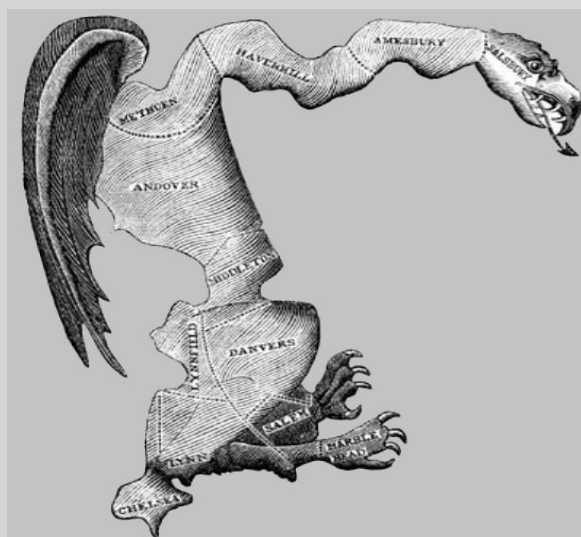


2024 fascicolo speciale n. 1

a cura di Lorenzo Spadacini

**ENHANCING EFFECTIVENESS OF DEMOCRATIC REPRESENTATION
CONSTITUENCIES AND EQUALITY OF THE VOTE
WITHIN DIFFERENT ELECTORAL SYSTEMS AND FORM OF GOVERNMENT**



Giugno 2024

**IDEATORE E DIRETTORE: PASQUALE COSTANZO
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**Enhancing effectiveness of democratic representation
Constituencies and equality of the vote
within different electoral systems and form of government**

a cura di Lorenzo Spadacini

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A CURA DI LORENZO SPADACINI

ENHANCING EFFECTIVENESS OF DEMOCRATIC REPRESENTATION
DISTRICTS AND EQUALITY OF THE VOTE
WITHIN DIFFERENT ELECTORAL SYSTEMS AND FORM OF GOVERNMENT *

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Alessandra Mazzola*
**The Revision of Electoral Districts in Italy:
the New Permanent Census System within the Framework
of Constitutional Provisions on Representation****

SUMMARY: 1. Brief Reflections on Political Representation and Equality in the Design of Electoral Constituencies. – 2. The Delineation of Electoral District Boundaries from the Constitutional Assembly to the 2018 Reform. – 3. The new Permanent Census System and the Requirement to Consistently Revise Electoral Constituencies.

ABSTRACT: This paper offers brief reflections on the intricate relationship between political representation and equality within the framework of electoral constituency design. It examines the historical evolution of delineating electoral district boundaries, tracing the process from the Constitutional Assembly to the recent reforms of 2018. Special attention is given to the introduction of the new Permanent Census System and the consequent necessity for consistent revision of electoral constituencies. Through critical analysis and historical context, this study sheds light on the complexities inherent in ensuring equitable representation within electoral systems.

1. *Brief Reflections on Political Representation Equality in the Design of Electoral Constituencies*

The democratic-representative principle constitutes the foundation of both the form of government and the form of the State as declared also from Article 1, § 2, of the Italian Constitution, which states that sovereignty belongs to the people and is sanctioned by universal suffrage (Art. 48, § 1, Italian Constitution).

The operation of translating abstract principle into concrete norms is not easy because it presupposes an electoral mechanism that allows everyone to be involved in the exercise of sovereignty. This mechanism must also ensure that each vote carries the same weight, preventing either over-representation or under-representation of some electors or group of them, as established by Article 48, § 2, of the Italian Constitution.

The rules governing the conversion of votes into seats, and thus determining the composition of the Chambers, must conform to the principles of equality and representativeness of the people. Furthermore, Constitutional Court, given the significance of parliamentary representativeness as a core element of popular sovereignty, has affirmed that achieving the most accurate political representation of

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the electorate necessitates an electoral system with minimal distortion, ensuring adherence to the principle of equality in translating votes into seats.¹

The proper functioning of the representative system depends, then, on the choice of the electoral system, which determines the extent of distortion in the “fiction” of the institution of political representation². To achieve this, it is necessary to identify a mechanism for converting votes into seats that best ensures the freedom and equality of citizens considering the political diversity among them. It is also crucial that this system reflects, with a sufficient degree of precision, the political orientation of the diverse body of voters. In order to ensure the effectiveness of political representation, institutions require more than being composed by people selected according to the mere expression of voter preferences for individuals capable of holding public office. The aim is to ensure the effective alignment of political ideologies between voters and elected representatives through ongoing dialogue for the entire duration of the elected official’s mandate, otherwise democracy would be consumed only on election day (quoting Rousseau). Political representation forms a cyclical relationship that begins with electors selecting candidates, followed by elected conveying their political objectives and compromises back to the electors, thus fostering mutual understanding. It is necessary to have a mechanism capable of translating the electorate’s will –votes – into seats. However, it is equally necessary for this representation to return from institutional seats to the constituencies (i.e., the people) from which the representative connection originated.

