

BAD QUALITY OF ITALIAN JURIDICAL LANGUAGE AND DEMOCRATIC PARTICIPATION RIGHTS¹

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In the democratic and constitutional system the power of the word of the law originates from people's sovereignty. The legal paper, based on a democratic mandate, must be clearly understandable by the addressee. When the virtuous communicative process breaks up, the democratic process, that is, its same foundation, comes to an end. The legislative Italian texts are mainly incomprehensible and contorted. The bad quality of legislation, deriving from many social and cultural factors, has provoked a crisis in the relation between institutions and citizens and bad consequences on the efficiency of the administrative apparatus and the economic life of the country. On the contrary, the language of the Italian Constitution of 1948 was clear and comprehensible, correct and simple, document of a democratic instrument. A real democratic participation requires a good writing of the laws in order to recover the way of democracy and civilization.

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INTRODUCTION

The language of a nation and its body of laws are mutually dependent².

They are the product of ever developing social conventions, systems with strong internal organizations, so that the language is conceived in terms of grammar or syntactic “rules”, both supporting the existence of the society

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² On the strictfunctional relationship between language and law, see the fundamental works of Scarpelli U., *Scienza del diritto ed analisi del linguaggio*, in U. SCARPELLI, P. LUCIA, *IL LINGUAGGIO DEL DIRITTO*, Milan L. ed. (1994); Scarpelli U., *Contributo alla Semantica del linguaggio normativo*, Milan, Giuffr  (1959; 1985).

and its interpersonal relations³.

The juridical aspect is intimately connected to the historical and cultural context in which it develops; it is the result of a dynamic process, so that the study of the language of jurisprudence is necessarily multidisciplinary, because of the variety of research profiles, relating to the general communication, and, specifically, the juridical sector, as well as the economic and social consequences, of a structured community life.⁴

In this article, we mean to limit our considerations to the relation between the juridical language decline and crisis of the democratic participation system in Italy.

I. THE WORDS OF THE LAW AND THE POWER OF THE RULE

The law uses language to regulate public relations between institutions and citizens and private connections among them; so, by definition, and at its own consume, it uses the power of the language to manipulate it, inevitably and lawfully, turning it into a language of power⁵.

The juridical law is not a simple formulation or narrative, but it expresses the strength of command; as direct expression of the Authority, it embodies the true essence of power representation.

The “word” of the law, different from any other form of communication, “is” the authoritative power for the maintenance of the ordered coexistence of the state community.

In the constitutional democratic system, as generally meant nowadays, the regulatory power of the word of the law takes origin from an unquestionable formal legitimacy that is from people’s sovereignty, being carried out, in various patterns of representations throughout its different historical—institutional experiences.

Nonetheless, the juridical law “is a kind of designated writing, based on a strong communicative pact with the addressee”, either with specific competencies, in the case of public officers, judges, lawyers or simple citizens called to apply, respect and have it safeguarded.

Hence, it is essential that the legislative writing, grounded on a

³ The observationis by Mantovani D., *Contributo alla Semantica del linguaggio normativo*, Università di Pavia (2017), <http://lalinguadeldiritto.unipv.it> (last visited October 19, 2017).

⁴ On the point, ex multis, Mantovani D., *Lingua e diritto. Prospettive di ricerca tra sociolinguistica e pragmatica* (2008); G. Garzone & F. Santulli, *Il linguaggio giuridico. Prospettive interdisciplinari*, Milan Giuffré, 17—22; Silvestri G., *Linguaggio della Costituzione e linguaggio giuridico: un rapporto complesso*, in *QUADERNI COSTITUZIONALI* 229—255 (1989).

⁵ Vespaziani A., *Il potere del linguaggio e le narrative processuali*, *Revista Internacional del Direito e Literatura*, Janeiro, 1(1), 69 ss (2015).

democratic mandate, may respond to the concrete requirements at the base of the mandate itself.

The legislative work, at the same time, linguistic and juridical act, has to fulfill the goal of “the communication among given interlocutors, in a well defined situation, in relation to fixed goals”⁶.

The knowledge of the contents of the rules on behalf of the addressees, which observe them, is essential to the State of law⁷.

When this virtuous process is shattered, not only the opportunity of simple understanding or decoding is at risk, but, slowly, even the foundation of democracy is undermined.

The problem is no longer of linguistic nature. Progressively, the power lawfully expressed by the language of regulations, becomes the power of who uses and understands those words.

