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Constitutional needs for the Italian process of drawing electoral districts: a more independent Commission, less partisanship, and greater transparency and participation**

SUMMARY: 1. District and constituencies: explicit and implicit constitutional principles and rules. – 2. The limited importance of the design of single-member constituencies until 1993. – 3. The constituency drawing system from 1993 to 2005. – 4. From the abolition of the single-member districts in 2005 to the need to design small multi-member districts in the electoral law, which was never implemented, in 2015. – 5. The current legislation on single-member district introduced in 2017 and still in force in light of the applied practice. – 6. How to make the procedure for producing electoral maps more compliant with the Constitution: a more independent technical commission; a timelier procedure; greater transparency and participation.

ABSTRACT: ***This article delves into the constitutional imperatives guiding the process of drawing electoral districts in Italy, advocating for reforms to ensure a more independent commission, reduced partisanship, and greater transparency and participation. Beginning with an exploration of explicit constitutional principles and rules governing seat allocation, the paper traces the historical evolution of constituency drawing systems, from the initial era of single-member constituencies within a proportional system to contemporary legislation on single-member first past the post districts (even within a mixed electoral system). Highlighting the shortcomings of past and present approaches, this article argues for procedural reforms aimed at enhancing compliance with constitutional principles. The conclusion underscores the importance of transparency and participation in mitigating inherent biases in electoral geography, emphasizing the need for procedural fairness even when substantive solutions remain elusive. By prioritizing the technical and non-partisan nature of the boundary commission, expediting the production of electoral constituencies, and bolstering participation and transparency measures, the article proposes a framework aligned with both Italian and international best practices, as endorsed by the Venice Commission.***

1. *District and constituencies: explicit and implicit constitutional principles and rules*

The Italian Constitution does not provide for a specific electoral system. Consequently, Italy has experienced a sort of electoral hyperactivity[1], oscillating between proportional and majority systems, sometimes including only multi-member

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[1] According to Fulco Lanchester, it would have been, literally, a case of electoral "hyperkinetism" (F. LANCHESTER, *La costituzione sotto sforzo. Tra ipercinetismo elettorale e supplenza degli organi costituzionali di garanzia*, CEDAM, Padova 2020).

districts, other times also incorporating single-member constituencies, as is the case for a portion of seats in the Chamber of Deputies and the Senate today[2]. Essentially, lacking a consolidated electoral tradition, there are no specific constitutional provisions concerning the design of single-member constituencies, which inherently require careful considerations to prevent the electoral outcome from being perceived by the public as unjust or unrepresentative. In fact, the Constitution limits itself to establishing certain overarching principles, some concerning the equality of voting[3], while others stem from democratic principles, the representative nature of democracy, or – perhaps – the parliamentary system of government.

Alongside these general principles, the Constitution instead establishes few specific rules. Among them, rules about the distribution of seats among the different territories of the country have specific relevance. For the Senate of the Republic, it is envisaged that the electoral system must be region-based, and the 196 seats to be elected at the national level (4 are reserved for Italians abroad) are distributed among the regions in proportion to the population. However, a minimum number of seats are guaranteed for less populous regions. For the Chamber of Deputies, it is envisaged that the national territory is divided into subnational constituencies to which seats must be allocated in proportion to the population. However, the Constitution does not specify the relevant subnational constituencies for the distribution of seats in the Chamber of Deputies. It has always been the sub-constitutional legislation that determines the subnational constituencies for seat distribution. They have always coincided with the regional territory, except for the more populous regions, which are divided into multiple constituencies[4]. In the Senate, however, given the mentioned rule of the "regional basis" of the electoral system, the constituencies coincide with the 20 regions. Both with reference to the Chamber of Deputies and the Senate, the Constitution specifies the representative data of the population to be considered for the allocation of seats to subnational constituencies: what matters is indeed the latest general census.

These rules are not difficult to apply. In fact, it is sufficient that, when elections are called, the data from the latest general population census is verified, and the seats are distributed among the various subnational constituencies as prescribed by law or the Constitution through a simple mathematical operation.

If an electoral law were to be adopted that provides for the division of the territory into constituencies and the distribution of seats within them based on single-member

[2] For a short description in English of the Italian bicameral system and the history of the electoral legislation, see A. D'ANDREA, L. SPADACINI, *The Structure of Parliament*, in V. ONIDA (et al.), *Constitutional Law in Italy*, Wolters Kluwer, *Alphen aan den Rijn*, 2021, 121-131.

[3] Art. 3

[4] This is the case in Piedmont, Veneto, Lazio, Campania, and Sicily, divided in two constituencies each, and Lombardy, now divided into 4 different constituencies. In truth, based on the data from the latest census, the population of Emilia-Romagna, consisting of a single sub-national district, has surpassed that of Piedmont, divided into two districts. This constitutes an interesting peculiarity, although it does not seem to have relevance in terms of the constitutionality of the current distribution.

districts (as was the case with the electoral law of 1993), it would then be necessary to proceed concretely with such division and distribution. To this end, an independent commission, separate from the Government and Parliament, should be identified to carry out this distribution transparently [5].

There are no explicit constitutional principles on this matter, probably also because the constitutional charter does not provide any indications - not even in general terms - on electoral law; however, it is possible to derive some general principles in this regard, such as:

a) The democratic principle and the attribution of sovereignty to the people (Article 1): from this perspective, the effective implementation of the democratic principle and the constitutional attribution of sovereignty to the people can only demand that the electoral system allows the chambers to make decisions that genuinely reflect the will of the people, as a necessary precondition for the exercise of its sovereignty. This means ensuring that the system of representation fulfils its function: allowing public decisions, mostly made through representative assemblies, to be realistically attributed to popular sovereignty[6]. The construction of a single-member constituency system on a partisan basis, indeed, would clearly hinder the realization of such mechanisms for the fulfilment of the democratic principle and the attribution of sovereignty to the people[7];

b) The equality of citizens (Article 3) as well as of voters (Article 48): from this second perspective, a partisan constituency system would inevitably end up contradicting the equality of citizens and voters because, in constituencies resulting from partisan choices, some voters are empowered with a greater weight in their vote while others' votes effectively carry less weight. Moreover, in the Italian legal system, the principle of formal equality (which might be considered respected even in the case of voting based on partisan constituencies) is not sufficient, given that it is well known

[5] Indeed, the need for an independent commission quickly emerged in the homeland of majoritarian single-member districts. On this point, see R.J. JOHNSTON, *Redistricting by Independent Commissions: A Perspective from Britain*, in *Annals of the Association of American Geographers*, Vol. 72, No. 4 (Dec., 1982), 457-470, and R.L. MORRIL, Political Redistricting, Washington: Association of American Geographers, 1981.