The electoral mechanisms employed by representative bodies of the people serve as the means through which political representation is established. Consequently, it becomes imperative to examine the various implications of the concept of representative democracy, beginning with the importance of focusing on the “site of representation”. This site, whether considered a moment or a place within institutions, is where the political will of the electorate finds expression.³

In essence, establishing political representation requires it to be linked to a specific location; in fact, our system divides the territory into constituencies to facilitate the conversion of votes into seats. This operation is essential for enhancing the representative relationship, whereby the residents of an area articulate their needs. These needs must be addressed through institutional activities, primarily carried out

¹ Italian Constitutional court, [judgment no. 1 of 2014](#) § 3.1 *Cons. dir.*

² As argued by H. KELSEN, *Essenza e valore della democrazia*, trad. it. A. Carrino (ed.), Giappichelli, Torino, 2004, 7.

³ D. CASANOVA, *Eguaglianza del voto e sistemi elettorali. Profili costituzionali*, in [Rivista del Gruppo di Pisa](#), 1/2019, 95 argued that the issue of political elections, and more precisely, electoral systems of representative bodies of the entire populace, being the instrument through which political representation is created, is the *conditio sine qua non* for reflecting on the various implications of the concept of representative democracy and requires to focus attention on the “place of representation” as an institutional moment where the interests of the parties converge. See also *Id.*, *Eguaglianza del voto e sistemi elettorali. I limiti costituzionali alla discrezionalità legislativa*, Editoriale scientifica, Napoli, 2020, 54-59.

by the Government and Parliament. Consequently, fostering political convergence becomes necessary, a process facilitated through parliamentary debate and the engagement between the majority and minority on the issues at hand.⁴

So, the Italian legal system divides the territory into constituencies to ensure adherence to the representative principle. Moreover, this division allows for the distribution of seats across multiple constituencies, bringing voters closer to candidates and facilitating voters' choice among them. Simultaneously, it maintains a vital connection between the voters and the candidates.⁵

For this reason, voters cannot be considered merely as individual units but rather as integral parts of a larger entity: the electorate; so that the will of the constituency, and not that of individual voters, is externally relevant and effective⁶. To maintain a contiguous relationship between voters and elected representatives, the Constitutional provision to divide the territory into electoral constituencies is reinforced by the additional indication that the residents in those constituencies form an electoral district tasked with selecting as many representatives as there are seats assigned to that constituency in proportion to its population. The voter's ballot cannot be reduced to a mere numerical value; rather, it represents a dynamic value, embodying the principle of actual equality among votes following the electoral outcome. Furthermore, the allocation of seats to constituencies is not arbitrary, as it directly impacts the degree of proportionality achieved in the electoral outcome, influenced by the electoral formula employed⁷.

The formula provided for in the Constitution, although it may seem like a mere mathematical equation, in fact, underpins the guarantee of respect for democratic and representative principles, strengthening the constitutional provision for the division of the territory into constituencies. These are rules that, according to the Constitutional Charter, are indispensable for ensuring the principle of equality among voters, as they aim to fulfill the demographic principle⁸. Furthermore, these rules also serve to ensure the equality of elected representatives, as each holds equal value within parliamentary

⁴ B. GUASTAFERRO, *Territorial Representation in Unitary States. Reforming National Legislatures in Italy and in the United Kingdom*, in [Italian Journal of Public Law](#), 1/2019, 147-195 shows that in unitary states (though composite), formal opposition between political representation and territorial representation is very strong, yet it ultimately amounts to nothing because representatives are in service of the nation. See also I. CIOLLI, *Il territorio rappresentato. Profili costituzionali*, Jovene, Napoli, 2010, 41-42.

⁵ In particular, concerning the division of the territory into constituencies and the guarantee of the freedom of choice for the voter, see M. RUBECCHI, *Il diritto di voto. Profili costituzionali e prospettive evolutive*, Giappichelli, Torino, 2016, 121.

⁶ T. MARTINES, *Art. 56-58*, in G. Branca (ed.), *Commentario della Costituzione, Le Camere*, I, Zanichelli editore-Il Foro italiano, Bologna-Roma, 1984, 76.

⁷ About electoral college and constituency see L. PRETI, *Diritto elettorale politico*, Giuffrè, Milano, 1957, 219 and A. RUSSO, *Collegi elettorali ed eguaglianza del voto. Un'indagine sulle principali democrazie stabilizzate*, Giuffrè, Milano, 1998, 7.

⁸ It is necessary to observe that, with reference to the Senate of the Republic, the principle of equality also satisfies territorial equality because of the allocation of seats reserved for the Molise and Valle d'Aosta regions (Article 57 § paragraph of the Constitution).

chambers and is vested with the same functions⁹. This “circular” relationship of equality between voters and elected representatives also fulfills a demographic principle, as a specific manifestation of the democratic principle. It is believed that, at least formally, this was well specified by the mathematical rule outlined in Articles 56 - 57 of the Italian Constitution before the 1963 reform. These articles stipulated that the Chamber of Deputies be composed of “one deputy for every eighty thousand inhabitants or fraction exceeding forty thousand”, while for the Senate, “each Region [was] assigned one senator for every two hundred thousand inhabitants or fraction exceeding one hundred thousand”.¹⁰

2. *The Delineation of Electoral District Boundaries from the Constitutional Assembly to the 2018 Reform*

Articles 56 - 57 of the Italian Constitution establish the procedure for distribution of seats among the constituencies designated to elect members of the Chamber of Deputies and among the Regions or Autonomous Provinces for the election of the Senate of the Republic.¹¹ This distribution is carried out by dividing the country’s population according to the latest general population census.

