the notion of law; the independence of the judge; the legality of the public administration; the political representation. Then, the Constituent Fathers took care to enclose “all in a systematic order”, almost “the index of a good university manual”<sup>9</sup>. However, it is to be noted that in the Italian constitutional Charter there aren’t any provisions about the electoral system for the representative system of government.

The principles of the liberal democratic constitutionalism built the Italian Constitution in each of its two parts: the first one dealing with general principles, fundamental rights and duties of citizens; the second one with the Italian Republic organization in a broad way<sup>10</sup>.

a) In the first part of the Republican Constitution, some important principles shape the entire republican system with its normative expression (especially the so called “pluralistic principle” and the principle of equality). In fact, after some uncertainties, among the Constituents prevailed the idea of incorporating the principles themselves into the text of the Constitution (rather than in a preamble or even in a separate charter of rights) in order to put better emphasis on their legal character. The declarations of fundamental rights are not “somehow original”, being similar to those of other Constitutions, however fundamental. Referring to the normative content, they are expressed in extremely extensive and complete terms. A precise criterion, which was defined by Aldo Moro as “progressive sociality”, features the list of recognized rights and duties: from the rights of freedom to economic, political and social rights<sup>11</sup>. In effect, in the same provisions concerning rights, it is also possible to find a political design

<sup>9</sup> G. CAPOGRASSI, *Dubbi sulla Costituzione* (1945), now in “Opere”, Milano, Giuffrè, 1959, VI, p. 105.

<sup>10</sup> See V. ONIDA, *La Costituzione dal 1948 al 2008*, in S. ILLARI (ed.) “La Costituzione italiana sessant’anni dopo. Esperienze e prospettive”, monographic issue “Il Politico”, n. 3, 2009, pp. 23ff., notably p. 24.

<sup>11</sup> U. DE SIERVO, *Il contributo di Aldo Moro alla formazione della Costituzione repubblicana*, in “Il Politico”, n. 2, 1979, pp. 193ff.

of a real acknowledgment to the reformist socialism aspirations together with the classical declarations of liberal constitutionalism. In particular, the recognition of the so-called social rights and economic rights came to be added to the historical guarantees of freedom and equality. The Constituents chose to put first the complex matter of rights (instead of the organizational part). This holds a prominent position towards citizens's rights in relation to the organizational and functional structures of Italian State.

- b) In its second part, the 1948 Constitution shows a peculiar version of the rationalized parliamentary system of government. This model featured the written constitutions of a lot of Countries in Western Europe in force during the first and the second afterwar<sup>12</sup>. On this subject it must be said that, historically, the parliamentary government had originated in Great Britain, from a gradual experience not backed from any theory, in order to give an answer to occasional necessities, also unforeseen. Almost as an imitation of the teaching of English history, in the same way, this had partially also happened in other European Countries. On the contrary, a complete design, fixed in advance, characterizes the rationalized parliamentary government model. To the latest one the Italian Constituents adhered too. The strong refusal of what so ever comeback of the prefascist parliamentary system of government, that was deemed dangerous by the majority of the political parties forming the Constituent Assembly, contributed to the choice of this model. Let's remember that in Italy, during those times, the historic parliamentary system of government was built by the empirical evolution of the constitutional monarchical system of government, also called "pure" constitutional system, because it is based on the principle that the power of the King is no longer absolute, but is exercised within the rules established in the Constitutional Charter.

The Constituents wished to introduce a kind of a rationalization defined as "balancing", meaning capable of maintaining a substantial responsibility among the various constitutional governing bodies, thus

<sup>12</sup> P. BISCARETTI DI RUFFIA, *Diritto costituzionale*, Jovene, Napoli, 1989, pp. 210ff. and P. BISCARETTI DI RUFFIA, *Introduzione al diritto costituzionale comparato. Le "forme di Stato" e le "forme di governo" le costituzioni moderne*, Milano, Giuffr , 1988, pp. 119ff., pp. 614ff.

avoiding any kind of predominance in only one of them<sup>13</sup>. This explains the introduction of checks and balances mechanisms among constitutional bodies, as happened, for example, with the same attribution of functions between the two Chambers of Parliament, that is characterized by a “perfect bicameralism”. Moreover, in powers and checks, external to the classical scheme composed by Parliament, Head of State and Government, were also previewed such as the Constitutional Court, the High Council of the Judiciary and the Regions.