[6] Regarding this, it has been emphasized that if the electoral system is the instrument for creating political representation, it is essential to focus on the 'place of representation,' namely the place where the interests of the parties (representative and represented) meet. This function is performed by electoral districts because the political relationship between representative and represented can only be established within a specific territorial space. The choice to focus on the electoral district is due to the fact that it serves as the place where the interests of voters and the elected representatives in the district converge. The place where representation is founded is, therefore, where candidates present themselves to voters and where the voter physically casts their vote, thus choosing their political representative. See D. CASANOVA, *Eguaglianza del voto e sistemi elettorali*. *Profili costituzionali*, in *Rivista del Gruppo di Pisa,* 1/2019.[7] D. W. RAE, *The political consequences of electoral laws*, New Haven, Yale University Press, 1971.

[7] D. W. RAE, *The political consequences of electoral laws*, New Haven, Yale University Press, 1971.

that Article 3 of the Constitution enshrines the principle of equality in both formal and substantive terms.

c) The constitutional provisions regarding the allocation of seats to sub-national constituencies and regions – constituting the constitutionalizing of a mathematical formula – withdraw this function from the ordinary legislator, indicating the sensitivity of the matter: if the Constitution is concerned about equality among voters, both individually and as voters located in a territory, to the extent of constitutionalizing mathematical formulas for the allocation of seats among constituencies, we can reasonably imagine that the constitutional domain of this matter is limited to the distribution of seats among constituencies and does not necessarily extend to the system of designing constituencies. The answer to this question seems evident, especially when considering that the allocation of seats among constituencies has much less decisive effects in terms of the effectiveness of the aforementioned principles than the design of single-member constituencies, at least where these operate according to the "first past the post" rule. Furthermore, these mathematical rules allow ensuring the most accurate territorial distribution of representation, in guarantee of the principle of equality among citizens (Article 3 of the Constitution) and, especially, of the equality of the vote (Article 48 of the Constitution).

Based on this approach, therefore, we should consider implicit in Italian constitutional principles what is explicitly stated, without formal legally-binding value, in the Code of Good Practice in Electoral Matters of the European Commission for Democracy through Law (Venice Commission), adopted in 2002[8]. With specific reference to the case of the redrawing of electoral constituencies, it is specified that the "new arrangement should not exhibit partisanship, hence be impartial; should not disadvantage national minorities; should take into account an opinion expressed by an independent commission, preferably including a geographer, a sociologist, a balanced representation of political parties, and, if applicable, representatives of national minorities [...] Subsequently, Parliament will decide based on the proposals of the commission, with a possibility of a single appeal."

These principles are reiterated and detailed in the "Report on Constituency Delineation and Seat Allocation," adopted by the Venice Commission in December 2017[9]. Regarding the framework for defining electoral constituencies, the Report highlights that the most relevant international standard to apply is that of the equality

[8] European Commission for Democracy through Law (Venice Commission), "Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report," adopted by the Venice Commission during its 52nd session (Venice, October 18-19, 2002).[9] European Commission for Democracy through Law (Venice Commission), "*Report on constituency delineation and seat allocation*", adopted by the Council for Democratic Elections at its 60th meeting (Venice, 7 December 2017) and by the Venice Commission at its 113th Plenary Session (Venice, 8-9 December 2017).

[9] European Commission for Democracy through Law (Venice Commission), "*Report on constituency delineation and seat allocation*", adopted by the Council for Democratic Elections at its 60th meeting (Venice, 7 December 2017) and by the Venice Commission at its 113th Plenary Session (Venice, 8-9 December 2017).

of voting power, as defined by the Code of Good Practice in Electoral Matters. According to this standard, the equality of the vote implies that each voter normally has the right to one vote only, and each voter's vote must have the same value.

Regarding procedural safeguards, the Report specifies that the delimitation of electoral boundaries should be carried out transparently and consistently, established by a law that also regulates the frequency of the revision of these boundaries. Furthermore, the concrete delimitation of electoral constituencies should occur following extensive public consultations with all stakeholders, legitimizing it in the eyes of both stakeholders and voters[10].

The Report also states that those responsible for defining electoral boundaries must be independent and impartial, ensuring that the criteria for seat allocation comply with international or European standards. It emphasizes that recommendations from authorities tasked with delineating electoral boundaries should be followed by the government or national legislators, and the procedure should be precisely defined by law so that the process remains the same regardless of the entity responsible for drawing district boundaries. The report notes the necessity for all political parties to have access to the process due to its political implications.

In essence, I would consider the recommendations of the Venice Commission as explicit expressions of constitutional principles indirectly deducible from the Italian constitution itself. However, some clarifications can be made.

First, compared to the framework outlined by the Venice Commission, the Italian legal system would better address the need to avoid partisanship in the design of electoral constituencies by placing greater emphasis on the role of the independent commission rather than the Parliament. The Venice Commission's recommendation that the procedure be ultimately decided by the Parliament is quite understandable insofar as it is aimed at preventing the procedure from being entrusted to the Government. In this sense, concerning the 1993 regulation, the provision stating that constituencies are adopted by a government act should be criticized. Compared to this solution, assigning the procedure to Parliament would undoubtedly be an improvement. However, it still would not be sufficiently safeguarding, as entrusting the decision to Parliament through the normal legislative procedure would hand the decision to the political majority pro tempore. As will be discussed later, it would not be possible to imagine a procedure that assigns the decision to the independent commission, except for parliamentary corrections adopted by a supermajority (i.e., with the agreement of both the majority and the opposition, excluding handing the process to the parliamentary majority).

[10] See paragraph 19 of the aforementioned report by the Venice Commission: « Boundary delimitation should take place in a transparent and consistent manner, established by a law that also regulates the frequency of reviewing boundaries. The delimitation process should take place at least one year before an election. Like all crucial elements of electoral law, the delimitation of constituencies should be adopted after extensive public consultations with all relevant stakeholders. This should make it legitimate for both stakeholders and voters».

Second, the other specification, concerning the recommendations of the Venice Commission relates to the recommended presence of parties in the independent commission, as well as national minorities. Regarding the presence of parties in the independent commission, indeed, given their participation in other phases of the procedure, it should not be considered absolutely necessary. On the contrary, the presence in the commission of experts specialized in issues related to minorities or the addition of one or two individuals appointed by the legislative assemblies of local entities with minority representation could be considered useful in order to truly establish an independent commission capable of effectively ensuring the protection of minorities in the construction of constituency maps.

In any case, if, as specified, the recommendations of the Venice Commission can be considered indicative of Italian constitutional principles, these considerations should be formulated regarding the legislative framework of procedure for producing constituency maps adopted in 1993: 1) It is an experience complying with the parameters set by the Venice Commission, where it stipulates that the process be guided by an independent commission; 2) The attribution, in the initial application, of the final decision to the Government does not meet the required standard; 3)The attribution, for subsequent applications, of the final decision to Parliament still exposes the procedure to partisan manoeuvres and increases the likelihood that it may not succeed (the approval of the bill, in fact, is not subject to deadlines, and there is no guarantee that a majority to approve it will be found).

2. *The limited importance of the design of single-member constituencies until 1993*

These provisions did not pose problems of application as long as the proportional representation system was in force[11]. Under this system, no special commission was required for the design of subnational constituencies, since they were established by law and the seats were allocated to each of them based on the latest available census data every time elections were called. This was entirely true, without the need for specific details, for the Chamber of Deputies.

