2014

**Parliamentary Groups in the Evolving Italian Political System**

Vito Cozzoli

Follow this and additional works at: https://dsc.duq.edu/dlr

Part of the **Comparative and Foreign Law Commons**

**Recommended Citation**


This Article is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.
Parliamentary Groups in the Evolving Italian Political System

Vito Cozzoli*

I. INTRODUCTION: WHY ARE PARLIAMENTARY GROUPS IMPORTANT IN A COMPARATIVE PROSPECTIVE? .......... 177

II. PARLIAMENTARY GROUPS AGAINST THE BACKDROP OF CHANGES IN THE ITALIAN SYSTEM ....................... 178

III. HISTORICAL BACKGROUND TO THE ESTABLISHMENT OF PARLIAMENTARY GROUPS ............................................. 183

IV. FORMATION OF PARLIAMENTARY GROUPS ...................... 185

V. THE SO-CALLED “MIXED GROUP” ........................................ 189

VI. THE FUNCTIONS OF PARLIAMENTARY GROUPS: INDIVIDUAL MEMBER PRIVILEGES AND PREROGATIVES ................................................................. 192

VII. THE PHENOMENON OF PARLIAMENTARY “MOBILITY” .. 199

VIII. COMPARATIVE REMARKS: THE U.S. HOUSE OF REPRESENTATIVES AND SENATE ............................ 203

IX. CONCLUSIONS .................................................................. 207

I. INTRODUCTION: WHY ARE PARLIAMENTARY GROUPS IMPORTANT IN A COMPARATIVE PROSPECTIVE?

The nature, work and legislative trends in parliaments across the world are subject to research, analysis, and debate amongst scholars and practitioners.¹ This explains why a study on parlia-

* General Counsel at the Italian Parliament, Chamber of Deputies. With special gratitude for Dante Figueroa, Marco Cerase, and Edward Cervini.

¹ For example, a study congress was held in Boston in November 2008 entitled The Most Disparaged Branch: Congress. The Role of Congress in the 21st Century. Symposium, The Most Disparaged Branch: Congress. The Role of Congress in the 21st Century. 89 B.U. L. REV 335 (2009). Moreover, in 2010 two former officials of perhaps the oldest national Parliamentary institutions in the world—Westminster and the U.S. Congress—published a comprehensive work on parliamentary proceedings and precedent that was presented in many locations around Europe and North America. Many more essays can be found in recent publications about this subject matter. Id.; W. McKay & C.W. Johnson, Parliament and Congress: Representation and Scrutiny in the 21st Century, (Oxford University Press, 2010). Before this book, the classical comparison between the UK and the U.S. was that which is quoted above. K. Bradshaw & D. Pring, Parliament and Congress, (Quartet Books, London, 1973).
mentary groups (hereinafter also "parliamentary fractions") could be a contribution in this landscape.

Parliamentary fractions arise from the elected members of a given party in a nation's parliament or governing body. A fraction is not simply an association of elected members united by a common goal, and its presence suggests more than the coincidental election of men and women who think alike. Parliamentary groups result from the organization of political parties within legislative bodies and reflect the will of the electorate.

The study of parliamentary fractions provides a vehicle for debate over the role of parliaments, the way they function, and what relevance they maintain in a world where the public decision-making process sharply diverges from the one that existed for most modern nations' constitutional framers two, or even three, centuries ago.

This essay is intended to offer analysis on the significant procedural roles the parliamentary fractions play in both Houses of Parlamento Italiano, the Italian Parliament. This essay also wishes to offer some comparative remarks and to provide the English-speaking reader with adequate insight into the similarities and differences between the multi-party Italian framework and the two-party system prevailing in the United States Congress.

II. PARLIAMENTARY GROUPS AGAINST THE BACKDROP OF CHANGES IN THE ITALIAN SYSTEM

The examination of parliamentary groups provides a particularly important vantage point for understanding the dynamics of institutional change and the transformations that have occurred in the Italian political system. It is precisely the parliamentary

---

2. The Floor of The House approved a change in its Rules—on 25 Sept, 2012—that gives this definition and provides for checks on fractions' budget. See It. Chamber of Deputies R. 14(01). "Parliamentary Groups are associations of Deputies established pursuant to the provisions set forth in this Rule. Inasmuch as Parliamentary Groups are entities necessary for the functioning of the Chamber of Deputies, pursuant to the Constitution and Rules of Procedure, they shall receive funds from the Chamber of Deputies budget to carry out their activities." Id.

3. BRADSHAW & PRING, PARLIAMENT AND CONGRESS, supra note 1, at 14; see also R.H. DAVIDSON & W. J. OLESZEK, CONGRESS AND ITS MEMBERS 163 (CQ Press, Washington 2000).

4. BRADSHAW & PRING, PARLIAMENT AND CONGRESS, supra note 1, at 10-14.

groups that constitute the crucial linkage between the government and parliament on the one hand, and coalitions and political parties on the other. Parliamentary groups influenced some of the most significant developments in the transitional period in which the Italian institutional system has been enduring—the crisis of the traditional political parties, the difficulty of new political players to become established, the evolution of electoral law—and thus have had inevitable repercussions on the organization and functioning of Parliament. These developments represent major, symptomatic changes in the institutional process while, at the same time, sending out contradictory signals of instability typical of the Italian situation in recent years. Indeed, the evolution at the Chamber of Deputies (hereinafter also the “Parliament House”) seems to have surpassed the 1971 reform’s approach in “the real need for the Chamber to be organized by Groups and for the Groups,” in favor of the emergence of a new operational rule based on the dialectic between majority and opposition.

As stated earlier, this paper will try to examine the different role given to the parliamentary groups under the new bipolar conception of relations between the political forces within the Houses of Parliament in the wake of the largely “first past the post” electoral system introduced in 1993 (which was, however, transformed again in a proportional representation system in 2005) and following the reforms of the Rules of Procedure of the Parliament House introduced in 1997-1999. More than ten years later, the importance of these changes—which have also affected the role of
parliamentary groups—is also emphasized by the fact that the Rules of Procedure very often anticipate the changes in the politico-institutional system because of their direct linkage with the Italian Constitution.