Beware though that this balancing trend, could also be seen as the “weakness” of the single constitutional bodies participating to general policy decisions: Parliament, Head of State, Government<sup>14</sup>.

Lastley, not to be forgotten the fact that a lot of constitutional scholars insisted in observing that the Italian Constitution has no provisions about the electoral system of the Parliament. By common opinion it is considered that the subject is completely referred to the simple act of Parliament<sup>15</sup>. Given the spirit of compromise that informed the work of the Constituents, they were the first to introduce the proportional electoral system for the above election. This system characterizes most of the constitutional history of the Republic.

### 3. *Its arduous implementation*

Although the Republican Constitution had come into force on 1 January 1948, its implementation was postponed to the future legislator, because many articles contained only preliminary and general rules.

<sup>13</sup> P. BISCARETTI DI RUFFIA, *Diritto costituzionale*, cit., pp. 210ff. and P. BISCARETTI DI RUFFIA, *Introduzione al diritto costituzionale comparato. Le “forme di Stato” e le “forme di governo” le costituzioni moderne*, cit., pp. 119ff., pp. 614ff.

<sup>14</sup> On this matter a such opinion is held by a lot of constitutional scholars. In this regard we must say that political parties, represented in the Constituent Assembly, agreed on the adoption of the parliamentary government, because the majority feared that the introduction of a presidential system of government could lead to dictatorial thrusts. Similarly, the proposal to have the President of the Republic directly elected by the people was rejected by unanimous vote. The proposal was presented by the communist deputy Umberto Nobile within the framework of the work of the Second Commission, established within the restricted commission of the Constituent Assembly. The memory of the fascist twenty years weighted a lot.

<sup>15</sup> Law n. 29, 6 February 1948, n. 29 for the Senate of the Republic elections; law n. 1058, 7 October 1947, for the Chamber of Deputies.

In order to implement it, the Parliament would have to approve a series of laws. However, the implementation wasn't a simple one, because of the internal conflicts among the Italian political parties that had agreed to approve it. In 1948 there was the illusion of continuing into the antifascist alliance, that had lasted during all the work of the Italian Constituent Assembly and that had produced a series of compromises depending on a stage of truce between the two great world powers, to which the same parties were closely linked. The situation had changed though in correlation with the evolution of the "Cold War". Since the 1947 spring there had been a fracture among the Italian political parties both to the Government and to the legislation. More properly, there had been a fracture of the governmental coalition relations between Democrats and Centrists, on the one hand, Communists and Socialists, on the other. The communists had been ousted from the Government and coalitions formed by the centrist parties had begun.

The escalating "Cold War" on the international level turned the first parliamentary elections of the Italian Republic, on 18 April 1948, into a clash between the supporters of the two sides who had formed in correspondence with the two blocs and, in the years that followed, led to the "freezing" of the Constitution, that is, the failure to apply much of its rules, often referred to as "merely programmatic". For many years, the effectiveness of the Constitutional Charter was delayed, both as an application and as an implementation.

- a) At that stage of the suspension of supreme rules, which had been extended for years, delicate questions had arisen. In particular, in ordinary and administrative jurisprudence, a wide range of criteria had developed on disputes concerning the application of individual constitutional provisions in concrete cases. By the decision of the Court of Cassation in united sections of 7 February 1948, the constitutional provisions had been distinguished and classified into different categories, not all of them of immediate application<sup>16</sup>.
- b) In 1948 new conflicts arose among the most main political parties and so it became more problematic to form a parliamentary majority. It is widely believed that the "centrist" majority had opposed a certain "resistance" to the implementation of many constitutional

<sup>16</sup> Cass. Sez. Un., 7 February 1948, in "Foro it.", vol. II, 1948, pp. 57ff.



provisions established by the Constituent Assembly, with the intention of not granting further advantages to the opposition of Socialists and Communists. During the first legislature, from 1948 to 1953, the entry into force of many constitutional provisions about the State organization remained largely not implemented, almost “suspended”, even if, for important cases, the Constituents had also indicated deadlines for the implementing laws. The problem of times that are not respected had been almost inevitable, because it was necessary to rebuild the Country after the war. However, some difficulties occurred and significant constitutional institutions had not started working for a long time.