However, for the Senate of the Republic, the proportional representation system in place from 1948 to 1993 involved dividing the territory of each regional constituency into single-member districts (although the distribution of seats was then done proportionally). In essence, each regional constituency was divided into as many single-member districts as the MPs it had to elect. Candidates submitted their nominations at the level of the single-member district, but only the candidate who obtained at least 65% of the votes in the district was elected. In fact, this condition occurred extremely rarely. All or virtually all other seats were distributed among the parties within the regional constituency according to a proportional system. To

[11] To delve into the development of Italian electoral laws since 1948, consult C. FUSARO, *Party System Developments and Electoral Legislation in Italy (1948-2009)*, in *Bulletin of Italian Politics*, 1/2009, 49-68.

allocate the unassigned seats (virtually all of them), the votes of the unelected candidates in the various single-member districts were summed, thus obtaining the electoral figure for each party at the regional level (given by the sum of the votes of all its unelected candidates in the districts). Based on these electoral figures, the seats in the constituency not yet assigned (which was almost always the case) were allocated to individual parties proportionally. Finally, having determined the number of seats for each party, the seats of each party were assigned within the districts according to the order of decreasing percentage that the party's candidates had obtained in the various single-member districts. As it is evident, these single-member districts did not produce a system with the usual characteristics of majoritarian single-member electoral systems. Nevertheless, it was still a system that required the design of single-member districts.

These districts, for the 1948 elections, were established by the Ministry of the Interior, after consulting a parliamentary commission especially established for the electoral law. Thus, no specific independent commission operated for the design of these districts.

These districts from 1948, however, were not updated until 1993.

This led to a progressive malapportionment in the distribution of the number of single-member districts within the different regional constituencies but without major issues in the proportional distribution of seats among parties. In fact, the number of elected members in the Senate gradually increased from 237 to 315. In this way, no regional constituency ever had fewer seats than the single-member districts designed within it, although in some regional constituencies, the percentage of single-member districts compared to the number of seats to be assigned in the regional constituency became much higher than in others.

Nevertheless, since almost no candidate surpassed the aforementioned threshold of 65%, almost all seats were allocated at the regional constituency level, where all votes have equal weight. Therefore, the inertia in redesigning the single member districts did not prejudice the equality of votes. Furthermore, since the seats were instead allocated to regional constituencies based on the latest available census data, the distribution of senators among the different regional territories also occurred fairly, despite the aforementioned inertia in redesigning single-member districts.

3. *The constituency drawing system from 1993 to 2005*

In 1993, an electoral law mostly based on a majoritarian system was adopted for both the Chambers. In particular, according to this new law, 75% of the seats in the Senate and the same percentage for the Chamber of Deputies had to be elected through the first-past-the-post system in single-member districts. The remaining 25%

of seats were allocated based on a proportional representation system[12]. Thus, the districts for the Senate were finally reconfigured, and new single-member electoral districts for the Chamber of Deputies were established.

To carry out this operation, Law August 4, 1993, no. 276, art. 7, provided the following:

a) The Government prepares a draft legislative decree based on the indications formulated, within two months of its establishment, by a commission appointed by the Presidents of the Chamber of Deputies and the Senate of the Republic, based on principles and guiding criteria legislatively set[13]. The commission is composed of the president of the National Institute of Statistics, who presides over it, and ten university professors or other experts in matters relevant to the tasks the commission is called upon to perform (paragraph 2).

b) The draft legislative decree, accompanied by the opinions expressed within fifteen days of its submission by the regional councils and those of the autonomous provinces on the recommendations of the expert commission, before its approval by the Council of Ministers, is transmitted to the Chambers for the purpose of expressing the opinion by the relevant permanent committees. If the draft deviates from the proposals of the expert commission, the government must explain the reasons to the Chambers; the opinion must be expressed within twenty days of receiving the draft. If the decree does not conform to parliamentary opinion, the government, simultaneously with the publication of the decree, must send to Parliament a report containing adequate justification.

c) At the beginning of each legislature, the Presidents of the Chamber of Deputies and the Senate of the Republic appoint the commission for the

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[12] On the electoral law reform see: R. S. KATZ, *Reforming the Italian Electoral Law, 1993*, in M. SOBERG SHUGART, and M. P. WATTENBERG (eds.), *Mixed-Member Electoral Systems: The Best of Both Worlds?*, *Comparative Politics*, Oxford Academic, Oxford, 2003.

[13] The principles and guiding criteria were substantially the following:

a) The coherence of the territorial basin of each constituency must be guaranteed, taking into account the economic, social, and historical-cultural characteristics of the territory;

b) Constituencies must be formed by a continuous territory, except in cases where the territory includes island portions;

c) Constituencies cannot divide municipal territory, except for municipalities that, due to their demographic size, encompass multiple constituencies within them. In such cases, if possible, the municipal territory must be divided into constituencies formed within the same municipality or the same metropolitan area;

d) In areas where recognized linguistic minorities are present, the size and delimitation of constituencies must facilitate their access to representation, even deviating from the other principles and criteria. For this purpose, the aforementioned minorities must be included in the smallest number of constituencies;

e) The population of each constituency can deviate from the average population of the constituencies in the region by no more than ten percent, either in excess or in deficiency.

verification and revision of electoral constituencies, composed as provided in paragraph 2. After each general population census (and whenever deemed necessary), the commission formulates indications for the revision of constituencies, according to the legislative criteria, and reports them to the Presidents of the Chambers[14].

The mentioned law, therefore, envisaged two procedures to be applied. In the case of the first application of the law, the procedure involved a legislative delegation to the government to be exercised within four months. In subsequent cases, particularly following the release of a new general population census, the procedure was not precisely indicated.

In fact, since, according to Article 76 of the Italian Constitution, the delegation of legislative powers to the government could not be made permanently but only for a defined period, it follows that the Commission for constituencies would have had to formulate a proposal that, in some way, would have become a draft law to be submitted to the Chambers. Therefore, the Chambers would have had to employ the usual ordinary legislative procedure. It is clear, however, that, in anticipation of the new general population census, the Parliament could have granted the Government a new specific delegation for a determined term to avoid the ordinary parliamentary procedure.

Indeed, this eventuality would have arisen in 2003, following the publication of the 2001 census data[15]. However, the electoral law was once again amended in 2005, when single-member districts were entirely abolished. The new electoral law No. 270 of December 21, 2005, in fact, envisaged a system in which all seats were allocated within subnational constituencies, using a proportional method albeit with the addition of a majority bonus. This new system, therefore, abolished the single-member districts both in the Chamber of Deputies (where they had existed since 1993) and in the Senate (where they had been in place since the first Senate election in 1948).

In essence, in this initial case of constituency drawing, recourse was made to an independent commission, whose level of independence can be deemed sufficient. This is evidenced by: a) The technical qualifications required for the commissioners; b) The non-partisan appointment: at that time, the presidents of the Chamber and Senate were representatives of the majority and opposition, starting from an agreement

[14] The law also took care to specify that the revision of constituencies was also carried out in the case of a constitutional amendment concerning the number of parliamentarians (paragraph 4).