⁹ See Fabian Michl, *Electoral Districts in Germany*, in this issue.

¹⁰ In this way E. BETTINELLI, *Elezioni politiche*, in *Digesto delle discipline pubblicistiche*, V, UTET, Torino, 1990, 487; M. SALERNO, *Art. 56*, in V. Crisafulli, L. Paladin (eds.), *Commentario breve alla Costituzione*, CEDAM, Padova, 1990, 365; C. FUSARO, M. RUBECCHI, *Art. 56*, in R. Bifulco, A. Celotto, M. Olivetti (eds.), *Commentario alla Costituzione*, II, UTET, Torino, 2006, 1141; C. FUSARO, M. RUBECCHI, *Art. 57*, in R. Bifulco, A. Celotto, M. Olivetti (eds.), *Commentario alla Costituzione*, II, cit., 1152-1153 and M. SALERNO, *Art. 57*, in V. Crisafulli, L. Paladin (ed.), *Commentario breve alla Costituzione*, cit., 368. It is important to consider, for instance, that according to the Spanish Constitution, the Senate – the territorial representative chamber – is elected based on the representation of inhabitants rather than residents. Article 69 paragraph 5 Spanish Constitution: «Las Comunidades Autónomas designarán además un Senador y otro más por cada millón de habitantes de su respectivo territorio [...]», but Article 68 paragraph 2 Spanish Constitution (for the Congreso de los Diputados) refers to the population (población), a generic term, which must be detailed by the electoral law. Therefore, a distinction is made between the representation of territories, the “Comunidades Autónomas”, and that of the electorate.

¹¹ This provision was introduced in the Article 56 of the Italian Constitution by Constitutional Law No. 2 of 1963, which establishes two principles. One pertains to the fixed number of deputies, the other concerns the designation of electoral constituencies, and so a physical, determined, and delimited place to attribute political representation. However, this innovation is more apparent than real, as the original formulation considers the reference to constituencies to be implicit. The norm specifying one deputy for every eighty thousand inhabitants or fraction exceeding forty thousand presupposed the need to divide the territory into constituencies for the distribution of seats. Allocating a seat for each fraction between forty and eighty thousand inhabitants would have been redundant, as a failure to distribute seats based on constituencies would have necessitated a national-level distribution. Consequently, the fraction exceeding forty thousand inhabitants could only have been one, implying the exclusive assignment of a single deputy. This principle is supported by Electoral Law for the Chamber of Deputies No. 26 of 1948, wherein the number of inhabitants in each constituency was divided by eighty thousand, and for each fraction exceeding forty thousand, an additional seat was assigned. On this topic and for this theory see

Indeed, the Consolidated Texts of laws containing rules for elections to the two Chambers of Parliament establish that population data are made public through the most recent official disclosure by the Istituto Nazionale di Statistica (ISTAT). These data become effective and acquire legal value through publication in the Gazzetta Ufficiale della Repubblica by means of the President of the Republic decree at least according to the relevant sub-constitutional provisions. The President of the Republic decree is issued upon the proposal of the Minister of the Interior, following the deliberation of the Council of Ministers, simultaneously with the decree convening the elections (Article 3, Presidential Decree No. 361 of 1957, and Article 1, § 1, Legislative Decree No. 533 of 1993).

Constitutional rules also establish how the legislature should distribute seats within constituencies because they stipulate that the distribution of seats must be based on the latest published general population census. However, Article 2 of Decree law No. 7 of 2024 has established that for electoral and referendum purposes, the results of the continuous population census are considered every five years. This provision raises some doubts about the possibility for the legislature to arbitrarily decide whether only the publication in the Gazzetta Ufficiale della Repubblica italiana is binding (as would be inferred from the referred provision) or if any type of official publication, including that of ISTAT, is valid.

Articles 56 - 57 of the Constitution, indeed, refer to “the latest general population census” without specifying formalities regarding its publicity. This raises doubts about constitutional legitimacy because there appears to be a discrepancy between the constitutional provision (referring to the latest general population census) and the regulatory data that revise the census discipline annually. The legislature introduced a rule according to which census data are updated every five years for electoral purposes, potentially arbitrarily; this choice may be driven by the length of time required for designing single-member districts.

However, this difficulty could be addressed by implementing continuous updates of the districts, considering that annual shifts are minimal and therefore do not necessitate overly complex organizational structures. This is because seat distribution based on demographic size guarantees voting equality. Nevertheless, a delay in updating, compared to the pace set by the Constitution, leads to a compression of voter equality. Therefore, this principle clarifies that what matters is not the form of census publication, but rather the reliability of the data it provides.

Constitutional rules also mandate that the legislature allocate seats among different constituencies. However, if the relationship between voters and elected officials within a single national constituency is compromised, it may lead to significant territorial imbalances in representation. This could result in several electoral districts being

E. BETTINELLI, *Elezioni politiche*, cit., 489-490; M. ESPOSITO, *Le circoscrizioni elettorali come elemento costitutivo della configurazione della rappresentanza politica*, in *Giur. cost.*, 3/2011, 2585 and L. SPADACINI, *L'Italicum di fronte al comma 4 dell'art. 56 Cost. tra radicamento territoriale della rappresentanza e principio di uguaglianza*, in [Nomos](#), 2/2016, 18-20.

effectively deprived of the opportunity to elect a parliamentarian¹². Without this allocation at the territorial level, there is a risk of assigning a greater number of seats in constituencies with higher voter turnout, potentially distorting or compromising the principle of representation, at least as conceptualized in these constitutional provisions. This scenario could occur because territories with fewer inhabitants may be over-represented, and vice versa. This becomes particularly apparent when considering voter abstention, as less populated areas with higher voter turnout may be more represented than more populated areas where the abstention rate is higher. The declared equal weight of constituencies is, in practice, distorted by various variables that can affect the representative relationship.