In particular, the building of individual institutions of government was slow, arduous, prolonged over time. Remember that at the time of the republican Chart promulgation, only the President of the Republic and the Government could work, following what already decided by the Constituent Assembly on the basis of the “provisional Constitutions”. Moreover, the Houses of Parliament were able to operate, having been approved special electoral laws. Some Regions with special autonomy (Sicily, Sardinia, Aosta Valley and Trentino Alto Adige) were also in force under the Statutes included in constitutional laws already approved by the Constituent Assembly. The Constitutional Court, the Superior Council of the Judiciary, the Ordinary Regions, included in the organization of government of the Republic in a broad sense, could not operate. Its formation and its settlement were postponed. There was also a delay for the laws regulating the exercise of the referendum.

Only after 1953, the implementation of the Constitution could be resumed, with many years of delay, in relation to a certain easing of international tensions and also thank to a new internal political situation. The laws provided for the completion of the construction of the constitutional building followed separate paths, also due to the contrasts between parties, center and left, dependent on particular interests. In fact, at the end of 1955, it took almost eight years before the Constitutional Court could finally get together for the first time and its first decision was enacted the year after, on June 1956. This decision, *inter alia*, rejected the previous distinction among constitutional provisions. Ten years later, in 1958, the Superior Council of the Judiciary and the National Council of Economy and Labour were formed. In 1970, after twenty-two years, the Ordinary Regions were established by law and their Regional Councils



were elected (elections which, by final disposition n. VIII of the Constitution, should have taken place within the same 1948). Moreover, a detailed conferral of powers took place only with the Legislative Decree n. 616 of 1977. Finally, only in 1971 the Regional Administrative Courts, as the first-degree organs of administrative justice, could enter into force, as provided for by the art. 125 of the Constitution. Still long would be the listing of the constitutional fulfilments.

This “constitutional thaw”, using an expression of Leopoldo Elia<sup>17</sup>, came about for two reasons: the defeat of the Christian Democratic Party and its Government’ allies in the political elections of 1953, due to the failure of the electoral law<sup>18</sup>. This fact made possible reaching political agreements between Christian democrats and Social-communists in the Parliament. Another important reason was the election of Giovanni Gronchi as President of the Republic. He had been elected by the new Parliament against Alcide De Gasperi and he immediately began persuading the Parliament to implement the Constitution.

#### 4. *And its problematic reform (among a few approved reforms, many projects and rejected reforms)*

As soon as the formation of Ordinary Regions was completed, at the beginning of the Seventies of the last century, discussions began among scholars of constitutional law on the need to make reforms, especially to the system of government. Generations of constitutional scholars were engaged in those discussions, having perceived symptoms of crisis and decadence of republican institutions<sup>19</sup>. Moreover, a

<sup>17</sup> E. ELIA, *Governo (forme di)*, in “Enc. Dir.”, XIX, pp. 634ff.

<sup>18</sup> The so-called “fraud law” (Law n. 148, 31 March 1953) did not work. This electoral law was approved just before the election and it was featured by the award of a substantial premium to the party or coalition that had obtained half plus one of the valid votes. The Christian Democratic Party was absolutely confident of winning the majority premium, in order to get a large majority in the Parliament. However, by a few thousand votes, the mechanism for awarding the majority premium failed to operate.

<sup>19</sup> The essays on constitutional reforms are already very many. It can be remembered that at the beginning, in 1973 and 1974, a particular impetus to the discussions came from two debates with the participation of eminent constitutional scholars. The first of these debates was attended by V. CRISAFULLI, A.C. JEMOLO, A. LA PERGOLA, C. MORTATI, A.M.

number of revision projects were also undertaken and a series of minor adjustments were also made, on which there were no real contrasts<sup>20</sup>. Thus, there were a number of constitutional laws or constitutional revision laws, approved under the article 138 of the Constitution.

Subsequently the “culture of constitutional revisionism”, using the expression of Valerio Onida<sup>21</sup>, grew in the Eighties to know an impetuous development in the early Nineties<sup>22</sup>. In fact, in the last decades of the last century opinions began to emerge. They attributed to the solutions adopted in the Constitution, especially in terms of system of government, the responsibility for the difficulties of political system of government functioning; in particular, the Government instability and the lack of effectiveness in Government action. In a short time it became clear the state of decline of the Republic and formal initiatives were undertaken by holders of the supreme bodies, also direct to declare the need and the will to achieve comprehensive and radical revisions of the second part of the Constitution<sup>23</sup>. This is the maximum extent of constitutional innovations. However, these initiatives remained unaffected. A particularly explicit statement of the need for reforms was expressed by the the Italian Republic President, Francesco Cossiga, with a special “Message to the Chambers” sent on 26 June 1991. Extensive discussions in the two branches of Parliament followed<sup>24</sup>.