With the enhanced emphasis on stability in government, and the development of the Italian political system in the direction of a "first past the post" system, there has been a stronger legitimization of parliamentary majority and opposition "poles," which enjoy significant parliamentary privileges and prerogatives. Indeed, the parliamentary Rules of Procedure explicitly refer to majority and opposition groups as "poles." This innovative approach to the parliamentary dynamics—a rejection of the pact-building approach that characterized the 1971 Rules of Procedure and the so-called "blocked" democracy model—strengthens the role of the government and its parliamentary majority, without weakening the role of the opposition. However, this method does not yet seem to be typical of the overall approach adopted by the current Rules of Procedure. The current rules do not provide for parliamentary groups to be structured along the lines of the two-way division of majority versus opposition, partly because the political system has not yet acquired a fully bipolar character. Indeed, the political forces making up the various electoral coalitions have failed after their election to set up a parliamentary group as a single political coalition representing them all. Once again they have split and divided, preserving their separate political identities and their share of the popular vote.

10. See Manetti, supra note 8, at 413, n.1.

11. Through programming of parliamentary business and going beyond the principle of unanimity, while imposing strict constraints on the distribution of parliamentary time, such as to ensure a predictable timeframe, both to the majority and the opposition, for the consideration of measures; voting on selected representative amendments or by principles, for the sake of procedural economy; time limits for the consideration of bills by Committees; oversight and fact-finding procedures vis-à-vis the Government; Prime Minister Question Time and urgent interpellations.


14. According to the formula conventio ad excludendum, post-war Italy was a blocked democracy, in which government transformation was virtually impossible due to the presence of the Communist Party in the political system. See ELIA L., Forme di governo, XIX ENCICLOPEDIA DEL DIRITTO 658 (1970).

15. Regarding the former aspect, the number of Parliamentary Groups that have been established paradoxically exceeds that of previous parliaments using the pure proportional system: in the Fourteenth Parliament the Chamber of Deputies had eight groups (nine in the Senate) and at the end of the Thirteenth Parliament there were nine groups; in the
The Rules of Procedure of the Chamber seem to have taken account of this complex and contradictory situation by introducing a series of measures to encourage a polarization of parliamentary dynamics, giving specific prerogatives to the majority and the opposition groups. They have also sanctioned the growing fragmentation of the Chamber by adopting new provisions for the Mixed Group. These provisions acknowledge the various component parts or groupings of the Mixed Group as each having an autonomous political and parliamentary personality: mini-groups, as it were, within the Group. These phenomena are related to

Twelfth Parliament there were as few as eight, which then rose to eleven, while the Eleventh Parliament had seven de jure groups, to which a further six authorized groups were subsequently added. Apart from this, the political situation in the Thirteenth Parliament was even more fragmented because of the formal acknowledgement in the Rules of Procedure of the Chamber of Deputies of the political entities or groupings established within the Mixed Group (in the Fourteenth Parliament there were nine of these groups). Recently, in the Fifteenth Parliament that ended early in 2006, Italian history had never seen such a number of Parliamentary groups: fourteen Parliamentary groups and four political entities of groupings established within the Mixed Group. But in 2010, during the Sixteenth Parliament, there are a smaller number of Parliamentary groups: six Parliamentary groups and six political entities or groupings established within the Mixed Group.


18. The Mixed Group brings together Deputies who have failed to declare their membership of a parliamentary group and those who opt for joining it.

19. Further political sub-grouping may be established within the Mixed Group. See It. Chamber of Deputies R. of P. R.14(4-5).

20. See F. LANCHESTER, Presentation at the Seminar on the revision of the Constitution at LUISS University (March 20, 1998) on La riforma del regolamento della Camera dei
the weakness of the party system in the current transition and to
the impact of the new electoral legislation that tends towards a
majoritarian system. The present stage in the institutional de-
velopment of Parliament therefore seems to involve a reappraisal
of the role and function of parliamentarians in the various forms
of democratic representation, both through the parliamentary
groups and as individual Members of Parliament (hereinafter
"MPs").

More specifically, because of the unifying function performed by
the groups with regard to their members and by being the expres-
sion of the political parties, the Groups are the necessary bench-
mark for the structure and the operation of each House of Parlia-
ment. Today, more than ever before, the Groups are being re-
quired to draw up the political strategies of the parties as well as
the coalitions to which they belong, fostering homogenization and
political coordination.

However, individual parliamentarians have increasingly de-
manded greater visibility and scope in political and parliamentary
decision-making processes. The majoritarian electoral law is en-
hancing their role and their position and very significantly is giv-
ing them a more immediate and direct relationship with their con-
stituents. This will have to be re-assessed when the new propor-
tional legislation with a majoritarian correction enacted in 2005 is
brought into effect.

Against this background, the protection of the opposition and
individual members is the natural way of balancing the “first past
the post” system, thereby avoiding the risks of excessively simpli-
fying the polarized political dynamics. This new parliamentary

deputati, in I costituzionalisti e le riforme. Una discussione sul progetto della Commissione
camerale per le riforme costituzionali, 246 (S.P. Panunzio ed.1998).
21. See VERZICHELLI L., I gruppi parlamentari dopo il 1994. Fluidità e riaggregazioni,
22. Through political parties.
23. Legge Dicembre 2005 n.270 (It.) introduced a fully proportional system for election
to the Chamber of Deputies, with the possibility of the award of bonus seats for a nation-
wide majority result, replacing the earlier partly proportional system. The new rules pro-
vide that with regard to the candidates, the political parties submitting lists may also form
coalitions; parties intending to stand for election to the position of ruling party must also
submit their manifesto and announce the name of their leader. The voting procedure per-
mits voters to cast only one vote on their preferred list, with no preference votes. The seats
are distributed proportionately nationwide between the coalitions of lists and the lists that
have exceeded the statutory minimum thresholds.
24. An organization of parliamentary business totally based on the majoritarian princi-
ple does favor a stable government and a transparent interaction between majority and
system is based on the idea of establishing a new identity for Parliament as the forum for political debate and decision-making,\textsuperscript{25} according to the rationale of "decision-making democracy,"\textsuperscript{26} thus moving away from the "blocked democracy" model.\textsuperscript{27} The parliamentary process is thus intended to arrive at decisions by political debate between the majority groups and the opposition groups.\textsuperscript{28}

In short, between 1997 and 1999, the Rules of Procedure in both the Italian Houses were changed in order to adjust parliamentary proceedings to a new political scenario based on the debate between the majority and the minority parties that entailed a more competitive approach to politics and legislation. Since the general election of 1994 there has always been—except in recent times, with a broad coalition supporting a technical cabinet related to economic emergency—a majority party and an opposition party. Therefore, the specific rules regarding parliamentary groups had to be changed.