For instance, distributing seats at the local level ensures that constituencies with the same number of inhabitants but different levels of abstentionism are still assigned an equal number of representatives.¹³ In particular, the distribution of seats starting from smaller territorial entities, such as constituencies, should prevent the underrepresentation of residents in parliamentary chambers in areas where the level of abstentionism is higher compared to areas where participation to suffrage is higher. To strengthen this guarantee – namely to exclude the overrepresentation of constituencies where the number of non-voting residents is higher (especially minors under the age of eighteen and foreigners) – one could opt for a seat distribution method based not on the number of residents but on the number of registered voters in the respective electoral lists.

This approach could also reduce virtual representation, which is intended to be minimized through the establishment of constituencies. The guarantee of equality among individuals and equal voting, as specified in the constitution regarding the division of territory into constituencies, clarifies its effects through a representation that is not virtual. The constitutional emphasis on constituencies not only aims to bring voters and elected officials closer but also ensures that areas with a high number of foreigners or minors under eighteen, or with a higher rate of abstention, are not underrepresented in parliamentary composition compared to areas with higher voter turnout.¹⁴

¹² See M. LUCIANI, *Governo (forme di)* (voce), in *Enciclopedia del diritto*, Annali III, Giuffrè, Roma 2010, 685 nt. 283; A. RUSSO, *Collegi elettorali ed eguaglianza del voto*, cit., 24; L. SPADACINI, *L'Italicum di fronte al comma 4 dell'art. 56 Cost. tra radicamento territoriale della rappresentanza e principio di uguaglianza*, cit., 6; D. CASANOVA, *Eguaglianza del voto e sistemi elettorali. I limiti costituzionali alla discrezionalità legislativa*, cit., 323 nt. 81.

¹³ See I. CIOLLI, *Il territorio rappresentato*, cit., 104.

¹⁴ In relation to the impact of the foreign population on the total population, refer the reflection of V. PIERGIGLI, *Premio di maggioranza ed eguaglianza del voto. Osservazioni a margine della sentenza Corte cost. 1/2014*, in [IANUS](#), 10/2014 44; but see also L. SPADACINI, *L'Italicum di fronte al comma 4 dell'art. 56 Cost. tra radicamento territoriale della rappresentanza e principio di uguaglianza*, cit., 22-23 nt. 65 and D. CASANOVA, *Eguaglianza del voto e sistemi elettorali. I limiti costituzionali alla discrezionalità legislativa*, cit., 91-92.

If representatives were not elected within a sufficiently large constituency, voters might struggle when choosing candidates, making it difficult to establish an adequate representative relationship between the voters and the elected representatives.¹⁵ For this purpose, Article 56, § 4 of the Italian Constitution indicates a fundamental democratic element as it illustrates and allows the constitutional organization of the people through the constituencies, specifying in the census the indispensable prerequisite for proceeding with the distribution of seats¹⁶.

The decennial census of the population was replaced by the permanent census through Article 3 of Decree law No. 179 of 2010. This regulation stipulates that data be collected through population sample and processed annually by the Istituto Nazionale di Statistica. The implementation of this regulatory provision was carried out by Article 1, § 2 of the Prime Minister's decree of May 12, 2016. It specified that ISTAT must employ statistical methods in accordance with the technical criteria indicated by Article 4, § 1, Regulation (EC) No. 763 of July 9, 2008.

The ISTAT Council has specified that the objective of the permanent census is to maintain a high level of classification detail traditionally guaranteed by the decennial census for a set of fundamental variables (of a demographic, social, and economic nature). The permanent census, by increasing the temporal frequency of the information produced and the promptness of its dissemination, appears as reliable as those of the decennial censuses carried out until 2011 (this is deduced directly from the statement of the ISTAT Council).

Therefore, the new method should be considered suitable to meet the needs indicated by Articles 56 - 57 of the Italian Constitution, particularly regarding the distribution of seats. One could even argue that the data resulting from the permanent census are more reliable than those from an investigation conducted every ten years, as they provide a more recent and therefore clearer snapshot of the population data. Indeed, the shorter temporal discrepancy between the population survey and seat distribution should ensure better satisfaction of the principle of equal suffrage, especially in the outgoing phase. Hence, it is challenging to comprehend the rationale behind not synchronizing the frequency of constituency revision with that of the census. Conversely, such alignment would indeed ensure the preservation of voter equality. Practical obstacles, such as the time and resources required for annual constituency revisions, do not seem to present valid arguments for compromising, either entirely or partially, the guarantee of voter equality.

¹⁵ A. RUSSO, *Collegi elettorali ed eguaglianza del voto*, cit., 25; M. ESPOSITO, *Le circoscrizioni elettorali come elemento costitutivo della configurazione della rappresentanza politica*, cit., 2582; L. SPADACINI, *L'Italicum di fronte al comma 4 dell'art. 56 Cost. tra radicamento territoriale della rappresentanza e principio di uguaglianza*, cit., 22 and M. RUBECCHI, *Il diritto di voto*, cit., 120 ff.