Remember that in 1992 there was a wider constitutional crisis, mainly caused by the discovery of serious corruption phenomena that

SANDULLI (*La Costituzione e la crisi*, in “Gli Stati”, n. January, 1973). At the second one, in addition to the scholars themselves, participated also F. CUOCOLO, M. MAZZIOTTI, S. COTTA (*Che fare del sistema*, in “Gli Stati”, n. June-July, 1974).

<sup>20</sup> Many revision projects, mostly of partial content, to the 1948 Constitution have been advanced since the first years after its promulgation. For a review on the subject see P. CIARLO, *Il revisionismo costituzionale in Italia: 1948-1954*, in “St. parl. e di pol. cost.”, 1995, pp. 83ff.

<sup>21</sup> V. ONIDA, *La Costituzione*, Bologna, il Mulino, 2007, p. 123.

<sup>22</sup> Just remember the “Bozzi Commission” of 1983 and the “De Mita-Jotti Commission” of 1992.

<sup>23</sup> Symptomatic is that these rules are also designated by the expression “game rules”, as an essential moment of Western democracies. See N. BOBBIO, *Il futuro della democrazia*, Torino, Einaudi, 1991, pp. 63ff.

<sup>24</sup> The presidential message text and the consequent discussions are collected in the volume published by the Chamber of Deputies with the title *La Costituzione e le riforme istituzionali. Il dibattito alle Camere sul messaggio del Presidente della Repubblica (23-25 luglio 1991)*, Roma, 1991.

polluted the political and business system and which led to a reshuffling of the Italian political parties, with a rise of new parties, from which attacks on the Constitution were moved, not excluding its part concerning fundamental principles.

It was also presented the thesis that the 1948 Constitution had fallen and that the “Second Republic” had begun. Confused events followed, during which various attempts were made to reform the Constitution on the basis of understandings between all political forces<sup>25</sup>. Formal review procedures were also initiated, but they remained at the stage of more or less organic institutional reform projects<sup>26</sup>.

Over time, moreover, significant innovations were introduced for the organization of the Italian State, through a number of extensive, if not total, revisions until the Constitutional Law n. 3 of 18 October 2001 for which the entire title concerning the territorial autonomies was replaced.

In later years, the features of the political forces for the end of the old parties were changed, other revision drawings were presented throughout the second part of the Constitution, concerning the organization of the State government. In 2006 and in 2016 specific proposals were submitted by the Governments in charge at that time. These projects of reform dealt with the entire organizational framework of the State, with innovations covering the implementation of the principle of political representation, the system of government in general, especially with changes in the rules on organization and proceedings<sup>27</sup>. It is clear that,

<sup>25</sup> A reasoned review of the debates and reforms in Italy between the two centuries is proposed by S. SICCARDI, M. CAVINO, L. IMARISIO (eds.), *Vent'anni di Costituzione (1993-2013)*, Bologna, il Mulino, 2015.

<sup>26</sup> In 1994 a study committee promoted by the first Berlusconi's Government was convened and in 1997 a new bicameral commission was set up by a specific constitutional law: the so-called “D'Alema Commission”, on the basis of constitutional laws *ad hoc*. For indications about the works of these Commissions, among many, we can mention the volume AA.VV., *La riforma costituzionale*, edited by AIC – Associazione italiana dei costituzionalisti, Padova, Cedam, 1999.

<sup>27</sup> In the first case, the constitutional bill was approved in XIV legislature, on initiative of the center-right government coalition. See, for all, *La riforma dell'ordinamento della Repubblica. Il testo approvato nella XIV legislatura e il referendum costituzionale*, edited by Servizio studi della Camera dei Deputati, n. 4, 2007. The second constitutional bill, so called “Renzi- Boschi”, was approved during the XVII legislature. In the extensive literature see *La riforma costituzionale. Schede di lettura*, n. 216/12, May 2016; A.A.V.V., *La riforma respinta (2014-2016)*, Bologna, il Mulino, 2017.

even if there were innovations in many important aspects of the institutions, the intention was to confirm the liberal democratic conception of the State and the ultimate foundation of power in accordance with the postulates already established by the Constituent Assembly in the far back in 1947. In both cases, the approvals of the parliamentary Chambers followed, as prescribed in the art. 138 of the Constitution, but never reached a two-thirds majority in the second vote. These projects have been rejected with a vote of popular referendum. The 1947 choices were therefore maintained by official acts but there are still a few demands for radical innovations. Now, considering the many attempts, listen to this: about the Italian Constitution, everyone believes that this Constitution does not work but no one knows how to correct or replace it. This is the thought expressed by an important philosopher attentive to the great problems of the law, Ugo Spirito, in 1972<sup>28</sup>. It seems still current.

