

# A Crisis Made in Italy

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The recent crisis surrounding the Italian President's refusal to appoint a Finance Minister considered likely to pursue an agenda of 'Italexit' has sparked a great deal of constitutional commentary. Two particular threads of opinion are identified here and some doubts cast about them. On the one hand, there are those who consider legitimate the President's discretionary use of power, partly in light of the pressure that would be brought to bear by the financial markets should Italy opt for exiting the single currency. On the other hand, there are those who doubt its wisdom, and offer a broader indictment of the pressure brought to bear on the Italian government as a result of being in an overly rigid Eurozone. This gets closer to diagnosing the condition, but in its ambiguity about the pressure point, fails to underscore that this is essentially a crisis made in Italy, and, if at all, to be resolved there, including a full and frank debate about membership of the single currency and even the European Union.

## At the President's discretion?

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The President's actions have been justified on the basis of his discretionary power under Article 92 of the Italian Constitution to appoint – and therefore reject – Ministers, which can be exercised with relatively few fetters. To rely on this alone, however, would be to run the risk of conflating legality with legitimacy, suggesting the President should do what he is legally empowered to do. But 'may' obviously does not imply 'should'. And there are sound political constitutional reasons for opposing the emergence of a convention that would augment the presidential power of veto over political appointments.

The text, or subtext, however, is material, a fear of how the financial markets would react to a fragile economy that dared to question the shibboleth of European integration, the single currency, and the order that supports it. The specific fear is that the economic damage such agenda would cause to the country's finances would price out protection of precisely those constitutional values cherished in the Italian republic.

This is a peculiar justification given the notorious volatility of the financial markets, the same markets that saw an extraordinary convergence in yields in the decade preceding the financial crisis, only to combust in the aftermath of the financial meltdown, to then be calmed by Draghi's 'whatever it takes speech', based on a 'myth' of irreversibility of the Euro, contested in Karlsruhe but sustained in Luxembourg. In any case, as Mark Blyth has shown, there is little to suggest that the markets reward fiscal discipline or austerity as such, unsurprisingly given its contractionary effects. Ironically, but not that unpredictably, the markets reacted badly to the President's gambit because all it did was to prolong (for a brief period) the uncertainty, possibly exacerbating the situation in July elections, with the League in particular looking set to profit. The end result, again, is a fudge, Savona, without apparent irony, now taking the position of Minister of European Affairs. Only time will tell if the fudge will stick.

Underlying the justification is not only that politicians should act prudently in the interests of financial stability, but that democratically legitimated choices should be thwarted in advance, to pre-empt possible future market reaction. The implicit assumption is that 'the market' is an impersonal, natural force like an earthquake, or a divine entity that must be suitably appeased. This obfuscates the fact that market pressure is brought to bear by human agents and political institutions. More fundamentally, it elides the reasons market rationality looms so large in the Eurozone. To explore this, one needs to probe further into the background, which is neither divine, nor natural, but constitutional.

## De-constitutionalisation

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Dani and Menendez thus identify the pressure to appoint (or reject) particular ministers as coming not from 'the markets' but from European constitutional law. From this perspective, they argue that the dilemma facing a prospective Italian government was one identified earlier by Dieter Grimm, namely that the EU in general, and EMU, in particular, is 'over-constitutionalised', leaving insufficient room for political manoeuvre at the national level.

'European law, as interpreted by the European Court of Justice and... as practised in the context of the European economic government, ties with the golden fetters of the euro the hands of national governments, rendering hopeless the task of removing the obstacles to the realization of substantive equality, as required by the Italian (and other) constitutions.'

It is indisputable that EMU, understood not just as a constitutional text, but as a constitutional practice (including the dubious Euro-crisis law and politics associated with it), has imposed extraordinary constraints on participating governments. These might even be described as supra-constitutional, given their ideological weight as part of a TINA narrative, and their ability to pressure even the constituent power of the people. It should thus be noted that the constraints are in a significant manner de-constitutionalised, as close scrutiny of the European Central Bank and the 'formally informal' Euro-group during the Greek-crisis would reveal.