[15] Following the publication in 2003 of the data related to the general population census of October 21, 2001, the Presidents of the Chambers had appointed the members of the Commission for the verification and revision of the electoral constituencies provided for by Article 7, paragraph 6, of Law No. 277 of August 4, 1993, and Article 7, paragraph 4, of Law No. 276 of August 4, 1993. During the proceedings, to make it clear that new elections could be held if the President of the Republic dissolved the Chambers, the Government issued Decree Law 64/2005 to regulate, on a transitional basis, the determination of the constituencies in the event of early elections. This decree-law was never applied because in the meantime, the approval of a new electoral law, No. 270 of December 21, 2005, intervened, abandoning the system that provided for constituencies.

among political forces that was upheld from 1976 to 1994 (it was, therefore, in force at the time of the appointment of the first commission for the drawing of districts but would no longer be respected from the election of subsequent chambers); c) The parliamentary nature of the body from which the appointments originated.

Nevertheless, the independent nature of the Commission was contradicted by other elements of the procedure: 1) at least in the initial application phase, although the formal act of adopting the constituencies had the force of law, it was still a legislative decree, i.e., an act issued by the Government; 2) the government had to submit the proposal of the independent commission to the opinion of the Chambers, but once it obtained the opinion of the Chambers, it could follow it while also modifying the content of the commission's proposal; moreover, the government was not even required to adhere to the opinion of the Chambers, as it could deviate from it with the sole obligation to justify the reasons (but without any body being authorized to scrutinize the reasonableness of the justifications); 3) for applications subsequent to the first, the proposal of the independent commission would have ended up as a bill to be subjected to the ordinary legislative procedure; in this case, therefore, the proposals of the independent commission would have been at the mercy of the parliamentary majority in office, which, in the legislative procedure, could have modified them at will without any need to justify the choices[16] (in the Italian context, moreover, it would have been practically impossible to activate a constitutional review of the constituency drawing).

Essentially, this initial regulation of the drawing of single-member electoral constituencies was characterized by: 1) the presence of a technical commission established with sufficient guarantees of independence; 2) an overall procedure that paradoxically seemed to subordinate the decisions of the independent commission either (a) to the government in the initial application procedure or (b) to the Parliament (and hence its majority pro tempore) in subsequent applications.

4. *From the abolition of the single-member districts in 2005 to the need to design small multi-member districts in the electoral law, which was never implemented, in 2015*

As already mentioned, the legislation on the design of electoral constituencies introduced in 1993 was repealed in 2005 and replaced by a proportional electoral system with a majority bonus and without any single-member constituencies[17]. It is an electoral law under which elections were held for the political elections of 2006 and

[16] This is the system traditionally used in the United States, which critics suggest has proven to be ineffective. Reference: L. HARDY, A. HESLOP, and S. ANDERSON (eds.), *Reapportionment Politics*, Sage Publications, Beverly Hills, 1981, 21.

[17] See: C. FUSARO, *Party system developments and electoral legislation in Italy (1948-2009)*, cit., 49-68; G. PASQUINO, *Tricks and Treats: The 2005 Italian Electoral Law and Its Consequences*, in *South European Society and Politics*, vol. 12, 2007, 79-93; A. RENWICK, C. HANRETTY, and D. HINE, *Partisan self-interest and electoral reform: The new Italian electoral law of 2005*, in *Electoral Studies*, 4/2009, 437-447.

2013. The results of the 2013 elections made the constitutional illegitimacy of such legislation evident. Indeed, at least in the Chamber of Deputies, despite being proportional, it automatically guaranteed 55% of the seats to the coalition that nationally obtained the most votes. In the 2013 elections, this seat bonus was granted to the center-left coalition, which with 29.55% of the votes (compared to 29.18% for the center-right and 25.56% for the Five Star Movement) obtained 340 seats (compared to the 124 of the center-right and the 108 of the Five Star Movement). Therefore, the Constitutional Court, with judgment No. 1 of 2014, declared the existing electoral law unconstitutional, leaving in place a completely proportional electoral law, without a majority bonus[18].

Following the Constitutional Court's ruling, and in anticipation of an associated constitutional reform that never came into effect (rejected by a popular referendum[19]), a new electoral law was approved, known as the law of May 6, 2015, No. 52, commonly referred to as the Italicum[20].

The law provided for a proportional system and reinstated the majority bonus previously rejected by the Court with a variation. It would have been awarded to the most voted list if it had obtained at least 40% of the votes. Otherwise, a national runoff would have been held between the two most voted lists. The winning list in the second round would have obtained 55% of the seats (even if it had been admitted to the second round with a very low percentage). This new electoral system envisaged that the subnational constituencies into which the Italian territory is divided (regional for the Senate and regional or subregional for the Chamber of Deputies) would be subdivided into smaller multi-member constituencies.

The new law, although it did not provide for single-member constituencies, still required the delineation of multi-member constituencies not predetermined by law. To this end, the Government was delegated to adopt, within ninety days from the date of entry into force of the law, a legislative decree for the determination of multi-member constituencies within each subnational constituency, based on principles and guiding criteria established by the law[21].

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[18] On judgment number 1/2014 of the Constitutional Court, in English see: A. BARAGGIA and L.P. VANONI, *The Italian Electoral Law Saga: Judicial Activism or Judicial Subsidiarity?*, in *Sant'Anna Legal Studies*, *STALS Research Paper*, 2/2017; A. PIN and E. LONGO, *Don't Waste Your Vote (Again!). The Italian Constitutional Court's Decision on Election Laws: An Episode of Strict Comparative Scrutiny*, in *ICON·S Working Paper – Conference Proceedings Series*, 1(10)/ 2015, 44

[19] See: G. PASQUINO and M. VALBRUZZI, *Italy says no: the 2016 constitutional referendum and its consequences*, in *Journal of Modern Italian Studies*, 2/2017, 145-162.

[20] See: G. PASQUINO, *Italy has yet another electoral law*, in *Contemporary Italian Politics*, 3/2015, 293-300.

[21] The main principles and guiding criteria that the Government's legislative decree had to comply with (article 4, paragraph 1) include:

a) The population of each constituency may deviate from the average population of the constituencies in the subnational constituency by no more than 20 percent in excess or in deficiency;

b) The coherence of the territorial basin of each constituency has to be guaranteed, and, normally, its socio-economic and historical-cultural homogeneity, as well as the continuity of the territory of each

For the preparation of the draft legislative decree, the Government relies on a Commission composed of the President of the National Institute of Statistics, who chairs it, and ten experts in matters related to the tasks that the Commission is called to carry out, without any additional costs.

The draft legislative decree had to be transmitted to the Chambers within forty-five days from the date of entry into force of the electoral law, for the purpose of obtaining the opinion from the relevant standing committees within twenty-five days from the receipt of the draft. If the decree did not conform to the parliamentary opinion, the law required Government, simultaneously with the publication of the decree, to send Parliament a report containing adequate justification.