##### 5. *About adherence to principles of liberal democratic constitutionalism*

It seems more difficult to recognize the more general effects of the Constitution unitedly considered in Italian public life. It should be kept in mind that in the years of contemporary history it has been recognized that the constitutions go together with great movements of public opinion or, to use a typical expression of the Italian writers of the past, “general feelings of public spirit”<sup>29</sup>. In this sense, it should also be noted that special notions have been developed for the constitutions. In order to understand the present ideal spirit, long after the promulgation of the 1948 Chart, the figure of a “patriotism of the Constitution” was established<sup>30</sup>. All this shows the intention to evoke higher demands of will and even

<sup>28</sup> U. SPIRITO, *L'equivoco della Costituzione. Lettera al Presidente della Corte Costituzionale* in “Nuovi Studi Politici”, n. 1-2, 1972, pp. 3-17. Now in F. GENTILE, P.G. GRASSO (eds.), *Costituzione criticata*, Napoli, Esi, 1999, p. 336.

<sup>29</sup> The expression is widely used by Antonio Rosmini for example in the *corpus* of his writings of 1848-49, now published in A. ROSMINI, *Progetti di Costituzione*, edited by C. Gray, Milano, Bocca, e A. ROSMINI, *Scritti politici*, edited by C.U. Muratore, con prefazione of M. d'Addio, Stresa, Sodalitas, 1997.

<sup>30</sup> Consider the studies of Maurizio Ridolfi, especially the volume he edited *Almanacco della Repubblica. Storia d'Italia attraverso le tradizioni, le istituzioni e le simbologie repubblicane*, Milano, Bruno Mondadori, 2003.

of feelings far beyond the positive character, however necessary, expressed by the imposition of ordinary or constitutional judges.

The expression appears to recall the more traditional statements about patriotism related to the idea of nation, identified with the history of a community and also with the territory<sup>31</sup>. The reference to patriotism as a “glue” between peoples is a concept that comes from afar<sup>32</sup>. However, as it is known, an explicit concept of constitutional patriotism was widely theorized by law scholars and sociologists from Germany in the Nineties of the past century, especially by Jurgen Habermas<sup>33</sup>. This widespread expression is intended to sum up the series of ideal principles and pragmatic attitudes linked to a feeling of belonging, typical of the liberal democratic States, which is expressed through the citizens’ adherence to the ideas of modern constitutionalism in the West<sup>34</sup>.

<sup>31</sup> For a review of the concepts of “patriotism” and “nationalism” see M. VIROLI, *Per amore della Patria*, Roma-Bari, Laterza, 2001.

<sup>32</sup> Alexis de Tocqueville already emphasized the importance of the identity factor as a tool to hold up the federations of States, in which within different cultures and identities must coexist precisely by developing the sense of collective belonging to something that should be considered as their own (A. DE TOQUEVILLE, *De la démocratie en Amérique* (1835), Italian translation edited by G. CANDELORO, *La democrazia in America*, Milano, Rizzoli, VI ed., 1996, pp. 377ff.). Later, during Italian Risorgimento, Giuseppe Mazzini also outlined his fundamental ideas about Republican patriotism in the essay “Dell’amor patrio di Dante” (1826-27). For Mazzini “The homeland is not a territory, the territory is but the base. The homeland is the idea that arises on that, it is the thought of love, the sense of communion that holds in one all the children of that territory” (G. MAZZINI, *Dei doveri dell’uomo*, in T. GRANDI, A. TOMBA (eds.), “Scritti politici”, Torino, UTET, 2005, p. 884).