II. THE DECLINE OF THE REGULATORY ITALIAN LANGUAGE

The Italian regulatory texts of the last decades are, in general, disarticulate and confused, uneven; the phrases are long, complex, often subordinate to each other. They contain frequent references to other normative sources and are incomprehensible to the common citizen and often to the same legal practitioners.

The degenerative phenomenon is the result of a slow, gradual estrangement of the language of the people from the language of the laws.

Some scholars “generously” attribute the obscurity of regulatory language to a natural, almost immanent ambiguity of the rule of law⁸. The appealing and authoritative theory also leads to the other, as much correct, consideration that the ambiguity of the juridical norm arises from the insuppressible inaccuracy of the instrument used to communicate, the word, the nature of which is such that it deceives and flusters more than clarifying, it hides more than revealing. Not to mention that the lack of clarity of the text is sometimes “wanted” by the legislator to conceal a difficult compromise reached among the political parties.

However, in the case of the Italian legislation, it is not, unfortunately,

⁶ The observationis by Alfieri G., “Non c’è grammatica”: la scrittura legislativa e la sua funzione testuale, in R. ZACCARIA, *LA BUONA SCRITTURA DELLE LEGGI* 97—108 (Rome 2011).

⁷ On the relationship between legal advertising and the rule of law, Meloncelli A., *Pubblicità (diritto pubblico)*, in Enc, dir, Milan, at 1034 (1998). On this point, Tiberi G. Ninatti S., *L’uso della lingua negli atti e nella comunicazione dei poteri pubblici italiana*, in P. BONETTI, *DIPARTIMENTO DI STUDI GIURIDICI* 66 (University of Milan Bicocca, Torino, Giappichelli 2016).

⁸ Carnevale P., *Diritto, normazione e ambiguità*, in R. ZACCARIA, *LA BUONA SCRITTURA DELLE LEGGI* 35—60 (Ed. Camera dei Deputati 2012); for the A. “the ambiguity” is a connotation of the legalnorm.

the natural ambiguity or the polysemous word the reason for the obscurity of laws and administrative measures.

The prevalent incomprehensibility of the texts and their frequent inapplicability to the concrete case is determined by much more trivial reasons, namely, the decay of normative writing and the overall decline in culture and language.

Decline of the language that “*is associated with the diminished collective sensibility to the precision and correctness of language, deriving from social and cultural factors*”. As, realistically pointed out by the most prominent experts in field:

The lack of clarity and ineffectiveness of the language derive, in the majority of cases, from a lack of knowledge of their mother tongue by those who should master the language. (...) the skill level in the use of the linguistic tool is scandalously low and deficient (...).⁹

Others also find a different reason, even connected to the former, in the direct relationship between the quality of the writing of Italian laws and the political objectives of the legislator, for a complex political interweaving between form and substance. That is, bad legislation would be the result of bad politics.

The awful way to make laws is not just due to the loss of a particular technical expertise. It is the direct consequence of a distorted conception of the institutions and the deterioration of the role of politics and of Parliament.¹⁰

The consequences of this decline of regulatory writing are evident. The process, time by time, even unconsciously has brought about the detachment of the administrated respect to the normative language. It, in fact, turning into possession of an elite, is no longer expression of the true linguistic vitality of the people and its needs¹¹.

Therefore, while the democratic institutional system in Italy remains formally unchanged, the progressive separation between the language of the bureaucratic apparatus and that of ordinary people reveals a sense of strangeness in relation to the institutional world and adversely affects the efficiency of the administrative machine as well as the same economic life

⁹ The comments are from Zucchelli C., Head of Legal Affairs and Legislative Affairs of the Council Presidency, *Riflessioni sulla qualità del linguaggio normativo* in LA BUONA SCRITTURA, *Cit.* at 79—86 (2012).

¹⁰ So Zanda L., *La buona scrittura delle leggi e crisi del Parlamento*, by R. ZACCARIA, LA BUONA SCRITTURA ROME, CAMERA DEI DEPUTATI 87—96 (2012); Zanda L., *Le leggi? Scriviamole in italiano*. Sole24ore, May 22, 10 (2011).

¹¹ De Mauro T., “The Language of the Constitution” Senate of the Republic, Reporting Services and Institutional Communication, n. 18, 19—27 (2008).

of the country.

This is certainly a critical element of the system, with economic and democratic costs.