These rules for the delineation of constituencies, compared to the arrangement of 1993, contained a key innovation: the appointment of the members of the Independent Commission was entrusted to the Presidents of the Chambers, in a context where one was representative of the majority and the other of the opposition. In the new arrangement, however, the appointment of the Commission members was entirely entrusted to the Government. It is clear that this new arrangement did not guarantee the independence of the Commission tasked with producing the map of the constituencies. Conversely, the most criticized features of the 1993 scheme were retained, namely the attribution of the final decision to the Government, rather than to Parliament, regarding the proposal provided by the commission.

In any case, in January 2017, the Constitutional Court declared the runoff provided for by the new electoral law unconstitutional[22], leaving the possible majority bonus for the list that should obtain 40% of the valid votes in the first (and only) round. Therefore, the parliamentary majority decided to completely amend the law[23], with the consequence that the multi-member constituencies designed according to the described scheme were never used.

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constituency, without dividing the municipal territory, except in the case of municipalities that, due to their demographic size, include multiple constituencies.

c) In areas where recognized linguistic minorities are present, the delimitation of constituencies, even in derogation from the principles and criteria indicated by the law, must take into account the need to facilitate their inclusion in the fewest possible number of constituencies;

d) Each multi-member constituency normally corresponds to the territorial extension of a province, as delimited at the date of entry into force of this law, or is determined by the merger of different provinces, provided they are contiguous.

[22] Also on judgment number 35/2017 of the Constitutional Court, see P. FARAGUNA, '*Do You Ever Have One of Those Days When Everything Seems Unconstitutional?': The Italian Constitutional Court Strikes Down the Electoral Law Once Again: Italian Constitutional Court Judgment of 9 February 2017 No. 35*, in *European Constitutional Law Review*, 4/2017, 778-792; E. STRADELLA, *Italy after the Constitutional Referendum: Legal and Political Scenarios, from the Public Debate to the 'Electoral Question'*, in Italian Law Journal, special issue.

[23] For a general assessment of the rather chaotic evolution of electoral legislation, see: F. CLEMENTI, *The Italian constitution after seventy years between referenda, electoral laws and institutional reform: a past that does not pass?*, in *Journal of Modern Italian Studies*, 3/2019, 415-426.

5. *The current legislation on single-member district introduced in 2017 and still in force in light of the applied practice*

The current legislation on constituencies was introduced in 2017 and has provided a peculiar mixed electoral system: 5/8 of the seats in both chambers are allocated proportionally, while the remaining 3/8 are allocated in single-member first past the post constituencies[24].

For the delineation of these districts, a new procedure and body were again established; in particular, the commission was assigned another function: to create multi-member constituencies. In fact, the 28 electoral subnational constituencies for the Chamber of Deputies and the 20 regional constituencies for the Senate were required to be subdivided internally into smaller multi-member electoral districts that allocate a number of seats less than 8: therefore, 21 of the 28 Chamber constituencies would be further divided, as well as 9 of the 20 regional Senate constituencies. Within these small multi-member constituencies, the single-member constituencies are delineated, in which parliamentarians are elected using the first-past-the-post system. Essentially, therefore, the territorial area of the multi-member constituencies must consist of the assembly of two or more whole single-member constituencies. This operation of identifying these smaller multi-member electoral constituencies is also delegated to the Commission, together with the task of identifying the single-member constituencies that, when assembled, effectively give rise to the multi-member constituencies[25].

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[24] A. CHIARAMONTE, and R. D'ALIMONTE, *The new Italian electoral system and its effects on strategic coordination and disproportionality*, in *Italian Political Science*, 1/2018, 8–18.

[25] However, this attribution is problematic. In fact, the way this provision is structured, for the Chamber, could violate Article 56 of the Constitution, which establishes the modalities of seat distribution among subnational constituencies. What are indeed the subnational constituencies referred to in Article 56 of the Constitution? I think they are the electoral divisions within which candidates are presented and where voters cast their votes. In the subnational constituencies, indeed, there are no candidates because candidacies are presented either at the level of the single-member district or at the level of the smaller multi-member districts. Similarly, the voter chooses among the candidates in their single-member district and among the lists competing for seats in the multi-member district within which their single-member constituency is located. The major 28 constituencies, in fact, have a completely marginal role in the dynamics of the new electoral law. They only serve to contain shifts of seats from one territorial area to another, as is better clarified by the reports of M. PODETTA, *The Delimitation of Multi-Member Districts in Italy: Political and Territorial Mis-Representativeness*; P. FELTRIN, S. MENONCELLO, G. IERACI, *Causes and Possible Remedies for the "Slipping Seats" Phenomenon: An Empirical Analysis*; D. CASANOVA, *Drawing Electoral Districts and Ensuring Equal Representation: A Comparative Study of Electoral District in Italy and the United States*, in this issue. But if this is the case, the constituencies referred to in Article 56 are instead the multi-member districts and not the subnational constituencies, which have a purely virtual nature. If this were so, the number of seats to be allocated to each constituency should be calculated using the method indicated by Article 56 and not with the currently provided methods.

The legislative framework concerning the Commission for the electoral districts currently in operation seems to present numerous aspects in contrast with the principles established by the Venice Commission, which - as mentioned - provide explicit elaboration of constitutional principles present in the Italian Constitution, even though they must be specified and detailed as described previously.

Let's look at the specifics.

The Commission of experts, established under Article 3, paragraph 3 of Law No. 165 of 2017, is the body the Government relies on for the determination of electoral districts[26]. According to paragraph 6 of the aforementioned law, the Commission is appointed by the Government every three years, and it is tasked with providing recommendations to the government for the revision of districts based on the results of the general population census[27], according to the criteria outlined in the same law, largely reproduced from the previous law, which never came into effect but only provided for plurinominal constituencies. The extension of these criteria - without differentiation - to uninominal constituencies effectively attests to the generality of the criteria themselves. It is evident that if they were genuinely binding criteria, they could not be applied indiscriminately to constituencies so diverse in demographic consistency and function, such as uninominal compared to plurinominal ones[28].

As in the legislation of 1993, even in that of 2017, the procedure for producing the districts is twofold: a) in the case of the first application of the law; b) in subsequent cases. In the case of the first application of the law (a), the procedure involved a

[26] Article 3, paragraph 3: For the purpose of drafting the draft legislative decree, the Government makes use of a commission composed of the president of the National Institute of Statistics, who chairs it, and ten experts in matters relevant to the tasks that the commission is called upon to perform.

[27] Article 3, paragraph 6: The Government updates the composition of the commission every three years. The commission, in relation to the results of the general population census, provides indications for the revision of the single-member and multi-member constituencies, according to the criteria set out by the law, and reports them to the Government. For the revision of the single-member and multi-member constituencies, the Government presents a bill to the Chambers." In implementing this provision, the first composition of the Commission was updated by a decree of the Prime Minister dated March 18, 2022.