<sup>33</sup> *Verfassungspatriotismus* is a concept coined by Dolf Stenberg (*Verfassungspatriotismus*, Frankfurt a M., Insel, 1990) and taken up by Jurgen Habermas in several of his essays. See J. HABERMAS, *La rivoluzione in corso* (1990), Italian translation edited by M. Protti, Milano, Feltrinelli, 1990, p. 147ff., notably p. 151 e J. HABERMAS, *L’inclusione dell’altro. Studi di teoria politica* (1996), Italian translation edited by L. Ceppa, Milano, Feltrinelli, 1998, pp. 217f.; J. HABERMAS, *Morale, diritto e politica*, Torino, Edizioni Comunità, 2001.

<sup>34</sup> True, there were considerations strongly linked to German history at the origin of the concept. The Author states that in Germany nationalism had asserted itself against the republican spirit and had degenerated into the racist aberrations that had led to the holocaust. In particular, from 1871 to 1945 the word “homeland” had meant a purification to be pursued by means of the expulsion or marginalization of all the supposed enemies of the national community. For this reason, according to Habermas, this form of nationalistic patriotism should be contrasted with another, based on loyalty to the universalist political principles of freedom and democracy embedded in the fundamental law of the Federal Republic of Germany.

In Italy similar positions were taken by some scholars of politics, history and law. In particular, in opposition to the political forces that in the mid of Nineties advocated a “new Constituent Assembly”, Giuseppe Dossetti also called for a “constitutional patriotism”. In the last years of thought, the old Constituent renewed his commitment to the protection of the Constitution in many public speeches, which were part of a wider debate about the characteristics of the political season marked by the advent of Silvio Berlusconi at the Government of Italy and of the so-called Second Republic. Faced with the irreversible crisis of the dying regime’s parties, he was firmly convinced that the 1948 Constitution, “the first not octroyé but really given by a large part of the Italian people, and the first joining the guarantees of equality for all and the basal structures of a corresponding form of State and government”, could live on its own life, beyond the political forces that had contributed to its drafting. Not only by helping “to healing old and new wounds of the unified (Italian) process” but also, on the model of what happened in the United States, “to found (...) the patriotism of the constitution”. The latter, if widespread and fortified, appeared to the old Constituent as “an orienting light and an aggregating force, (...) capable of revitalizing a new understanding among all the traditional components of the (Italian) people, and of stimulating a collective recovery”. It should be noted that for Dossetti the spirit of patriotism of the Constitution is not based on a “contract” that establishes some common shared principles. Rather, it is the same spirit that “can build and guarantee non-negotiable common values” therefore removed from bargaining and political conflicts”<sup>35</sup>.

The theme of Dossetti’s constitutional patriotism refers to the co-eval debate of those same years on the features of national identity after the war catastrophe of Second World War, which would lead to the “death of the homeland” in September 1943<sup>36</sup>, intertwining with that

<sup>35</sup> The observations reported here were expressed by Dossetti during the conference held in 1995 at the Institute of Philosophical Studies of Naples. See G. DOSSETTI, *I valori della Costituzione*, in “Quaderni del Trentennale 1975-2005”, Napoli, Istituto italiano per gli Studi filosofici, 2005, pp. 23ff.

<sup>36</sup> According to the lapidary expression used by Salvatore Satta in the difficult situation of the division of Italy into two parts (S. SATTA, *De profundis*, Milano, Adelphi, 1980). The crucial historical problem is that of the Italian nation that dissolves with September 8, 1943, when, as it known, the entry into force of the “Cassibile armistice”

caused by “historiographic revisionism” about the re-reading of knots and crucial moments in post-unification history, such as resistance and antifascism. In that moment the scholar of fascist history, Renzo de Felice, proposed the formulation of a new patriotism based on the archiving of the contrast between fascism and antifascism, which would cause lacerations and deep wounds, irreparably compromising the possibility of developing a shared memory<sup>37</sup>. It is also worth considering the position of Ernesto Galli della Loggia for whom, almost in antithesis to “constitutional patriotism”, the current weakness of the Italian national identity (defined by the same author “death of the fatherland”) would be in the pretense of erasing the entire past as an *unicum* obscured redeemed exclusively by the events that led to the proclamation of the Republic and the drafting of the Constitution<sup>38</sup>.

In this context a question seems to arise if in Italy the constitutional patriotism, besides being a doctrinal elaboration, is also a widespread sentiment among Italians of convinced belonging to the universal principles incorporated in it<sup>39</sup>.

(secretly signed by the Government of marshal Badoglio), an act with which the Kingdom of Italy ceased all hostilities against the Allies during the Second World War and established the beginning of the Italian resistance against Nazi fascism.