¹⁶ About the significance of the census in electoral procedures, it suffices to note that since 1861 (with the exceptions of 1891 and 1941), this calculation has been conducted in the first year of each decade. The most recent decennial census was convened by Article 50 of the Decree law No. 78 of 2010. It took place in 2011. So, since 2021, the continuous census has come into effect.

3. Given the Permanent Census, there is a Probable Requirement to Consistently Revise Electoral Constituencies

The delineation of electoral constituencies enables votes translating into seats; therefore, it appears essential to readjust electoral boundaries following the annual update of census data. This is supported by the fact that the permanent census is more reliable than the decennial census.

The annual revision of electoral boundaries, informed by census data updated by the end of December, seems moreover constitutionally mandated by Articles 56 - 57 of the Italian Constitution, which refer to the “latest general population census”. The continuous adaptation of electoral constituencies based on changes in census results is considered crucial to uphold the principle of equal suffrage, as well as to preserve values such as timeliness, impartiality, and transparency in the procedures for updating electoral geography.

The decade to which data census refers inevitably causes a certain misalignment between real and institutional data. It is not a coincidence that the results of the 2021 census, published in January 2023, compared to those of the 2011 census, show an increase in population in eight constituencies¹⁷, leading to the redistribution of five seats.¹⁸ The same phenomenon occurs in the Senate of the Republic. Indeed, the 2021 census data highlight an increase in population in three regions and in the two Autonomous Provinces¹⁹. This increase necessitated the redistribution of two seats.²⁰ These data support both the constitution and the political necessity of designing electoral geography based on the most recent available numbers, so as to ensure the representative principle and the principle of equal suffrage.

The necessity for the electoral constituency boundaries to reflect the most recent available data suggests some alternatives to the current model for seat distribution, given that census data change every year.²¹ If certain constituencies were to receive a lower number of seats than proportionally due to them, voters in that constituency would be underrepresented while voters in another constituency would be overrepresented. This could compromise the principle of equality, as some voters would have disproportionately greater weight and political influence than others. If electoral geography were revised in tandem with the update of census data, seat distribution should be able to ensure the closest approximation of the population size,

¹⁷ Three constituencies in Lombardia, two constituencies in Lazio, the constituencies to the Emilia-Romagna and those to Trentino-Alto Adige.

¹⁸ Precisely, two more seats are allocated to Lombardy 1 and one more each to Lombardy 3, Lazio 1 and 2, while one seat is lost by the constituencies of Abruzzo, Calabria, Campania 2, Puglia, and Sardinia.

¹⁹ The regions are Emilia-Romagna, Lazio and Lombardia and the Autonomous Provinces are Trento and Bolzano.

²⁰ In particular, an additional seat should be allocated to Lombardia, and one seat should be subtracted from Sicilia.

²¹ This theory is supported by the study conducted by the Camera dei deputati, [Il censimento 2021 e la legislazione elettorale](#), aprile 2023, 29-30 e 33-34.

thus avoiding overly distortive effects between the secret ballot and its transformation into seats. However, it should be noted that annual census data would result in minimal shifts of constituencies, as it is likely that the population does not migrate massively from one place to another, causing significant changes every year.

In any case, it is necessary to understand what the best method could be for designing the constituencies in accordance with the continuous census rule. It is worth mentioning the presumed illegitimacy of Decree law No. 7 of 2024, which appears to conflict with Articles 56 - 57 of the Italian Constitution (i.e., referring to the latest general population census) and with Article 3 of Decree law No. 179 of 2012 (i.e., the continuous census rule) because the decree law stipulates that census data for electoral purposes hold a five-year validity, likely in an arbitrary manner compared to the constitutional and regulatory provisions.

It is worth noting that since 1993 (and except for the electoral law No. 270 of 2005), the legislature has employed the technique of legislative delegation to design electoral constituencies²². According to Article 3 of the law No. 165 of 2017 – reaffirmed by Article 3, § 3, of the law No. 51 of 2019 – the revision of electoral constituencies occurs through a bill presented by the Government to the Chambers, based on the indications provided by the Commission of experts.²³ Considering the data resulting from the latest general population census, this Commission offers the Government the necessary guidance for the revision of the constituencies, and the Government then submits a bill to the Chambers (Article 3, § 6, of Law No. 165 of 2017).

The system employed with the decennial census seems unsuitable for use with the permanent census because such legislation appears too slow for the new method of annual population counting. Legislative delegation doesn't appear to be a viable solution, as Article 76 of the Constitution imposes a time limit within which the legislative decree must be adopted, preventing a "perpetual delegation" to the Executive to perform this task. A solution for drawing constituencies boundaries in line with the permanent census could involve entrusting a Commission of experts, already responsible for appointing electoral constituencies, with the task of presenting a

²² On this point, reference is made to the reconstruction provided by L. SPADACINI, *Constitutional needs for the Italian process of drawing electoral districts: a more independent Commission, less partisanship, and greater transparency and participation*, in this issue.