[28] Here is a summary of the main criteria established by the law:

a) The population of each uninominal and plurinominal constituency may deviate from the average population of the uninominal and plurinominal constituencies of the district by no more than 20 percent excess or deficiency.

b) In the formation of uninominal and plurinominal constituencies, the coherence of the territorial basin of each constituency is guaranteed, considering the administrative units on which they are based and, as a rule, its homogeneity in terms of socio-economic aspects and historical-cultural characteristics, as well as the continuity of the territory of each constituency, except in cases where the territory itself includes island portions.

c) Uninominal and plurinominal constituencies, as a rule, cannot divide municipal territory, except for municipalities which, due to their demographic size, include multiple constituencies within them.

d) In areas where recognized linguistic minorities are present, constituency delimitation, even in derogation from the guiding principles and criteria of the law, must consider the need to facilitate their inclusion in the fewest possible constituencies.

legislative delegation to the government. For future applications (b), according to Article 76 of the Italian Constitution which requires the delegation of legislative powers to the government be only for a defined period, the Chambers must employ the usual ordinary legislative procedure[29].

The first procedure was used to create the single-member districts used for the 2018 political elections[30]. However, a redesign of the districts soon became necessary.

Indeed, constitutional law number 1 of 2020, which came into effect after a popular referendum, mandated a reduction in the number of parliamentarians by more than one-third[31]. Consequently, it was necessary to proportionally reduce the number of single-member districts, which, according to the law, had to remain in the same proportions as previously established (i.e., 3/8 of the members of each chamber). In this scenario, however, a special law[32] stipulated to proceed according to the scheme that involves legislative delegation, granting the Government a specific delegation for this particular occasion[33]. Therefore, scheme (b) which envisions resorting to the ordinary procedure was not employed even in the second application of the district redesign system.

Certainly, the timelines of ordinary legislation would have been incompatible with the need to have the new single-member districts in place in time for the reduction in the number of parliamentarians to take effect. This reduction, in fact, would have been operative for the subsequent elections (scheduled for 2023 but actually held early in September 2022). According to the Constitution, when the President of the Republic dissolves the Chambers, he distributes the parliamentary seats among the regions (in the Senate) and the subnational constituencies (in the Chamber of Deputies), based on the latest published general census. It follows that, to avoid problems, in the Italian constitutional system, the map of the districts must always be updated. Furthermore, based on the law, he distributes the seats among the smaller multi-member constituencies designed within the subnational districts.

This exercise of redesigning the electoral districts, carried out in 2022 by the Commission based on the latest published general census, namely that of 2011. Thus, when the new census relating to the 2021 population was published in 2023, the need for a new redesign of the electoral districts became evident. The Commission addressed this in December 2023, delivering a new proposal to the Government. However, in this case, since a new ad hoc legislative delegation has not been approved,

[29] In essence, the 2017 law specifies the procedure that the 1993 law did not explicitly indicate but that one had to necessarily deduce from the system. Indeed, according to Article 3, paragraph 6 of Law No. 165 of 2017, "For the revision of the uninominal and plurinominal constituencies, the Government presents a bill to the Chambers".

[30] Legislative Decree No. 189 of December 12, 2017.

[31] See: M. CALAMO SPECCHIA, *The Future of Parliamentary Democracy in Italy Post-Referendum 2020. Suggestions from Comparative Constitutional Law*, in *Cogito-Multidisciplinary research Journal*, 2/2021, 77-98.

[32] Article 3 of Law No. 51 of 2019.

[33] Legislative Decree No. 177 of 2020.

the ordinary legislative procedure must be employed for the first time. Therefore, at the moment, we are awaiting the bill that the Government should submit to the Chambers. This is an urgent requirement because, in the event of an early dissolution of the Chambers, the electoral districts drawn up based on the 2011 census data are currently in force, while the Constitution requires the Head of State to allocate seats among the constituencies based on the 2021 data.

Of course, it is always possible for Parliament to grant a new delegation to the Government on a temporary basis. In that case, however, the delegation would concern a proposal already formulated by the Commission and – not now, but presumably at the time when the delegation would be approved – made known to the parliamentarians through the bill deposited with the Chambers by the Government. This makes the process of adopting the electoral districts more problematic. In fact, it is difficult to imagine that, once the Commission's proposal is known, parliamentarians from the majority will delegate the operation to the Government without conditioning modification of their own electoral district.

First and foremost, the new regulatory framework establishing the procedure for drawing electoral districts reiterates a pattern already criticized and present in all previous iterations: namely, it places the Government at the centre in the appointment of the member of the Commission. In this regard, the adopted scheme confirms the structure of the 2015 law, abandoning the one adopted in the 1993 legislation, which was much more convincing in terms of guaranteeing independence.

Even the role played by the Commission, at least as configured by Law No. 165 of 2017, does not have the centrality that was recognized by 1993 Laws No. 276 and No. 277 when it was formally tasked with indicating to the Government a division of the territory, and the Executive had to provide reasons to the Chambers to deviate from it. In the current configuration, however, the Commission performs a mere "support" role to the Government, which therefore appears to be the dominant force in the process. Indeed, with reference to the first exercise of producing the constituencies (during the Gentiloni Government in 2017/18), the Government modified the proposal of the Commission even before submitting it to the Chambers, demonstrating that if the Government wants, the Commission can be relegated to an ancillary role.

It is worth noting, however, that the need for neutrality and impartiality in the process of delineating the constituencies has been considered with particular attention in the adoption of the latest Legislative Decree No. 177 of 2020, currently in force (although it needs updating as it is based on census data from 2011); in that context, the Government interpreted its role solely as a guarantor of the process. This is apparent in at least three ways. First, the initial Commission, appointed by a center-left government, was not removed by the subsequent government (the Conte 1 Government, which excluded from its majority all the political forces that had supported the previous Government), except for one replacement due to resignation. Second, when the Commission expired, the new Government in office (the Conte 2 Government, composed of a majority that now included the center-left along with the

5 Star Movement), essentially confirmed the previous Commission, with few replacements, mostly justified by gender-balance reasons within the Commission. Third, the same government (Conte 2) merely limited itself to transmitting the choices of the panel of experts to Parliament and ensuring that the modifications proposed solely by the competent parliamentary committees were incorporated into the legislative decree. In this case, moreover, the Commission's proposal, untouched by the Government, received only one suggestion from the Chambers, regarding a minor issue related to the plurinominal constituencies (without any modification, therefore, concerning the boundaries of the uninominal ones), which the Government accepted without hesitation.

Nevertheless, this self-restrained attitude of the Government has been a voluntary choice. The guarantees of independence of the process that the Constitution requires should find coverage in the law.

Furthermore, the current process of drawing the electoral districts retains all the other highlighted flaws: there is no guarantee of certainty in the timing of their renewal, and it is entirely lacking in terms of involving minorities and even more so in terms of the transparency of the procedure.

6. *How to make the procedure for producing electoral maps more compliant with the Constitution: a more independent technical commission; a timelier procedure; greater transparency and participation*

Based on this reconstruction of the constitutional requirements for the redrawing process of electoral districts and on the basis of the accumulated experience recounted in the preceding paragraphs, it is possible to seek remedies aimed at improving the current procedure. In particular, the procedures established therein are certainly capable of improvement to enhance guarantees of transparency and participation, considered essential but lacking in the Italian current arrangement. Similarly, a lack of independence has emerged in the appointment procedures of the commission.