<sup>37</sup> In this context, De Felice makes an interesting consideration regarding the relationship between the nation and the Constitution: “The patriotism of the Nation and the patriotism of the Constitution are not contradictory to me. Except that without the Nation there can be no Constitution. That is to say, the values that give shape to the patriotism of the Constitution are values expressed by history, by culture, by the events of a particular country, not by a juridical abstraction. And indeed, when we speak positively or negatively of the “Constitution born of the Resistance”, we are referring to a very precise moment of Italian history, to something that is good only for Italians, not for the French or the Swedes. I have never believed in the enlightenment possibility of a constitutional experiment, since all patriotism must have its homeland of reference” (R. DE FELICE, *Rosso e Nero*, edited by Pasquale Chessa, Milano, Baldini e Castoldi, 1995, p. 104).

<sup>38</sup> E. GALLI DELLA LOGGIA, *La morte della patria: la crisi dell'idea di nazione tra Resistenza, antifascismo e Repubblica*, Roma-Bari, Laterza, 1996.

<sup>39</sup> Besides, relevant constitutional scholars point out that the principles that inform the first part of the Constitution have become progressively entrenched in Italian legal system thanks to the interpretation based “on values” expressed by the Constitutional Court in its case-law. The latter has enriched (and not contradicted) the framework of the constitutional principles, with new rights that have been added to the constitutional catalogue in order to reinforce the same principles. S.A. BARBERA, *Costituzione della Repubblica italiana*, in “Enc. Dir.”, Annali VIII, p. 264.



a) Certainly, it is essential to embed the constitutional principles and values and the Republic in the common culture, favoring the development of this renewed constitutional patriotism. In this sense, adherence to the universal principles of the 1948 Constitution is re-proposed, beyond a strictly theoretical framework, by the last Presidents of the Italian Republic. Especially Carlo Azeglio Ciampi, an exponent of that world indeed with a greater attention to the themes of national unity and the Risorgimento spirit, advocated of “republican patriotism”, perhaps more extensive than the simple reference to the Constitution<sup>40</sup>. Even his successor, Giorgio Napolitano, referred several times to the “pact that binds” the Italian people, referring them to “a competition of will stronger than all the reasons for division”. On the occasion of the sixty years of the republican Constitution, the latter clearly stated: “There is no better common ground than that of an authentic, profound, operating, constitutional patriotism. This is the new, modern form of patriotism in which to bring to life the pact that binds us: the pact of national unity in freedom and democracy”<sup>41</sup>. More recently, the current President of the Republic, Sergio Mattarella, has observed that “the love of your country does not coincide with nationalist extremism”, but has more distant roots. It comes from the Risorgimento: ‘a commitment to freedom, to free oneself from the domination imposed by force: then from foreign States’. After the Great War it was a political part to compress the freedom of all. In this lies the profound link between Risorgimento and Resistance”. Today “the love of country is inseparable from the principles of our Constitution, which are its product and its fulfillment”<sup>42</sup>.

<sup>40</sup> C.A. CIAMPI, *Patriottismo repubblicano, Costituzione, Europa*, in S. ILLARI (ed.), *La Costituzione sessant'anni dopo, Esperienze e prospettive*, monographic issue “Il Politico”, n. 3, 2009, p. 5. See also the essay of S. ROSSI, *La Presidenza Ciampi nel segno del patriottismo costituzionale*, in “Forum Quaderni costituzionali”, 25 September 2006, available on the net at the address [www.forumcostituzionale.it](http://www.forumcostituzionale.it).

<sup>41</sup> G. NAPOLITANO, *Il patto che ci lega. Per una coscienza repubblicana*, il Mulino, Bologna, 2009.