In any case, the material reality of the constraints are beyond doubt. It is their constitutional identity that is more ambiguous. Is this a European or a domestic constitutional convention? Where ultimately does over-constitutionalisation take place? Dani and Menendez are clear that 'European law does not impose any policy requirement for the Minister of the Economy sitting in the ECOFIN and the Eurogroup'. And aside from some unwise but rather inconsequential comments from Juncker and Oettinger, the EU institutions have remained publically mute in the face of the Italian predicament, as has the German government. So instead, they reinterpret the constraint as a constitutional convention, 'according to which political parties or coalitions that are critical of the existing economic and monetary arrangements within the Eurozone cannot get into government'. In their view, this amounts to a new form of 'authoritarian liberalism, in which the preservation of monetary and financial stability trumps democracy'.

Dani and Menendez seem inclined to present this as a feature of EU law and practice only so they can then reject it as such. But presenting the dilemma as primarily a matter of European constitutional law (or convention) threatens to lead to the usual impasse, adorned with the same, tired, insistence that this is a European problem which requires a European solution. Although perhaps impeccable as a matter of normative logic, this fails as a matter of constitutional analysis. By placing its faith in reform of a Eurozone that looks highly resistant, if not immune to such change, it is also doubtful as constitutional strategy.

## This is a domestic constitutional crisis

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However much the pressure on Italy appears to be brought to bear by global financial markets or European constitutional conventions, this is a domestic constitutional crisis. It is made in Italy. Full reflection not just on this episode but on the broader Italian political situation suggests a crisis of the material constitution. This is similar to what Gramsci called an 'organic crisis', the inability of the ruling bloc (made up of broadly centrist parties and institutions) to maintain positional and ideological hegemony. This encompasses 'the totality of a system that, for whatever reason, is no longer able to generate societal consensus... Organic crises are at once economic, political, social, and ideological—in Gramscian terms, they are crises of hegemony—and they usually lead to a rejection of established political parties, economic policies, and value systems.'

The claim must not be misunderstood. The problems faced by Italy are repeated elsewhere in Europe, and beyond. Material constitutional crises play out across the Continent in different ways, with anti-establishment parties on the rise almost everywhere, in creditor as well as debtor countries. Neither is it to ignore the geopolitical and institutional pressures

that are placed in a Euro-zone that increasingly resembles a hegemonic federation, with a dominant neoliberal ideology. The problems, in other words, are systemic, and intertwined. But that makes it all the more necessary to zoom in on the proximate constitutional cause.

The postwar settlement in Europe includes a dominant constitutional idea, which is that participation in the project of integration and by extension the single currency is a constitutional essential, a *conditio sine qua non* of respectable constitutional opinion. It is here that Dani and Menendez have hit on the important point, suggesting an analogy with the *pactum ad excludendum* that put communist parties beyond the pale.

But this is a feature of the domestic constitutional imagination, backed by domestic constitutional norms. Dani and Menendez imply as much because they consider that it might be overcome by appealing to another constitutional essential, Italy's 'democratic republic founded on labour'. This, however, risks offering another overly-constitutional solution, swapping one form of authoritarianism for a different, more palatable variety. The only way out of the impasse lies in and through democracy, and, more fundamentally still, in social movements and their translation into progressive political and constitutional goals. This, at the present moment, can only occur domestically. And it must address the shibboleth of the single currency and even European integration itself. There should be no underestimating the challenge.

## Authoritarian liberalism

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Here a final point about Italy is worth raising. In most other contexts, as the 'extreme centre' disintegrates in Europe (and elsewhere), there has been a revival of new formations across the political spectrum – centre, left and right. 'Pasokification' is already into its second round in Italy, with the decline of the Democratic Party of Renzi at the March elections. The Italian reaction, however, seems in danger of leaning in an unmitigated illiberal direction, witness the unopposed part of the coalition agreement on the expulsion of half a million irregular migrants. Is this because the terrain of contestation not just of EU policies, but, we must add, of the European political project, has been almost totally vacated by the left?

Elsewhere, I have elaborated on the phenomenon of authoritarian liberalism, first coined by German Social Democratic Hermann Heller in the interwar years, representing the combination of politically authoritarian means to achieve ostensibly economically liberal ends. This must now include maintenance of a single currency with the free circulation of capital but with clear winners and losers, raising inequality both within and between nations. Over-constitutionalisation of a neo- and ordo-liberal kind has certainly contributed to the de-democratisation of the economy and to the various malaises in Europe over the last few decades, accelerating since the Euro-crisis. But it is a mistake to think that constitutionalisation of a different kind would be a cure for the patient.

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