The widespread state of regulatory uncertainty, due to shortcomings in the quality of legislation, in both formal and substantive terms, in Italy has produced costs to economy as well as to the same democracy, as it has reduced the effective opportunity of getting to know the legal body by those who are subjects to.¹²

Therefore, the matrix of the problem is linguistic, but the consequences of the “*disruption of the language of laws*”¹³, characterized by confused, obscure, contradictory and even grammatical errors, are reflected in the functioning of public administration, justice, private relationships, protection of rights.

III. THE ITALIAN CONSTITUTION OF 1948: A MODEL OF DEMOCRATIC LANGUAGE

The interrelation between effectiveness of democratic participation and level of understanding of juridical words was absolutely clear to the Italian Constitutional legislators. It was a basic point of their work.¹⁴

The Constitutional fathers were conscious that the building of a parliamentary democratic Republic did not require merely an institutional democratic foundation and the acknowledgement of inviolable rights, but also and most importantly, a linguistic code able to make the Constitutional body really comprehensible and accessible to everybody.

In other words, “democratic” had to be not only the Constitutional in itself, but most of all, the language in which it was expressed.

An understandable and clear lexis becomes more easily ownership of the citizens that are, thus, induced to respect the rules. That is because they feel part of the democratic process, playing the role of main characters, rather than mere subjects.

The Constitution rulers’ concern, often highlighted in lots of

¹² So Zampetti U., “*Introduction*” in LA BUONA SCRITTURA, R. Zaccaria, *Cit.*, at 4 (2012).

¹³ See the presentation of the University Project of the University of Pavia, The Language of Law, <http://lalinguadeldiritto.unipv.it/presentazione.html> (last visited October 25, 2017).

¹⁴ The clarity and accessibility of normative language, which is a prerequisite for democratic participation, is contained in the directives of the preparatory work of the Italian Constitution: “The constitution must be as clear as possible and that the whole people can understand it” (OdGBozzi, October 26, 1946); on the point, De Mauro T., *Constitution*, in M. Arcangeli, *Itabolario*. Italy united in 150 words, Rome, Carocci (2011); more recently, Bambi F., *La lingua delle aule parlamentari. La lingua della costituzione e la lingua della legge* (2015), www.osservatoriosullefonti.it, 3.1 (last visited October 25, 2017).

preliminary meetings was mainly centered on the *loyalty* of the language¹⁵ and so on its style that was suggested by “the aims of language cohesion, simplification ..., conceptual clearness, determining the Constitutional formulations”.¹⁶

The literary element, in that context, was clearly used also to build a new constitutional asset, as it was evident that the rules were the pillars of the institutional architecture as well as the constitutional organs aiming to build the State system.

The juridical language used was, in itself, instrument and expression of democracy that was being established and the words of the law belonged to the people as well as sovereignty belonged to the people¹⁷.

IV. REGULATORY LANGUAGE AND CRISIS OF DEMOCRATIC PARTICIPATION

When the one-to-one relationship between the normative language and the democratic participation is broken, also the relationship between citizen and authority, that is the democratic principle, suffers a crisis, often in an inadvertent way.

It is a politic matter, at the utmost level, but it gains an important juridical significance, fully attributable to a precise constitutional basis. The “good law composition” has its foundation in the democratic set of rules and, in the meanwhile, represents the fulfillment tool of the legal certainty principle and of citizenship legal certainty.

Following this logic, some authors hypothesize the constitutional unlawfulness of “dark” laws; a largely unintelligible law could be for this unconstitutionality as it weakens at the roots of the democratic report which gives it the legitimacy¹⁸.

Others individuate the constitutional basis of a good quality legislation as the last is a “needed implication for the system”, a “significant aim under the constitutional way”¹⁹.

¹⁵ The term “loyal” is by Pietro Calamandrei, see www.legislature.camera.it, sez. Discussioni (last visited October 29, 2017).

¹⁶ Meuccio R., ACTS OF THE CONSTITUENT ASSEMBLY, at 3568 (Rome, Chamber of Deputies, X, December 22, 1947).

¹⁷ The words used in the text were about 90% of those normally used in the spoken language at that time, or 1948, with a general modest level of culture; the observation is in De Mauro T., *The Language of the Constitution*, in S. RODOTÀ, AT THE ORIGINS OF THE CONSTITUTION 25—42 (Bologna 1998); Deon V., *A Democratic Language: The Language of the Constitution*, in G. ALFIERI & A. CASSOLA, *LINGUA ITALIA* 195—212 (Public and Institutional Use, Rome 1998).

¹⁸ Ainis M., *La legge oscura: come e perché non funziona*, ROME-BARI 117—123 (2002).