<sup>42</sup> The observation reported *verbatim* is taken from the speech given by President Sergio Mattarella on the occasion of the Second World War end centenary. This speech of 4 November 2018 can be found on the institutional website of the Presidency of the Republic at the net address <https://www.quirinale.it>. The same observation is also reported in the interview made by M. BREDI, “Sergio Mattarella e la Grande guerra. ‘La lezione

- b) There has also been the problem of making constitutional values part of a more widespread media culture. It may be interesting to remember that the observance of the constitutional charts depends on the spontaneous accessions of citizens, which also appear to depend on certain activities<sup>43</sup>. Among other things, the diffusion of certain symbols that are proposed as useful to comfort adhesions among the common people is considered relevant<sup>44</sup>. Their practice is widespread in Countries with long democratic traditions such as the United States, United Kingdom and France in the first place. Right at the beginning of the XXI century, the President of the Republic, Carlo Azeglio Ciampi, was the protagonist of a more general action to promote Italian patriotic symbols. During the last year-end speech addressed to Italian people, he remembered having “insisted on recalling the most symbols significant of our identity as a nation from the tricolor flag to the hymn of Mameli - the hymn of the awakening of the Italian people - thus recalling the ideal nexus that links the Risorgimento to the Resistance, to the Republic and to the values enshrined in its Constitutional Chart”<sup>45</sup>. Actually, in the Republican Constitutional Charter the only officially recognized homeland symbol consists of the flag, described as the “green, white and red tricolor”, as required by Article 12 of the Constitution<sup>46</sup>. With constitutional patriotism, the history and values of the Resistance and the Risorgimento, as well as the symbols of national identity, have been able to find a new centrality and recognition as the

del 1918: l’amor di patria non è nazionalismo estremo””, in “Corriere della Sera”, 4 novembre 2018, p. 8.

<sup>43</sup> M. RIDOLFI (ed.), *Almanacco della Repubblica: storia d’Italia attraverso le tradizioni, le istituzioni e le simbologie repubblicane*, cit.

<sup>44</sup> About “the indispensability” of symbols for a political community see M. LUCIANI, *Art. 12*, Roma, Carocci, 2018, pp. 47ff.

<sup>45</sup> It is interesting to remember that the hymn of Mameli was originally adopted on 12 October 1946 by the Council of Ministers, on a provisional basis. No law had made it definitive and only recently the law that makes it official has been approved (Law n. 181, 4 December 2017).

<sup>46</sup> The tricolor flag has spread in the history of Italy for over two centuries. Once the national unification took place, this flag, without other innovations, was taken on as a national flag under the law of 17 March 1861 n. 467. The Albertine Statute established that the Savoy State retained “the flag in use” (art. 77). About its long history see M. LUCIANI, *Art. 12*, cit., pp. 18ff.

founding roots of the Republic: not only the hymn of Mameli and the tricolor flag, but also the Quirinale (the official presidential residence), that have been opened to the public, while the celebrations of 2 June have been restarted<sup>47</sup>.

- c) In this sense we can also explain the introduction of the constitution teaching as a relevant part in the education and training of people or those who are informed of media culture. The teaching in the schools of the national hymn, the reflection on the Risorgimento events and on the adoption of the tricolor flag are prescribed by law n. 222 of 23 November 2012 included in the transversal subject called “citizenship and Constitution”. Recently the question of the teaching of the Constitution in primary and secondary schools has resurfaced in Italy<sup>48</sup>.

**Riassunto** - Ripercorrendo alcuni “passi” del percorso compiuto dalla Costituzione italiana del 1948, si è tentato *in primis* di soffermare l’attenzione sul modello liberaldemocratico scaturito dall’arduo lavoro dei Costituenti. Questi gettarono le basi di un nuovo inizio, poi seguì la travagliata attuazione e il crescente susseguirsi di progetti di riforma,

spesso non arrivati a compimento, se non addirittura respinti con voto popolare. “Tutti avvertono che non va, ma non si sa come correggerla o sostituirla” affermò Ugo Spirito già nel lontano 1972. E intanto la Costituzione del 1948 appare ancora oggi come il patto che lega il popolo italiano nella libertà e nella democrazia, oltre tutte le ragioni di divisione.

<sup>47</sup> The first celebration of the Italian Republic day took place on 2 June 1947. Later, in order to contain the public expenditure, the celebration was moved to the first Sunday of June (Law n. 54, 5 March 1977). In 2001 the Republic day was restored on the exact date, at the initiative of the then President of the Republic Carlo Azeglio Ciampi (Law n. 336, 20 November 2000).

<sup>48</sup> See the recent bill n. 682, presented at the Chamber of Deputies on the first of June 2018 “Istituzione dell’insegnamento dell’educazione civica nella scuola primaria e secondaria e del premio annuale per l’educazione civica”. Last May, the Chamber of Deputies passed, almost unanimously (451 votes in favor, 3 abstentions) it, establishing the teaching of civic education in schools. Now it’s up to the Senate.