\section*{III. Historical Background to the Establishment of Parliamentary Groups}

The creation of parliamentary groups, as permanent organizations of senators or deputies belonging to the same party or at least taking their inspiration from the same political ideology, within the parliamentary assemblies, is not exclusive to the modern status of political parties because the tendency to group together in terms of political kinship is something that is common to all political bodies.\textsuperscript{29}
Historically, the formation of parliamentary parties preceded the formation of the popular parties that, initially, were merely the projection of the divisions existing within the Parliament. However, the question of recognizing and regulating the political groups only arose with the extension of universal franchise and the adoption of the proportional electoral system, with a majoritarian correction replacing the previous "first past the post" system.

In Italy, it was the 1919 Electoral Act[^30] that introduced the new electoral system of competing lists with proportional representation. The Parliamentary Groups entered the Chamber after the 1920 procedural reform[^31]. It was the internal response that adjusted the regulations to the new Italian constitutional system that followed the 1919 elections. The liberal state of government by the nobles became a state based on broad democratic participation. The entry of political parties changed both the scenarios and the personalities in politics, and the parliamentary rules reflected the change and institutionalised the new political dynamics.

While the Chamber under the "Statuto Albertino"[^32] made no reference to party membership, the 1920 Chamber of Deputies deferred to a party-based system in which the groups in the Chamber were the mandatory organizational structure for the elected representatives. The rules at that time were very similar to the

[^30]: Leggee 16 Novembre n.1985 (It. 1918), Leggee 15 Aug. (It. 1919) introduced a reform of the electoral rules for the elections of 1919 and 1921. As compared with the 1912 electoral law, the franchise was extended to all male citizens 21 years of age or who had performed military service. The proportional system—already used from 1882 to 1891—was reintroduced in order to ensure that also minority lists that had gained a significant share of the votes would be represented in Parliament.

[^31]: The 1919 general elections, held soon after the introduction of the new list-based proportional system, which led to the 25th Parliament of the Kingdom of Italy, were a major turning point in parliamentary law and, more importantly, provided an political and institutional answer to the coming to the fore of the popular masses and the development of the new mass-based political parties. As a result, ten new Rules were introduced in parliamentary procedures to regulate Parliamentary Groups and Standing Committees. A new system of parliamentary rules thus began to take shape that—to the exception of the Fascist interruption—would shape until the Republican period the organization of the Chamber of Deputies on the basis of Groups and Committees.

[^32]: The Constitution of The Kingdom of Italy was adopted in 1848 and overruled in 1948, when Italy became a Republic with Constitution.
present rules: (1) it was mandatory to register as a member of a party; (2) there had to be a minimum of twenty Deputies; (3) as an exception smaller groups could be authorized; (4) arrangements were made for a Mixed Group; and (5) the Groups appointed their representatives to parliamentary Committees.

The reasons underlying the 1920 reform of the Rules were set out in the Constitution of the Republic that recognized political parties (article 49) referring to Parliamentary Groups (articles 72 and 82) for the composition of the Committees sitting in an enacting capacity, and Committees of Inquiry, which are required to reflect the proportions of the Parliamentary Groups. These provisions enshrined the principle of the organization of Parliament based on Groups. With the 1971 reform, the Rules of Procedure further specified and broadened many of the powers of the Groups by recognizing that the Chambers were “organized by the Groups and for the Groups” (as stated in the explanatory memorandum on the changes made to the Rules of Procedure).33

IV. FORMATION OF PARLIAMENTARY GROUPS

The Constitution of the Republic refers to the Groups in two places, albeit only indirectly: in article 72 and article 82. However, there can be no doubt that the parliamentary Groups are not only the natural and necessary projection of the parties in Parliament, but are also the load-bearing structure of parliamentary organization. Membership of a group is mandatory on all parliamentarians: the Rules of Procedure require34 Deputies to declare to which Parliamentary Group they wish to belong within two days of the first session of the House, and Senators within three days. The minimum number required to set up a Parliamentary Group in the Chamber of Deputies is twenty, while the minimum number for senators is ten. But there are possible exceptions for both Chambers.

The Bureau of both the Chamber of Deputies and the Senate may authorize fewer parliamentarians to create a group than the prescribed number, subject to certain conditions. The conditions provided by both sets of rules for the creation of smaller groups (dictated by Rule 14 of the Rules of Procedure of the Chamber and the Senate), are:

34. See R. 14(3).
a) to be the expression of a political movement that has some
recognition in the social and political texture of the Country;
and

b) to have put forward candidates in a minimum number of
counties, hence garnishing a minimum number of
votes.\(^{35}\)

These requirements, however, still refer to the old rules of pro-
portional representation. The Rules of Procedure have taken up
the provisions of the new electoral law in several places by intro-
ducing new procedures and concepts (in terms of scheduling par-
liamentary business, pre-legislative scrutiny and consultation,
and parliamentary oversight). However the statutes have not
completed the necessary adjustment of the rules governing the
composition of groups waiving the minimum required numerical
membership, which are still the ones that existed under the old
proportional representation electoral system (prior to the largely
“first past the post” system introduced in 1993). In addition, the
Parliamentary Rules of Procedure for the past twelve or so years
have not been consistent with the new largely “first past the post”
electoral legislation. With the adoption of the new proportional
representation legislation in 2005, the provisions of the Parlia-
mentary Rules of Procedure have become fully current again be-
cause they were drawn up precisely for the proportional represen-
tation system, even though some elements of the rules have not
been contemplated in the new electoral law.

In the Twelfth and Thirteenth Parliaments, these provisions re-
garding authorization to waive the minimum number of members
required to set up a Parliamentary Group were not applied, and
indeed were deemed not to be applicable, even by analogy, to the
new semi-first-past-the post electoral system; the Bureaus of both
the Chamber of Deputies and the Senate turned down the re-
quests that were made by various political groups for waivers.\(^{36}\)

In the Fourteenth Parliament, there was a change in the case
law of the Chamber of Deputies.\(^{37}\) Article 14(2) of the Rules of
Procedure of the Chamber had since become inapplicable (which,
as already mentioned, referred to the previous proportional repre-
sentation electoral system) and was considered to have been su-

\(^{35}\) See R. 14(2).