In fact, it is evident that based on these procedures, the allocation of constituencies is adopted through legislative decrees, based on the indications provided to the Government by the Expert Commission, and is essentially entrusted to the Government with full autonomy, with the possibility of disregarding the opinions of the competent parliamentary committees, albeit with the obligation to justify the reasons in a specific report to Parliament.

Moreover, since 2015 (Italicum law), the Expert Commission has been appointed by the government, contrary to the requirements of independence and neutrality. Also, the role played by the Commission, at least as configured by law No. 165 of 2017, does not have the centrality that had been recognized by laws No. 276 and No. 277 of 1993, when it was formally tasked with indicating to the Government a division of the

territory, and the Executive had to indicate the reasons to the Chambers if it deviated from it. In the currently prevailing configuration, instead, the Commission performs a mere "support" activity to the Government, which therefore appears to be the dominant force in the procedure.

By way of reform, the appointment of members of the technical commission should not be of governmental origin but should be referred to the parliamentary sphere and entrusted to a vote by a qualified two-thirds majority of each of the Constitutional Affairs Committees of the Chamber of Deputies and the Senate. With this method, the appointment of the body would be removed from the will of the political forces of the majority alone, as the involvement of the opposition is essential. Indeed, what would be replicated is the bipartisan appointment system that was set up in 1993, entrusting the appointment of members to the Presidents of the two Houses (in a period during which the presidents of the Chambers, by convention, were agreed upon jointly by the majority and the opposition). With the demise of this convention, the supermajority of two-thirds of votes in favour in the two relevant parliamentary committees seems to be the best surrogate for the rule according to which the appointment was attributed to the Presidents of the Houses[34].

Specifically, the Permanent Commission for the revision of electoral districts should be composed – as it is now – by the President of the National Institute of Statistics, who chairs it, and by ten experts of recognized independence and proven competence in the following fields: statistics, economic and political geography, constitutional law, and political science[35]. It is clear, indeed, that the technical requirements to be met by the appointed individuals must be strengthened, to prevent the appointment of members to the two commissions, although aimed at enhancing the bipartisan nature of the appointment, from becoming politicized.

The members of the Commission should be elected for a longer period (every six years, perhaps), five by the Constitutional Affairs Committee of the Chamber of Deputies and five by the Constitutional Affairs Committee of the Senate of the Republic, by a two-thirds majority of their respective members. Commission members

[34] The importance of genuinely independent commissions in the electoral boundary drawing process and their removal from the sphere of political control by parliamentary or government majorities is well demonstrated by the Canadian experience. In Canada, such a move was adopted in 1964 and was dubbed the "electoral boundary revolution" by RK Carty in "The Electoral Boundary Revolution in Canada" (1985) 15:3 Am Rev Can Stud 273. These reforms eliminated gerrymandering, "an impressive feat given how much that practice had been a staple of Canadian politics since Confederation," as stated by Michael Pal. (2015) 61:2 McGill LJ 231 — (2015) 61:2 RD McGill 2). The same observation is also evidenced by the American experience, which, in order to address the issue, increasingly resorts to the introduction of independent commissions. See: Bruce E Cain, "Redistricting Commissions: A Better Political Buffer?" (2012) 121:7 Yale LJ 1808 at 1812–21; D Theodore Rave, "Politicians as Fiduciaries" (2013) 126:3 Harv L Rev 671 at 680, n 38, 729–35; Nicholas O Stephanopoulos, "Our Electoral Exceptionalism" (2013) 80:2 U Chicago L Rev 769 at 778–80.

[35] As for the permanent nature of the revision that should now be required, I refer to A. MAZZOLA, *The Revision of Electoral Districts in Italy: the New Permanent Census System within the Framework of Constitutional Provisions on Representation*, in this issue.

should be appointed by decree agreed upon by the presidents of the Senate of the Republic and the Chamber of Deputies. The members should remain in office until the appointment of new members, thus ensuring continuity in the revision process. These are a series of provisions aimed at increasing the level of independence and preventing the Commission from consistently operating even in cases where agreement between the majority and the opposition for its renewal proves to be complicated.

In addition, it is necessary to reconsider the legislative rank of the act currently used to produce electoral geographies.

In concrete experience, the process of defining electoral constituencies initiated since 1993, with the so-called Mattarellum electoral law - except for the period when electoral law No. 270 of 2005 was in force, which did not provide for single member districts - then with the law 165 of 2017 and, most recently, with law No. 51 of 2019, has been to use legislative delegation, although, with reference to the update required by the new census of 2021, the Government seems inclined to resort to the default rule, namely the use of ordinary legislative procedure (unless the Government's attitude is merely due to negligence).

Whether using the legislative delegation system or employing the ordinary legislative procedure, the issue of the timeliness of renewing the single-member districts and the need to avoid partisan influence in the creation of electoral maps are not guaranteed. In fact, both ordinary laws and legislative decrees are not obligatory acts, so it is always possible that the process of producing districts may be interrupted and not completed on time. Moreover, both procedures are subject to the majority rule, which allows for the dominance, in decision-making, of the political majority of the moment.

Therefore, given the impracticality of determining districts through legislation and the impossibility of a "permanent delegation," a different rank (sub-legislative) should be attributed to the measure that redefines district boundaries, similar to that of the act determining the number of seats allocated to subnational constituencies in accordance with Articles 56 and 57 of the Constitution.

In other words, the new electoral districts should be determined by the same decree of the President of the Republic that, at each call of the electoral assemblies, provides for the allocation of seats. The issue of lowering the source to a secondary level is not incompatible with the constitutional system. In electoral matters, there is no absolute legislative reserve but a relative one, which allows us to argue that the transition of the normative instrument for the production of districts from the primary to the secondary source does not encounter formal admissibility obstacles, provided that the law further specifies and refines the criteria to be followed in the production of districts.

In essence, for the act establishing the districts to be timely, it must become obligatory. This requires that it does not have legislative rank, as acts of such rank are by their nature discretionary in their adoption. The point then becomes to adopt a

system that does not resort to legislation but that does not sacrifice the role of Parliament.

In this light, the procedure should formalize a process centred in the parliamentary sphere with the involvement of the opposition, even though the procedure does not culminate in an act of legislative rank. The Government should be limited to deliberating the proposals of the expert commission, appointed by a supermajority in the parliamentary committees, in the Council of Ministers, with only the modifications unanimously approved by the relevant parliamentary committees themselves by, again, a supermajority. This arrangement would place Parliament at the center of the division of the territory into electoral districts, without governmental interference, without subjecting the entire process to the will of the majority alone.

More in particular, regarding the procedure for defining districts, the proposal of the expert commission should only be subject to modification by parliamentary committees, to which the final decision on the choices made should belong. They would have the opportunity to request only specific and unanimous changes, which would then be mandatory included in the Council of Ministers' deliberation. For such changes, a qualified two-thirds majority of the members would be required. This way, the participation of all political forces, and not just the majority, in the political decision concerning the territorial boundaries of electoral districts would be ensured.