²³ This Commission is composed of the President of ISTAT and ten experts in electoral mechanisms. This Commission should be updated every three years by the Government, as affirmed by Article 3, third paragraph, of law No. 165 of 2017. The Expert Commission should also incorporate measures to ensure the impartiality of its members, beginning with their appointment in a way that establishes a technical and impartial body (regarding the importance of a transparent drawing of electoral districts in producing more equal constituencies and how this situation doesn't lead to judicial interventions, refer to R. GREEN, *Redistricting transparency & litigation*, in [Syracuse Law Review](#), 71/2021, 1121-1177 that examines the judicial assessments of electoral maps following the U.S. census in 2010). This could be achieved by their appointment through a qualified majority vote in Parliament. The impartiality of the body is indeed influenced by the criteria adopted for delineating constituencies, as well as the nature of its relationship with the body responsible for designing electoral geography (the Government).

report to Parliament outlining changes to the single-member and multi-member constituencies of the Chambers.

Such a mechanism is used in Canada, where electoral districts are drawn by an independent commission that has significant decision-making power.²⁴ Indeed, the Chamber has the right to raise objections to decisions made by the commission, particularly regarding the way constituencies are delineated; the commissions must consider the objections, though they are not obliged to accept them²⁵. The proclamation of the redistribution of boundaries occurs through the representation order issued by Canada's Governor in Council.²⁶

An independent commission for the drawing of electoral constituencies is also provided for in the United Kingdom; the Parliamentary Constituencies Act 1986 establishes the legal framework for the review of electoral boundaries. This act served as a consolidation measure, bringing together prior enactments without introducing any amendments. The provisions in the act have subsequently been modified, in 2011 and 2020. The 2011 legislation provides four independent Boundary Commissions, each dedicated to a specific part of the UK, along with defining their membership. The Chair of each Commission is the Speaker of the House of Commons but, conventionally, the Speaker doesn't participate in the Reviews.²⁷ Furthermore, in United Kingdom the drawing of electoral constituencies carried out by the Boundary Commission has always been approved by law (a formal law); instead, for the first time, with the Parliamentary Constituencies Act 2020, the law containing the constituency boundaries was not approved (most likely because, concurrently, the reduction of Members of Parliament from 650 to 600 would have been approved).²⁸

²⁴ For an analysis of the Canadian model and the difference compared to the American system, where political actors dominate redistricting, see C. P. HOFFMAN, *The Gerrymander and the Commission: Drawing Electoral Districts in the United States and Canada*, in [Manitoba Law Journal](#), 2/2006, 331-359. See also Rebecca Green and Lucas Della Ventura, *Comparative Redistricting Transparency*, in this issue.

²⁵ M. BOSC and A. GAGNON (eds.), *House of Commons Procedure and Practice*, Éditions Yvons Blais, Montreal, 2017, 177-178. Following each census – which occurs every ten years – there are changes in the number of electoral districts and their boundaries to accommodate population changes and growth. For the drawing of electoral boundaries, ten independent commissions are established, one in each province, to propose new boundaries, consult citizens, and create the new electoral map for their province. On this point, reference is made to the observation by Michael Pal, *The Canadian Model of Electoral District Design: Challenges and Adaptation*, in this issue.

²⁶ M. BOSC and A. GAGNON (eds.), *House of Commons Procedure and Practice*, cit., 163-254, spec. 174-178. See also ELECTORAL BOUNDARIES COMMISSION, [Final Report](#), April 3, 2023 and the Canadian website [Redistribution Federal Electoral Districts](#).

²⁷ See HOUSE OF COMMONS LIBRARY, [Constituency boundary reviews and the number of MPs](#), November 20, 2023, 10-16.

²⁸ See the [Parliamentary Constituencies Act 2020](#) and the commentary on the act on the [Boundary Commission for England's website](#). According to doctrine, consider R. JOHNSTON, C., PATTIE and D. ROSSITER, *Boundaries in Limbo: Why the Government Cannot Decide How Many MPs there should be*, in [The London School of Economics and Political Science](#), May 2019 and N. JOHNSTON, *Parliamentary boundary reviews: public consultations*, in [House of commons library Briefing paper](#), 22 October 2020. See also G.

The Canadian and British examples demonstrate that if a panel of experts were entrusted with the task of continuously updating both multi-member and, particularly, single-member districts based on census data, it would be feasible to maintain up-to-date electoral boundaries swiftly. This process could be carried out without compromising the effectiveness of representation or delaying the possibility of holding elections shortly thereafter.

Indeed, if the revision of constituencies doesn't take place as quickly as possible and, therefore, doesn't reflect the most recent census data, there could be a violation of Articles 56 and 57 of the Constitution, leading to an alteration of the representative principles and equality of the vote. If the distribution of seats were based on data that doesn't accurately reflect the population, the vote of each voter would have different effects in electoral representation, accentuating the distortion of the electoral mechanism.²⁹

The relationships between these institutional entities could be regulated by specifying that the Commission submit the report with the revision of constituencies to the Council of Ministers. The Government could modify the proposal, provided such modification is supported by adequate and publicly-disclosed reasoning. This way, the Government should be subjected to a control by parliamentarians and citizens, especially voters. The proposal for modifying the electoral boundaries by the Expert Commission implies that the revision must be based on objective reasons rather than political considerations. The Executive wouldn't be the institution actively involved in the design of constituencies, but rather "the final and predominantly formal drafter of an act derived from a complex procedural process", avoiding the possibility of favoring the majority that supports it in the subsequent electoral round.³⁰

The update of seats to be assigned to constituencies, as elaborated by the Expert Commission and approved and/or revised by the Council of Ministers, could be published in the same decree of the President of the Republic that announces the allocation of seats in constituencies and multi-member constituencies.