\(^{36}\) COZZOLI, supra note 6, at 66.

\(^{37}\) See id. at 352.
Parliamentary Groups

perseded by the Rules of Procedure Committee, which adopted a new interpretation of the rule to adjust it to the new system. The Committee ruled that, apart from the literal wording of that provision, it was designed to make it possible for representatives of the political forces to set up a Parliamentary Group provided that they were permanently organized in the country, had taken part in the elections using their own lists of candidates, and had obtained, nationwide, at least four percent of the valid votes cast.\textsuperscript{38}

The Rules Committee therefore gave permission for the small Communist Party (Rifondazione Comunista) to form a Group, which was subsequently authorized by the Bureau. At the same time, the Bureau urged that Rule 14(2) governing this issue should be amended to bring it into line with the legislation governing elections to the Chamber of Deputies. This interpretation was accompanied by yet another guideline adopted by the Committee, ruling out the possibility to invoke this interpretation in the present Parliament for any further political groupings.

The Committee also took note of the fact that the elements characterizing the position of Rifondazione Comunista could not be claimed again in the same Fourteenth Parliament for other political groupings. This was a clear way of emphasizing that this new interpretation of the Rules of Procedure of the Chamber could only be used at the beginning of the Fourteenth Parliament to authorize political forces that had individually exceeded the electoral threshold, and therefore could not be used for groups that, for example, had been created by splitting off from existing groups.\textsuperscript{39}

The establishment of Groups under a waiver became very topical in 2006 at the beginning of the Fifteenth Parliament, following a proportional representation-oriented reform adopted at the end of the Fourteenth Parliament.\textsuperscript{40} The electoral system was then changed back to a proportional representation mechanism with a majoritarian correction in 2005; the elections of 2006 returned a Parliament full of small parties that were not formally entitled to be a fraction within the Assembly but demanded to be one nonetheless.


\textsuperscript{39} See, e.g., S. Curreri., I gruppi parlamentari autorizzati nella XIV legislatura in www.forumcostituzionale.it, 12 (2006); I gruppi parlamentari nella XV legislatura in Quaderni costituzionali, n.3 (2006).

\textsuperscript{40} See Legge Dicembre 2005, supra note 23, at n.270, on the new electoral system voted in 2005.
Indeed, the Bureau of the Chamber received requests in 2006 to set up six parliamentary Groups with less than twenty members. The Rules Committee was then asked at its meeting on May 16, 2006 to consider and provide an interpretation on the scope of the application of Rule 14(2) in view of the new electoral legislation. This provision had never been amended since its coming into force in 1971, despite several changes to electoral legislation. Thus, there was a need for a clarifying interpretation to ensure consistency between the new law, on the one hand, and the requirement for political parties to be organized on a national basis, as well as the electoral result on the other.

With respect to the requirement for political parties to be organized on a national basis, and in view of the need to ensure consistency with the evolution of the political system and the electoral law, the Rules Committee adopted the following stance on the occasion of the above-mentioned meeting: “A Party organized on a national basis” is deemed to mean a “political force” (also including several parties) which, although not strictly corresponding to the letter of the law, is unequivocally identifiable at the time of elections because it has submitted electoral lists with the same emblem, provided it was not established after the elections. Thus, the electoral list was considered as the criterion to identify the political force, which is recognized by the Rules as a relevant entity for the Parliament.

With respect to the electoral result required, the Rules Committee held that, in view of the changed electoral system, electoral lists—which have been registered in at least twenty constituencies—are required to obtain access to the allocation of seats on a national basis. On the possibility of setting a minimum number of members for the establishment of parliamentary Groups to be authorized under Rule 14(2), the Rules Committee stated that a strict interpretation of the Rules does not seem compatible with an interpretation whereby the authorization to establish a Group would require a minimum number of members. In the light of this interpretation adopted by the Rules Committee on May 17, 2006, the Bureau of the House held a lively and, at times, harsh debate, which continued the next day on the Floor of the House. As a result, the Bureau authorized the establishment of four small groups under Rule 14(2): a socialist-leaning group, a neo-communist one, an environmentalist one and a Catholic one.

The Bureau did not authorize, however, a Group called ‘Movement for Autonomy,’ as it had not fulfilled the electoral result re-
requirement in compliance with the interpretation rendered by the Rules Committee on the strength of the new electoral legislation. The new parliamentary group, if authorized, would not have represented the entire political force identified by the list which had participated in the elections, as the above-mentioned movement had submitted joint lists with the *Lega Nord*.41

Concerning the status of groups set up under a waiver, it should be recalled that during the Fifteenth Parliament the principle of equal status among the groups was formally established, with no *deminutio* for groups set up under derogation. In 2008, however, at the outset of the Sixteenth Parliament, no requests to authorize the establishment of groups under a waiver (i.e., below the minimum membership requirement) were submitted. In the Chamber of Deputies, the Bureau's powers were strengthened such that the Bureau could now dissolve a parliamentary group if falling below the minimum number provided for under the Rules. This power is consistent with the sole responsibility of the Bureau to authorize the establishment of groups under a waiver (i.e. below the minimum membership requirement).

V. THE SO-CALLED "MIXED GROUP"

Members who have not declared membership of any other group constitute the "Mixed Group." In the Chamber of Deputies during Thirteenth Parliament, it became particularly necessary to ensure greater visibility and political autonomy for the minority political forces present in each of the two electoral coalitions.

A problem therefore arose concerning the nature and the internal management of the Mixed Group, which had become unprecedentedly and abnormally large because it comprised, not only individual members of Parliament, but whole political movements that had not wished or been able to find a different placing within the electoral coalitions, and had preferred to remain independent. Because of these situations, at the end of the Thirteenth Parliament the Mixed Group was comprised of ninety-two members in the Chamber of Deputies (of whom seventy were members of internal political groupings and twenty were not), which was almost five times larger than the original number (twenty-six deputies), making it numerically the third largest group in the Chamber.