¹⁹ Costanzo P., *Il fondamento costituzionale della qualità della normazione (con riferimenti comparati e all'UE)*, in GIUSEPPE G. NAPOLI, *STUDIES IN MEMORY* 177 ss (Floridia 2009).

The prospect is for sure not unsubstantiated; the State Council, the institution of juridical consulting for the higher State authorities, defined the law quality a “fundamental intangible entity” in order to put into effect the constitutional guaranteed rights and freedoms and then it added that “the laws have to be clear, intelligible and accessible, but above all they have to be validated by a substantial quality: They must contain “good rules”²⁰.

Only thanks to a suitable law composition, the legislator is able to essentially and effectively pursue the expected political aim.²¹

V. RULESQUALITY, DEMOCRATIC PARTICIPATION QUALITY

The construction of a legal document is a communicative act. Laws for their same institutional and symbolic strength provide or should provide models for a communicative and efficacious style that is more civil and democratic.²²

There is, in other words, a “consistent connection between good laws writing and legality principle, meant not as abstract citizen’s guarantee, but as the existence of effective prerequisites (also linguistic ones)”²³ of knowledge.

To care about laws well written means, in other words, following “a path towards civilization” and democracy.

The clearness of regulations, that the Council of State calls “*the quality of rules*”, is necessary for the fulfillment of every citizen’s personal right to correct information, a constitutional principle sanctioned in the Art. 21, in close and functional relationship to the practice of democratic principle expressed by the Art. 1 of the Constitution.²⁴

The jurisprudence interpretation has also observed that among the rights to be taken into consideration there should be also “the right to

²⁰ Cons. St., Ad. Gen., (October 25, 2004), no. 2/2004.

²¹ AA.VV., *Le parole giuste. Scrittura tecnica e cultura linguistica per il buon funzionamento della pubblica amministrazione e della giustizia*, in Collana Studi e Ricerche, n. 1 Rome, Senate of the Republic (2017).

²² Piemontese M. E., *La semplificazione del linguaggio amministrativo e lo scoglio della mancata semplificazione del linguaggio legislativo. Aspetti linguistici e aspetti politici*, in R. Zaccaria *Le parole giuste*, in Collana Studi e Ricerche, no. 1, 157—169 (Rome, Senate of the Republic 2017).

²³ Murgia S., *Il ruolo delle Commissioni parlamentari nella buona scrittura delle leggi*, in R. Zaccaria, *Cit.*, at 109—114 (2012).

²⁴ The right to information, especially in the passive dimension (right to be informed), linked to the general interest of the recipients, namely the principle of democracy, see Loiodice A., *Information (right to)* in Enc. Dir., XXI, Milan, 472 (1971); Idem *Problematica costituzionale dell’informazione* (Bari 1973).

understand”²⁵.

Not to understand or to understand little or badly implies the risk of undermining the relation between State and citizens, administrators and administered. Furthermore, it affects also the personal, family, professional and social life of people, not to mention the efficacy and efficiency of administrative actions.²⁶

The juridical language, especially the constitution alone, is not totally indifferent to the democratic issue. Actually, regulatory language and democratic participation are closely linked each other throughout a correlation of mutual interdependence. The power of the popular sovereign does not end with the delegation process, but it actualizes itself and it grows exactly with the constant, active and responsible participation, which needs the proper civic consciousness, information and awareness.

CONCLUSIONS

The communicative style of the regulation is essential for the survival of the democratic organizations in order to rebuilt virtuous and loyal relationships between citizens and State.

In Italy, it means that the regulatory framework should be brought to the “communicative loyalty” principle. It is also crucial to elaborate clear and efficient legal papers as a civil progress tool, able to improve the efficiency of the legal relationship between privates and to guarantee not only the protection and the fulfilment of the rights, but also the transparency and the validity of the public operation and the economic safety. That is, let the regulatory system be a typical element of the citizenship statute in the contemporary context²⁷.

²⁵ Piemontese M. E., *Capire e farsi capire. Teorie e tecniche della scrittura controllata*, Naples, Tecnodid (1996).

²⁶ Piemontese M. E., *Il linguaggio della pubblica amministrazione nell'Italia di oggi. Aspetti problematici della semplificazione linguistica* in G. ALFIERI, A. CASSOLA, *THE LANGUAGE OF ITALY. Public and institutional uses*, Rome, Bulzoni (1998).

²⁷ The reflection is contained in the presentation of the Strategic Project of the University of Pavia, *The Law Language*, <http://lalinguadeldiritto.unipv.it/presentazione.html> (last visited October 25, 2017).