To advocate for the possibility of electoral boundaries being approved and disclosed through a secondary source, namely the decree of the President of the Republic, it is deemed necessary to offer some observations regarding the statutory reservation established by Article 72 of the Italian Constitution regarding electoral affairs. The provision stipulates that the electoral law must be approved by the entire Parliament,

CARVALE, *Gli Mps restano 650: Il Parliamentary Constituencies Act 2020 contro la riduzione del numero dei parlamentari del Regno Unito*, in [Nomos](#), 3/2020, spec. 13-17.

²⁹ This could lead to a greater overrepresentation of the winning party or coalition and, conversely, an underrepresentation of the political forces that didn't win (or reverse).

³⁰ See A. AGOSTA, *Elezioni e territorio: i collegi uninominali tra storia legislativa e nuova disciplina elettorale*, in M. LUCIANI, M. VOLPI (eds.), *Riforme elettorali*, Laterza, Roma-Bari, 1995, 174 and L. SPADACINI, *La proposta di riforma elettorale all'attenzione del Senato: alcuni dubbi di legittimità costituzionale*, [Audizione informale presso la Prima Commissione permanente del Senato della Repubblica](#), 8 ff.

rather than by a “smart” commission³¹. However, in practice, things diverge significantly, to the extent that one can identify on various occasions the intervention of a source of law of secondary rank in electoral matters rather than that of the law.

The regulation by a source subordinate to the law, even within the limits it establishes, is believed to have not caused any detriment in terms of protection or effectiveness in the intricate process of translating votes into seats. This has also been established by paragraph 67 of the *Code of Good Practice in Electoral Matters*, according to which “electoral law should normally have the rank of statute law”, but it doesn’t exclude that “rules implementation, in particular those on technical questions and matters of detail, can nevertheless be in the form of regulations”. The constant updating of multi-member and single-member districts following the results of the ongoing census should be, if not a purely technical matter, an act to be removed from the discretion (political) of the panel of experts.

Acknowledging that in electoral matters legislative reservation can be relative³², it could be argued that the revision of electoral constituencies and, consequently, the allocation of seats to each constituency, can take place through a source of law of secondary rank as already occurs. The electoral law must anticipate this option and specify the methods and techniques of intervention by the Commission of experts called to design the electoral constituencies, specifying the limits, or ensuring that the Commission works exclusively based on census data without the margin to favor (or penalize) one political faction or another.

Alongside this possible “general rule” regarding the perpetual revision of electoral boundaries, a transitional regulation should be provided in case of the early dissolution of the Chambers because a delay between data publication and constituency restructuring is unavoidable, even within the framework proposed here, which has minimal effects and is likely only hypothetical. In this scenario, it would be necessary to proceed with the distribution of seats even without the most recent census data or, if available, before the Experts’ Commission has had (or has) time to update the electoral boundaries.

Initially, it’s important to reaffirm that the shifting of constituencies is minimal precisely because census data are updated annually, not every ten years. Indeed, the slight shifting of electoral boundaries underscores the need for ongoing electoral geography revision. Moving one or two constituencies is far more simple and quicker than completely restarting every ten years.

³¹ According to some scholars, this can be inferred from the so-called assembly reserve, while according to others, it stems directly from the law reserve. Refer to V. CRISAFULLI, *Lezioni di diritto costituzionale*, I, CEDAM, Padova, 1978, 216 and A. RUGGERI, *Gerarchia, competenza e qualità nel sistema costituzionale delle fonti normative*, Giuffrè, Milano, 1977, 149.

³² The term “relative legislative reserve” refers to the legal principle whereby the Constitution provides that the general regulation of precisely identified matters is the prerogative of primary sources (which involve the active involvement of Parliament), while detailed regulation is delegated to secondary sources, namely governmental regulations.

If it were necessary to proceed with the drawing of electoral districts without updated data available or if the panel of experts lacks time to proceed with the drawing of single-member districts, two alternatives can be identified. It could be possible to proceed with the allocation of constituencies using census data from the previous year,³³ or the distribution of seats could be carried out according to the most recent census results.

Alternatively, while maintaining the number of single-member and multi-member constituencies, a redistribution of seats could be carried out using the at-large method without creating new electoral constituencies.³⁴ In this circumstance, it could be considered to utilize single-member constituencies designed based on the data from the previous census then adjusting the number of seats to be distributed proportionally within the multi-member constituencies, in accordance with the number of seats indicated by the decree of the President of the Republic. This decree, based on the latest census data, establishes the overall number of multi-member constituencies.

If census data indicate that the number of seats assigned to a constituency exceeds the number of constituencies, additional representatives would be elected either at large or proportionally within the constituency. Conversely, if the number of representatives to be elected within the constituency is fewer than the number of electoral constituencies, all seats would be allocated using the at-large method³⁵,

³³ This is the proposed by the article 1 of the decree of the President of the Republic on January 20, 2023.