41. See COZZOLI & CASTALDI, supra note 5, at 355. The *Lega Nord* is a party fighting for independence of the North Eastern part of Italy.
(approximately fifteen percent of the overall membership of the Chamber of Deputies). In the Senate, the Mixed Group was comprised of forty-three senators or about fourteen percent of the total membership. This was less marked in the Fourteenth Parliament, where the Mixed Group was comprised of sixty-three Deputies and thirty-four senators.

Additionally, during the Fifteenth and Sixteenth Parliaments, the number of MPs who joined the Mixed Group decreased considerably. This was clearly due to the much stronger linkage between MPs and his/her party under in the new electoral legislation. In the Fifteenth Parliament, Deputies belonging to the Mixed Group amounted to thirty-three members, as against thirty-one Senators; in the Sixteenth Parliament, twenty-four Deputies and sixteen Senators joined the Mixed Group.

This group is extremely varied, because it has lost its “last-resort” character and has now become a “super-group” with widely differing types of political forces permanently belonging to it. As a result, its political thinking is very difficult to clearly identify. The organizational and political problems that have made it difficult to govern the Mixed Group were addressed by the 1997 reform of the Rules, which was intended to regulate the conditions for membership of the Mixed Group. Political groupings could be established within the Group under the following conditions:

- at least ten Deputies must submit the request (this is a purely numeric requirement; this procedure for creating an internal grouping within the Mixed Group is therefore detached from any relationship to a particular party or political movement);

---


43. Deputies belonging to the Mixed Group may ask the President of the Chamber to form political groupings within it, on the condition that each consists of at least ten Deputies. Smaller groupings may also be formed, as long as they include not less than three Deputies. These Deputies must represent a party or political movement the existence of which can be demonstrated, on the date of the elections to the Chamber of Deputies, by precise and unequivocal features, and which must, alone or jointly with others, have presented lists of candidates or individual candidates in the single-member constituencies. Not less than three Deputies belonging to linguistic minorities protected by the Constitution and referred to in an Act of Parliament may also form a single political grouping within the Mixed Group. These Deputies must have been elected, in areas in which these minorities are protected, from, or in connection with, lists that reflect these minorities. See Rule 14 (5).
• a request made by at least three Deputies, but in this case they would have to represent a party or political movement that had stood for election to the Chamber of Deputies as such (this second type of grouping has a political characterization, even though the numerical condition still applies, and although the number is smaller than in the first case);

• a request can be entered to set up a single political grouping by at least three deputies who were elected to represent linguistic minorities protected by the Constitution and recognised by law (in this case three conditions must be met: (a) a minimum of three deputies must apply; (b) they must be members of a linguistic minority; and (c) they must have been elected within lists representing a linguistic minority).

It was because of this "bloating" of the Mixed Group that it became necessary to give prerogatives and rights to the political groupings established therein to ensure that they are as broadly involved in parliamentary work as possible by recognizing that they possess their own legitimacy and political visibility, as well as specific powers based on the Rules of Procedure. One only has to think of the organization of the debates taking into account the groupings and the times to be allotted to them, and their participation in the work of the Conference of Parliamentary Group Chairpersons.

It should be noted, however, that the establishment of political groupings within the Mixed Group is only provided for by the Rules of Procedure of the Chamber of Deputies. There is no general provision for this to occur in the Senate, but representatives of the political groupings within the Mixed Group do have the right to submit parliamentary "interpellations" using the shortened procedure, pursuant to article 156-*bis, para. 1.

---

44. See N. LUPO, Le recenti modifiche del regolamento della Camera: una riforma del procedimento legislativo "a Costituzione invariata", in Gazzetta Giuridica Giuffrè, 2, n. 37 (1997).
VI. THE FUNCTIONS OF PARLIAMENTARY GROUPS: INDIVIDUAL MEMBER PRIVILEGES AND PREROGATIVES

According to the parliamentary rules, the Groups have two types of functions: (1) in relation to the organization of the two Houses; and (2) in relation to individual members.45

First, with regard to the functional organization of the Chambers, the Groups are the yardstick for the composition of the internal bodies, in order to guarantee their representative character and (as far as possible) their proportionality. They are also the instrument which makes it possible to guarantee the particular “political economy,” as is emphasized in the literature46 of parliamentary business. In this regard, the Group chairpersons enjoy a number of procedural prerogatives which are often (in the Chamber of Deputies, but not in the Senate) linked to the size of their groups. These are known as weighted requests, where the Rules of Procedure require that a particular procedural point be supported by a given quorum of deputies "or by one or more Group Chairpersons which, separately or jointly, account for at least the same number . . . ."47 Then, there are cases in which the procedural power of the Group Chairpersons is recognized independently of any weighting of the numerical size of the group (which is obviously favorable to groups with smaller numbers of members).

The groups have a number of powers and privileges within the parliamentary system according to the Rules of Procedure of the Chamber of Deputies.

With regard to the agenda setting, the Group Chairpersons have deliberative voting powers at the Conference of the Group Chairpersons for approving the agenda and the timetable of the House; the representatives of the groups also attend the meetings of the Committee Bureaus for the adoption of the program and timetable. Each group is allocated time which is partly equal for all the groups, and partly proportional to the size of the group memberships. A Parliamentary Group may request that for the phases following a general debate on an exceptionally important bill, time quotas are established only following a unanimous decision of the Conference of Group Chairpersons, or when the debate is unable to be concluded and the bill is set down for a later time-

45. See COZZOLI, supra note 6, at 28.
47. Rule 114(1); see also Rules 44(1) and 114(2).
table. For time-restricted debates, it is mostly permitted for one deputy to speak for each group, in addition to the dissenting members.

The relevant committee must initiate consideration of those bills endorsed by a Parliamentary Group within one month. The Chairperson of a Parliamentary Group may request the Bill to be declared urgent; the Conference of Group Chairpersons or the House resolves on the request. Following the reporting committee's examination of a bill, dissenting groups can appoint minority rapporteurs to represent them. In connection with voting on amendments, a Parliamentary Group may table amendments proportionally to the size of the group and a number of the clauses in the bill, which must be put to a vote even if the Speaker orders a summary vote based on selected amendments or by principles.

