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Dear Ray,

## REFERENDA

1. On 4 February the Constitutional Court pronounced on the admissibility of 12 referenda for which the necessary 500,000 signatures had been collected. Their judgement is based, in theory at least, on whether or not proposed referenda conflict with provisions of the Constitution or fail to fulfil all the conditions for referenda which the Constitution lays down. Ten of these referenda had been promoted by the Radical Party, which sees this tactic as a way of exerting a political influence far greater than its minute party membership (no more than a couple of thousand throughout Italy) and limited Parliamentary strength (18 deputies) would otherwise allow: Radical efforts to publicise the referenda in fact put them into debt, but they took care to keep the finances for the referendum campaign separate from those of the party. The other two referenda were sponsored by the "Movement for Life", a Catholic organisation which aims to ban or at least severely restrict opportunities for abortion in Italy: with considerable assistance from the Church in some areas they collected more than enough signatures without difficulty.

2. The Court has allowed exactly half the proposed referenda (as it did in 1978). Those which survive, with a brief description of each, are as follows:

- i) Abortion (Radical), calling for the abrogation of 13 articles of the present Law No. 194 of 1979: its effect would be almost complete liberalisation;
- ii) Abortion (Movement for Life), calling for the abrogation of 8 articles of Law 194: its effect would be to limit abortion to cases where the mother's life or physical health was at risk;

/iii)

Handwritten notes:  
 1812  
 Mr. Veretier  
 my minute of 17 Feb referenda  
 Voting is most likely on Feb 11th  
 For 14 June and the DC will  
 campaign only for (ii), calling for  
 rejection of the other five.

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- iii) Legge Cossiga, calling for repeal of the anti-terrorism law of February 1980 which gives extensive powers to the authorities (at the time the Radicals waged a fierce campaign of obstruction against it in Parliament: they are now doing the same on the proposal to extend by decree law the police powers of preventive arrest - "Fermo di Polizia" - which forms part of Legge Cossiga);
- iv) Life Imprisonment, calling for it to be abolished as inhumane: the relevant articles of the penal code are nos. 17 and 22;
- v) Bearing arms, calling for the repeal of those provisions of the 1931 Law on Public Security which (enshrined in Law 110 of 1975) permit private citizens to bear arms under certain circumstances: weapons would be restricted to the forces of the state, and private security firms etc. would have to operate unarmed;
- vi) Military tribunals, calling for the repeal of some of the provisions of the 1941 law which governs their composition: the aim is to open the way to a substitution of civil for military judges (military tribunals as such cannot be abolished by referendum because they are enshrined in the Constitution);

Voting on all 6 of these referenda should take place on a Sunday between 15 April and 15 June (more probably in the second half of that period).

3. The rejected referenda were

- vii) Abortion (Movement for Life) calling for a complete prohibition of abortion;
- viii) Hunting, calling for it to be banned;
- ix) "Soft" drugs, calling for freedom to use cannabis;
- x) Nuclear power stations, calling for them to be banned;
- xi) Demilitarisation of the Guardia di Finanza, (that section of the state authorities concerned with finance, fraud, tax evasion etc);

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xii) "Crimes of opinion", calling for the repeal of 31 articles of the Fascist penal code (still in force) which can make it illegal to hold opinions or arrange meetings.

4. The Court must in the next day or two publish the legal argument behind its decision in each case. According to press reports, iii) and vi) above were passed only by the casting vote of the Court's President, Amadei: on the two successful abortion referenda the Court was more united (9 to 5). The arguments for rejection of the rest are likely to include incompatibility with international treaties (Nuclear power centres and soft drugs), inconsistency (crimes of opinion), interference with the competence of the regions (hunting) and use of the referendum for a purpose other than abrogation of a law (xi above). The most interesting will be the decision on vii): Amadei has said that to ban abortion entirely would be a return to the situation existing before 1975, when the Court declared it not to be a crime.

5. The Radicals are protesting at the rejection of 5 of their referenda and some commentators think that those which are politically most controversial have deliberately not been allowed. It is true that the Court, like so many other parts of the judicial structure in Italy, reflects political interests: a third of its members are appointed by Parliament and another third by the President, and often they base their argument more on political factors than points of law. None of the major parties really likes the principle of the referendum: opposition to it from the DC establishment delayed its implementation for 20 years, despite the provisions in the Constitution, and there have still only been three referenda held (Divorce, Party Financing, and *Legge Reale* on police powers) - although in one or two other cases the threat of a referendum has proved sufficient to get the law changed. The PCI have different reasons for not wanting to see the party and Parliament bypassed by public opinion in this way. The PSI have the particular objection that a successful referendum campaign would rebound to the credit of the Radicals, who are a potential threat to them in electoral terms. Against this background it is more significant that six referenda survived than that six were dropped - and those which survive include abortion, which remains a very sensitive subject for the DC.

6. There are two possible ways of avoiding referenda. One is to call early elections, which none of the main parties claim to want at present. The other is to change the law which is the subject of the referendum sufficiently to

/invalidate

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invalidate the collection of signatures (as was done with abortion in 1979): the proponents of the referendum then have to start all over again. The Liberals have already suggested the second course and the other small lay parties may well agree, except on abortion. The PCI will decide their attitude at a Central Committee meeting this week: on abortion they will remain strong defenders of the present law (which they were instrumental in passing) but on life imprisonment and military tribunals they might be willing to modify the law. Here the Radicals are in effect attacking the unreformed Fascist penal code (the "Rocco code") which remains the basis of criminal law in Italy, and the PCI are not alone in being uncomfortable about defending its more outmoded and repressive provisions. It is conceivable that on some issues the PCI might allow its members a free vote, on the grounds that the subjects are more moral or social than political: but even this would displease the old guard.

7. For the DC, Forlani's main aim will be to ensure that none of the referenda leads to a split within the party or the coalition. On life imprisonment and military tribunals this might mean letting the PSI vote differently from the other three coalition parties: the Socialists, anxious lest the Radicals steal all their clothes on these issues, would be inclined to support both referenda in their present form. The Catholic abortion referendum is still more difficult, since this is the issue above all others which can unite the smaller lay parties against the DC, who are under pressure from the Church and are expected by many of their electorate to give a firm lead. Nevertheless, the party has not forgotten the 1974 debate when, with Fanfani in the van, they threw their whole weight against the divorce proposal and lost. That was one of the most significant developments in post-war Italy: Forlani will be anxious not to make the same mistake over abortion. Already the Party Secretary Piccoli has said that the DC will not seek to make a crusade out of the abortion issue or turn it into a squabble between parties. It remains to be seen whether the DC can hold this line, and whether the coalition with its disparate elements can survive the strain which these 6 referenda will put upon it.

*John*

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