More specifically, the procedure should include the following steps: within a term from the publication of the results of the permanent census of the resident population as reported by the most recent available publication of the National Institute of Statistics, even if not published in the Official Gazette of the Italian Republic, the Commission presents to Parliament a proposal for the revision of electoral districts, consisting of tables determining, for the Chamber of Deputies and the Senate of the Republic, the single-member districts including the names of the municipalities or sub-municipal areas included in each district as well as the tables determining the multi-member districts with the indication of the single-member districts included in each of them. The proposal should be accompanied by a Report that gives an account of the activities carried out and the reasons supporting the proposed solutions.

Upon proposal by the Prime Minister and the Minister of the Interior, the Council of Ministers deliberates the approval of the tables proposed by the Commission with only the possible modifications approved by both parliamentary committees, by a two-thirds majority of the members, and transmitted to the Government within thirty days from the date of receipt of the same tables, also ensuring publication on the institutional website of the Government.

And finally, there is a need to intervene to improve transparency and public participation regarding the procedure for producing electoral districts[36].

[36] R. GREEN, *Redistricting transparency & litigation*, in *Syracuse Law Review*, 71/2021, 1121-1177 refers the importance of a transparent drawing of electoral districts in producing more equal constituencies.

From these perspectives, indeed, the Italian procedure has proved to be quite disappointing. The work of the independent Commission is carried out behind closed doors. Neither stakeholders nor members of Parliament are allowed. The Commission concludes its work without any discussion with either institutions or civil society. It delivers its work to the Government, which then submits it to Parliament. Regarding objections that may be raised in Parliament, the Commission has no further say. At this stage, parliamentary requests for amendment are subject to political evaluation, with no provision for access to the technical and neutral instance that the commission should represent.

For the sake of completeness, it is worth noting two positive signals regarding the production of electoral constituencies following the reduction in the number of parliamentarians in 2021. Unlike the case with the decree of 2018 and the ongoing procedure for renewal based on new census data, on this occasion, the Government at least published the entire report along with its related databases as soon as the Commission delivered it, making all the material produced available to the public. Additionally, in the Prime Ministerial Decree renewing the Independent Commission, it is provided for the first time that the Commission, if it deems it necessary, especially in doubtful cases, could resort to consulting stakeholders before choosing among several abstractly possible options. Despite this positive innovation, it is worth noting that the commission has never utilized it, thereby demonstrating a greater openness to transparency and participation by the Government (Conte 2) that established the rule but not among the members of the Commission.

Furthermore, openness to transparency and participation is a constant feature of all best practices at the international level, as extensively demonstrated, in the case of Canada, by Michael Pal's work[37], and more generally by the research of Rebecca

[37] Each Canadian Commission, in particular, consults Canadians through public hearings and examines objections from parliamentarians; for further information, see The Role and Structure of Elections Canada. In particular, the Commission publishes proposals (including new maps) in the Canada Gazette and on its website, and advertises them in newspapers. Simultaneously, it invites Canadians to submit comments and opinions in public hearings, which may also be attended by Members of the House of Commons. These hearings provide an opportunity to participate in the electoral map redrawing process and are usually held at various locations across the provinces. Anyone wishing to contribute their ideas must inform the Commission in writing within 23 days of the publication of the proposals. For more information on the origin of the provisions on public participation, please refer to the History of Representation in the House of Commons of Canada section on the official website of Elections Canada. After the hearings, the Commissions decide whether changes are needed to their initial proposals. They then prepare their reports and provide them to the Chief Electoral Officer of Canada, who forwards them to the Speaker of the House of Commons for presentation. Members of the House of Commons have 30 days to review the reports and lodge objections with a designated Committee of the House. This Committee then has 30 sitting days to review the proposed maps in light of the objections received from Members of Parliament. The objections, committee proceedings, and evidence obtained are sent to the Chief Electoral Officer and referred back to the relevant Commission, which must consider and decide on them within 30 days. The Commission may modify its report accordingly if deemed necessary.

Green[38], who also highlights the New Zealand case. Significant attention to transparency has also been devoted to the constituency boundary review system employed in the United Kingdom[39].

Most importantly, the most compelling reason to increase transparency and participation in the constituency updating procedure lies in the fact that, substantively, it is always challenging to achieve optimal electoral geography—namely, one that does not inherently favour or disadvantage any of the contenders. Indeed, the myth of nonpartisan line drawing in the production of electoral constituencies has long been discussed[40]. However, while obtaining the best solution substantively may be complicated, what can reasonably be achieved is procedural fairness. A more transparent and participatory procedure can compensate procedurally for what is not guaranteed substantively. Through a process that clearly brings all interests at stake into play and forces process actors to dialectically justify their choices, a more transparent and participatory procedure can level the playing field. Essentially, therefore, opting for a participatory and transparent procedure aligns with enhancing the technical and bipartisan aspect in configuring the composition and role of the technical Commission.

In summary, placing greater emphasis on the technical and non-partisan nature of the Commission, adopting procedures that ensure timeliness in the production of electoral constituencies, and implementing measures to increase participation and

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[38] The process of electoral boundary review varies from state to state, differing both in terms of the entities entrusted with it and the methods by which it is carried out. Typically, all states involve some form of stakeholder participation, including:

Identifying local communities: Many states require consideration of "communities of interest" in the redistricting process. Since such communities can be difficult to identify and locate, public involvement is crucial. Members of local communities can assist by delineating boundaries that should be maintained within the same district or identifying appropriate locations for potential division. Stakeholders can agree on community boundaries through town hall meetings, community forums, and with the assistance of non-profit organizations, often using simple technologies.

Participating in public hearings: Many states hold public hearings as part of the redistricting process. The schedules for these hearings are often published on dedicated websites.

Submitting community maps: During public hearings, and sometimes in a separate process, it may be possible to submit maps, including those of individual communities, to the entity responsible for redrawing boundaries. These maps may be accompanied by petitions supporting the proposed boundaries and can serve as useful references for authorities. In case of disputes, courts may use them as a guide. No particular formalities are required for map submissions; it may be sufficient to draw boundaries with pen and paper or use online tools, such as those developed by the Independent Redistricting Commission of California.

Additionally, stakeholders can utilize media coverage of the redistricting process by submitting comments, articles, or letters to the editor on aspects they consider relevant and impactful to their communities.

[39] HOUSE OF COMMONS LIBRARY, *Constituency boundary reviews and the number of MPs*, November 20, 2023.

[40] P. J. TAYLOR, and G. GUDGIN, *The myth of non-partisan cartography*, Urban Studies, 1976, 13-25; G. GUDGIN, and P. J. TAYLOR, *Seats, votes and the spatial organisation of elections*, Pion, London, 1979; P. J. TAYLOR, and R. J. JOHNSTON, *Geography of elections*, Holmes and Meyer, New York, 1979, Chapter 7-8.

transparency appear to be the most suitable measures, in light of both Italian and foreign experiences, to ensure better effectiveness of the constitutional principles underlying the matter. Particularly, these measures can be articulated in accordance with the recommendations of the Venice Commission.