Furthermore, the chairperson of a Parliamentary Group has a number of procedural powers, provided that the group comprises of at least (a) one-tenth of the total number of Deputies: in this case he/she may seek the referral of a bill to the floor of the House assigned to a Committee acting in an enacting capacity, or request amendments from the Committee in the course of a parliamentary session to be delayed by a maximum of three hours; (b) thirty Deputies: he/she may request a secret ballot, submit sub-amendments to the amendments tabled by the Committee in the course of the session, or submit proposals to debated topics which are not on the order of the day or agenda; or (c) twenty Deputies: he/she may request voting by roll-call, an adjournment of the debate, submit amendments and sub-amendments to motions within deadlines that are shorter than those normally prescribed, or request a debate to be broadened to discuss the general thrust of a particular bill.

Independent of the size of the group, the Parliamentary Group Chairperson may also: (a) invite the Speaker of the House to request information, clarification and documents from the Court of Auditors; (b) table a preliminary question regarding the substance of a decree law or of a Bill enacting a decree law; (c) take up an amendment withdrawn by its sponsor; (d) table motions or request the discussion of motions withdrawn by their movers; (e) propose a different referral for a particular bill; (f) request a debate on a bill by titles or parts; (g) submit proposals for a different transposition of the principles and guiding criteria for re-wording draft amendments to the Rules adopted by the House; (h) request that the
House to meet in closed session; and (i) object to the referral of a bill to a Committee during a period of adjournment.

With reference to participation of groups in the bodies of the Chamber, the groups must be represented at the Bureau and (mostly in proportion to their numbers) on Committees. The group chairperson is also vested with other prerogatives relating to parliamentary oversight, and may submit no more than two interpellations as a matter of urgency for each month of parliamentary business. Each group also has the right to submit a parliamentary question for each session during which specific time for questions is scheduled. Lastly, the groups are entitled to use facilities, equipment and contributions from the Chamber of Deputies’ budget, bearing in mind the general basic requirements and the size of each group.

For individual members, affiliation to a group is a necessary condition of their status, for two reasons: (1) primarily in order to ensure a more economical and rational organization of parliamentary business; and (2) the Rules of Procedure establish a very close linkage to the parties which, as provided by the Constitution, are designed to prevent the fragmentation of the parliamentary mandate, which is typical of the liberal nineteenth century systems.

The Parliamentary Groups have their own internal rules of procedure (through their Statutes or Rules). As far as “whipping”—the requirement that parliamentarians toe the Group line—or group discipline is concerned, it should be borne in mind that individual members are not legally obligated to vote according to the indications of their Group. The provisions of article 67 of the Constitution state that an “imperative mandate”48 is prohibited. The Constitutional Court, in judgement 14 of March 7, 1964, stated that each parliamentarian “is free to vote according to the indications of his or her party (or Parliamentary Group to which he or she belongs) but they are also free not to; no provision could lawfully require anyone to be subject to any sanctions for voting against the directives of the party.” The Council of State, the supreme administrative court, also ruled in judgement 642 of June 13, 1969 that party discipline is an element extraneous to the normal exercise of parliamentary activities and that parliamentarians could refuse to comply with group discipline either by facing

---

48. “Each Member of Parliament represents the Nation and carries out his/her duties without a binding mandate.”
internal sanctions, or resigning from the group while retaining their parliamentary mandate.

With regard to all of these obligations, the Rules of Procedure of both the Chamber and the Senate act as guarantees, protecting the rights of dissenting members and the activities of individual parliamentarians. Indeed, in 1988 the Rules of Procedure of the Senate laid down specific directives for the statutes of the Groups to protect individual senators. This was a momentous turning point. Only a short time before then, there had been a rigid separation between the internal sources of law governing the groups and parliamentary rules.

According to article 53(7) of the Senate Rules of Procedure following the 1988 reform, the internal rules of individual Parliamentary Groups are required to provide for procedures and forms of participation that enable individual senators to express their opinions and submit proposals on items on the parliamentary agenda. With this provision, the Senate Rules of Procedure refer to the Statutes of the Groups as a source of law with including guiding principles to protect the freedom of action of each individual member.

Meanwhile, with the introduction of article 15-bis, the Rules of Procedure of the Chamber of Deputies have also dealt with the question of the internal democracy of the parliamentary groups, particularly within the Mixed Group. This rule, which develops the contents of the final sentence of article 15(2), is more appropriately positioned in the new article 15-bis. It requires that the steering bodies of the Mixed Group be set up in such a way that reflects the size of the various political groupings. It specifies that the members of the steering bodies of the Group represent their respective groupings in relations with the other organs of the Chamber of Deputies. They therefore exercise all powers and rights conferred on their grouping and act on its behalf and in its name in all internal official bodies.

Notwithstanding their independence with regard to the adoption of the statutes of the Group, the steering bodies of the Mixed Group of the Chamber of Deputies must resolve any measure in which the interests of the various groupings are involved. The steering bodies must ensure the balance between the groupings

---

49. "7. The Rules of Procedure of individual parliamentary groups shall lay down the procedures and manner whereby individual Senators may express their positions and submit proposals regarding the matters included in the programme of business or the agenda."
proportionally to their numbers. Whenever any of the groupings believes that any of its fundamental political rights have been violated in this respect, it may appeal the decision to the Speaker of the Chamber of Deputies. The Speaker shall make a decision personally, or place the matter before the Bureau. To date, this provision has not been applied.\(^50\)

Apart from this exceptional power conferred on the Speaker of the Chamber of Deputies by Rule 15-bis(2), the Rules of Procedure of the Chamber of Deputies make no other provision authorizing the Speaker or the Bureau to adopt measures on their own authority, or to rule on or modify resolutions adopted by the Parliamentary Groups. The exclusion of this power is a means for protecting the autonomy of the parliamentary groups' freedom in performing their political/parliamentary role.

In contrast, Rule 12(2) is quite different. This Rule vests the Bureau with the task of ruling on appeals concerning the establishment or first meeting of groups. The rationale of this provision is obviously to regulate the moment in which the parliamentary groups are formed. For in this phase they have not yet acquired their full and autonomous subjectivity within the Chamber of Deputies system. They do not have their own rules adopted by their own members, or organs with the powers to apply these rules, accountable for their conduct towards the members of the group. For this reason, the Rules of Procedure empower the Bureau to decide on appeals concerning the establishment of groups, precisely to guarantee the lawfulness of the procedures required to give the group legal existence. Once this is complete, the group has the power to take its own decisions, with the sphere of competence reserved to its own organs, and hence not subject to oversight by any outside bodies. In any event, provisions protecting the right of individual parliamentarians to dissent from their Group already define the status of individual parliamentarians under the parliamentary rules.