³⁴ The at-large method is described in the *Code of Laws of the United States of America, "United State Code" Title 2, Chapter 1, Section 2a*; this provision states that "[...] if there is an increase in the number of Representatives, such additional Representative or Representatives shall be elected from the State at large [...]" ..

³⁵ In this regard, it should also be noted that the advantages of the at-large election system include the likelihood that these districts will prioritize achieving the best outcomes for the entire community rather than catering to specific demands from particular segments and (See T. DONOVAN and H. SMITH, *Proportional representation in local elections: a review*, in [Washington State Institute for Public Policy](#), December 1994, III; S. HOFER, C. HUANG and R. MURRAY, *The Trade-Offs between At-Large and Single-Member Districts*, in [Hobby School of Public Affairs White Paper Series](#), 14/2018, 2). It has been demonstrated that substantive representation is more prevalent in at-large systems, especially benefiting the wealthiest and most connected individuals in the community (K. J. MEIER, E. G. JUENKE, R. D. WRINKLE and J. L. POLINARD, *Structural Choices and Representational Biases: The Post-Election Color of Representation*, in *American Journal of Political Science*, 4/2005, 758-768; P. K. ENNS, C. WLEZIEN (eds.), *Who Gets Represented?*, Russel Sage Foundation, New York, 2011; M. GILENS and B. I. PAGE, *Testing Theories of American Politics: Elites, Interest Groups, and Average Citizens*, in *Perspectives on Politics*, 3/2014, 564-581). Furthermore, at-large systems contribute to enhancing gender diversity in representation, leading to an increased number of women being elected (J. TROUNSTINE and M. E. VALDINI, *The Context Matters: The Effects of Single-Member versus At-Large Districts on City Council Diversity*, in *American Journal of Political Science*, 3/2008, 554-569. It was also demonstrated that «people of color are less likely to be elected in AL systems because the votes of racial minorities are diluted in elections that cover a broader area» (*Ivi*, 560). «Unlike racial diversity, gender diversity among the population is stable across geography» (S. HOFER, C. HUANG and R. MURRAY, *The Trade-Offs between At-Large and Single-Member Districts*, cit., p. 3), making the at-large system more effective in ensuring gender

wherein the seats of the constituency would be redistributed proportionally across the entire district.

In accordance with the constitutional provisions outlined in Articles 56 – 57 of the Italian Constitution, it is therefore believed that the annual population census fully complies with these requirements. However, regulatory innovation necessitates some practical adjustments, particularly regarding the functioning of the electoral districts commission, which must now operate on a permanent basis. The objections that may arise, especially concerning the perceived sluggishness of the commission's work in designing electoral boundaries, do not appear to be sufficiently robust or well-founded. Any annual changes in census results, presumed to be minimal, lead to quicker turnaround times for the electoral districts commission, resulting in lower costs as well. It must be reiterated, finally, that Decree law No. 7 of 2024, which stipulates that the results of the permanent census are used for electoral purposes only every five years (in the first and sixth year of each decade), seems to contradict Articles 56 - 57 of the Italian Constitution. This discrepancy appears unreasonable as it lacks justification by any necessity, whether practical or otherwise, that could justify non-compliance with the rule established by the constitutional provisions.

equality. It is also important to specify that in the United States, at-large elections were popular for local elections, particularly as a means to enable a white majority voting bloc to prevent black citizens from selecting representatives of their choice in local governments. The landscape of racial diversity and representation underwent significant changes in 1965 through the Voting Rights Act (VRA). Initially, the inclusion of language permitting judicial review of efforts to dilute the votes of minorities in areas with a history of disenfranchising minority voters played a role in steering communities away from at-large systems. However, court decisions weakened this language in the late 1970s. By 1980, courts had established that racial minorities needed to demonstrate that a contested election structure was intentionally designed or maintained to diminish minority voting power. The reauthorization of the VRA in 1982 altered this standard from racial intent to effects-based vote dilution, increasing the likelihood of success for minority challenges. The 1986 *Thornburg v. Gingles* ruling introduced a faster and simpler process for addressing vote dilution, leading to widespread shifts from at-large elections to single-member (SM) elections, achieved through both legal action and legislative changes (M. J. KOSTERLITZ, *Thornburg v. Gingles: The Supreme Court's New Test for Analyzing Minority Vote Dilution*, in [Catholic University Law Review](#), 2/1986, 531-563; C. DAVIDSON, *The Voting Rights Act: A Brief History*, in B. Grofman, C. Davidson (eds.), *Controversies in Minority Voting: The Voting Rights Act in Perspective*, Brooking Institution Press, Washington, 1992, 7-34). «Although the courts would later reverse course on some aspects of the VRA, the legacy of the rulings in the 1980s has become the status quo» (S. HOFER, C. HUANG and R. MURRAY, *The Trade-Offs between At-Large and Single-Member Districts*, cit., 3). In particular, with the *Thornburg v. Gingles* decision, the U.S. Supreme Court has defined legal standards that establish «when and how at-large election plans (and to a lesser extent, single-member districts) constitute a violation» of the Voting Rights Act by diluting minority voting strength. The Supreme Court established a three preconditions to establish vote dilution: that «the minority is large enough to compose a majority in a potential single-member district»; that the minority be politically cohesive; and that «the majority [consistently] votes as a bloc to defeat minority candidates» (T. DONOVAN and H. SMITH, *Proportional representation in local elections: a review*, cit., 8).