The process of "verticalizing" the parliamentary debate, at the level of Parliamentary Groups and then of opposing coalitions within Parliament, can be problematic. A balance must be sought between offering adequate guarantees for individual parliamen-

---

tarians to take political initiatives, particularly when they dissent, and avoiding placing restrictions on individual parliamentarians that cannot be mechanically linked to the bipolar rationale underlying the new rules for the operation of the parliamentary institution. Concern has emerged that the new Rules of Procedure, which are strongly influenced by the bipolar dialectic between the political forces, could lead to excessive restrictions being placed on the rights of parliamentarians who do not accept that rationale. Parliamentarians stand the risk of being excessively penalized by a misunderstood interpretation of the “first past the post” democratic system. Adapting the Rules of Procedure to the principle of bipolarism has therefore not limited the freedom of the parliamentarian or diminished the role of the Parliamentary Groups and individual members.

The emphasis on bipolarism has led to procedural timing being redistributed between the various phases of the legislative process, in order to encourage debate between the majority and the opposition, without excluding any dissenting deputies or groups from the debate. The attempted goal is to reconcile the legitimate need to streamline parliamentary work while, at the same time, encouraging the ability of individual parliamentarians to have their say.

Specific deadlines were set for a more rigorous scheduling of work: a minimum period was set to thoroughly scrutinize bills in Committee; the status of opposition groups was defined, vesting them with significant rights both to include their own items on the agenda, and to have alternative text put to a vote in the House with priority over other amendments. Opposition groups were also empowered to promote the fact-finding and scrutiny procedures of the Government. Groups are required to respond to requests for information and data, even if the requests are made by minorities, promoting interaction between the Government and the Parliament and between the majority and the opposition. Organs and procedures have been instituted to improve the quality of legislation and to simplify the legislative process. Further, the “Prime Minister’s Question Time” has been introduced; ministers are summoned to give evidence before Committees twice a month following the same procedure used for the House. Even though the new Rules intended to give the majority and opposition groups
an "enhanced" role, they also grant adequate room for the individual positions of individual deputies.\footnote{51}

If parliamentarians cannot be subjected to "positive" constraints by virtue of the freedom, they have to exercise their mandate; the gradual rewriting of parliamentary rules has nevertheless laid down a series of "negative" constraints on parliamentarians. The new Rules have enhanced the role of the groups and their representatives, to the detriment of individual parliamentarians.\footnote{52} For example, as far as scheduling parliamentary business is concerned, the proposed initiatives of individual deputies outside the mediation of the Parliamentary Groups are not guaranteed any follow-up. Or once again, only groups, acting through their chairperson, may submit urgent interpellations or questions for imme-

\footnote{51. The reform of the Rules, without changing the rights and prerogatives conferred individually on each parliamentarian by the Constitution and the Parliamentary Rules of Procedure (such as the possibility of tabling bills, amendments, motions, resolutions, interpellations and parliamentary questions, and taking part in the work of the Committees and the House), also shows particular attention to the right of individual parliamentarians to dissent. For example Rule 24(7) provides that one-fifth of the time devoted overall for the discussion of the items set down on the timetable of the House should be set aside for Deputies who wish to speak in a personal capacity. Furthermore, specific guarantees are set down for the general discussion and for the discussion of individual clauses, and amendments or additional clauses, and the Speaker may give the floor to deputies wishing to express a dissenting vote from the group to which they belong, setting out the procedures and the times for so doing (article 83 (1) and article 85 (7)). Individual deputies also have a similar right to express their dissent when voting on a motion of confidence (article 16 (3)), and when voting on a proposal to update the government's economic/financial planning document, if required by contingent events (article 118-bis). Furthermore, individual deputies are also given further guarantees to protect their positions when voting on amendments submitted by groups, when implementing the regulations regarding summary votes on selected amendments or by principles (article 85 (8)). In this connection, article 85-bis (3) provides that the Speaker may also put separate clauses and amendments to the vote, where they are considered relevant, that have been submitted by deputies dissenting from the groups to which they belong. However, under the reform, the need to provide guarantees for individual parliamentarians is not limited to the internal organizational phase in the work of the Chamber of Deputies, but is also projected outwards, seeking to encourage the MP to become more firmly established in his or her constituency. For the obligation has been reaffirmed —which existed under the repealed article 25-bis of the Chamber of Deputies Rules of Procedure, which was rarely complied with—that the work of the Chamber of Deputies should be adjourned for one week so that parliamentarians can also perform other activities relating to their constituents.}

\footnote{52. Regarding the principle of the so called "imperative mandate," see P. RIDOLA, \textit{Diritti di libertà} 119-20 (stating that this principle "acts not only as a protection of the individual status of MPs . . . but it carries a further connotation, within democratic systems and with respect to relations among actors of pluralism, in that it guarantees the mobility of the political system. It enables MPs to keep up communication channels with public opinion, limiting the risk of a political system overly constrained by party discipline and, on the other hand, it offers political parties — via the independence of their MPs — the possibility to participate in a system of mediation vis-à-vis societal complexity."}
diate answer, whether on the Floor or in Committee. In principle, individual parliamentarians are entitled to express their opinion when they dissent from their group, but nevertheless this guarantee can also depend on the discretion of the Speaker, who has the responsibility of deciding “the modalities and the time limits on any statement,” or evaluating “the relevance” of the amendments submitted by individual deputies.

VII. THE PHENOMENON OF PARLIAMENTARY “MOBILITY”

A further indication of the freedom that individual members nevertheless enjoy, bearing witness to the present settling-down phase through which Italy’s political and institutional system is passing, can be seen from the way in which parliamentarians change groups. The electoral system in force between 1993 and 2005, based on the “first past the post” system and not fully completed at the institutional level, by no means simplified the political system – one only has to look at the number of Parliamentary Groups. Neither has it curbed the fragmentation between and within political forces, because of the prevalence of the positions of individual parliamentarians and the weakening of group discipline.

The large number of transfers from one group to another that was typical of the Thirteenth Parliament could represent the permanent feature of nervousness in the political system. Member mobility might have serious repercussions both on Parliament and on the fate of governments, by disrupting the existing political balances. However, one should avoid facile simplifications in an attempt to explain the reasons for this, by simply attributing

53. It should also be noted that individual deputies may not activate these new instruments for oversight and scrutiny as such, because these instruments are always tabled through the Parliamentary Group to which they belong. For as far as parliamentary questions to be answered orally and immediately are concerned, whether in the House or in Committee, a deputy for each Group can submit questions, but it has to be done through their own Group Chairperson, which means that individual parliamentarians cannot scrutinize the work of the Government without the “blessing” of the Group to which they belong. The same applies to an even greater extent to urgent interpellations, which can only be tabled through the Parliamentary Group Chairpersons or by at least thirty deputies for each question, and then there are limits on the numbers that may be presented (two per month for each group, and one for each deputy).

54. See Rules 83 (1), 85 (7), 116 (3), 118-bis (4).

55. See C. De Caro Bonella, I gruppi parlamentari nella XII legislatura, in Rassegna parlamentare, 2, 360 (1996).

transformism or political convenience. The collapse of political ideologies and the crisis of the traditional party system, hastened by the changes in the electoral system, could fail to have immediate effects on the conduct of the political classes and on the way of viewing political activism within the party.

It is no coincidence that, in previous parliaments, there were not many cases of parliamentarians changing groups. A gradual increase in migration was present, however, which often resulted in collective movements of dissident factions within one party to another. Across the years it was exceptional for an individual to change groups, considering the powerful group and party discipline, and the profound sense of ideological militancy. In any event, migration was confined to limited political areas.


Group-changing in the Thirteenth Parliament (1996-2001) was much higher than in the recent past. In the Chamber of Deputies, 139 MPs changed groups (twenty-three per cent of the total membership of the Chamber), while eighty-two senators (one quarter of the membership of the Senate) did so. This phenomenon also reached extreme peaks when some MPs changed groups several times: fifty-nine deputies changed groups only once; thirty-seven deputies changed twice; thirty-two deputies three times; seven deputies four times; one deputy five times; two deputies six times; and one deputy as many as eight times. This phenomenon did not reoccur on the same scale in the Fourteenth Parliament (2001-2006), when only thirty-nine members of the House and twenty-one Senators changed groups.

However, confirming the powerful influence of the electoral system on this phenomenon, it was the Deputies elected in “first past the post” constituencies that changed group most frequently. This indicates a weaker attachment to party membership by those elected under the “first past the post” system (ninety-eight deputies in the Thirteenth Parliament), in comparison with those elected in the proportional representation constituencies (forty-one deputies in the Thirteenth Parliament). Even the latter propor-
tional representation constituencies were strongly affected by this phenomenon: contrary to what one might believe, considering the direct and privileged relationship that MPs elected in “first past the post” constituencies might claim to have with their electorate, parliamentary mobility also affected MPs elected with the proportional representation system (which was quite sizable considering the different proportion of parliamentarians elected with each of these two systems). Despite the greater “gratitude” that the latter ought to have towards the political movements that put their names on the lists, proportional representation constituencies still experienced group migration.57

The most typical cases of group changes can be brought under three headings: (a) the transfer of MPs from one group to another while remaining in the same electoral coalition; (b) group changes across coalitions, despite a less than fully bipolar system; and (c) collective migrations resulting from splits and re-groupings affecting a number of political parties. Against this background, the Mixed Group served as a stop-over group, a refuge for parliamentarians who did not move directly due to concerns about their image, in moving one political force to another. But these temporary shuffles in and out of the Mixed Group gave rise to the problem of identifying and managing the political groupings within the Mixed Group.

Problems with the Mixed Group demonstrate that parliamentary mobility must be considered worthy of close attention because of the political and institutional implications that it has. There is no doubt that the electoral system that existed until 2005 contributed considerably to focusing on the “member” element, to the detriment of the “party” element. This is particularly true considering parliamentarians’ view on party discipline, and hence group discipline, as increasingly less binding and imperative. The gradual loss of ideological ties and the constant rapprochement between the stances adopted by the political forces also participated in the development of member mobility.

Yet the very organization of political forces in Parliament actually contributes to fostering mobility. For while the electoral contest is based on coalitions of parties, the political forces, immediately after an election, once again split in Parliament to set up their own parliamentary groups. This makes it possible for MPs to have a certain freedom of movement within their coalition, weak-

57. Cozzoli, supra note 6, at 100.
ening the linkage between parliamentarians and the political forces to which they originally belonged.

Furthermore, the tendency of parliamentarians to demand greater political autonomy as a result of the obligations arising from their own constituency is also being driven by current legislation. For example, the legislation on the refunding of election expenses, or the subsidies available for publishing, which allow even the tiniest political formations to qualify for these grants, encourage the splits within Parliamentary Groups. A risk arises from the absence of appropriate forms of coordination and discipline. Often, parliamentarians’ right to act independently of the mandate given to them by the electorate and the political parties is used to pursue an excessively individualistic and laissez-faire concept of parliamentary representation.58

The freedom of parliamentarians, a fundamental safeguard upheld by the Constitutional Court to defend every MP from pressures exerted by their own political group, cannot and should not be used as a tool to jeopardize the functionality and democratic nature of the system. At the present time, the only way that Deputies and Senators can be penalized under the Parliamentary Rules for switching groups is found in the provisions governing the composition of the Bureaus of the Chamber of Deputies and the Senate. The provisions state that parliamentarians who have been appointed Secretaries lose office as soon as they join another Parliamentary Group.59 Any further penalty likely to affect the status of the parliamentarians, however, should be considered infringement of article 67 of the Constitution.60

Any interpretation that would place such a privileged emphasis on the exercise of freedom by parliamentarians would destructively lead to individualistic parliamentary representation, detached from any rationale of party membership. There is no basis for laissez-faire style representation in other provisions of the Constitu-

58. See Curreri, supra note 56, at 277.
59. In the Chamber of Deputies (Rule 5(7)) the Secretary loses their "office if the Group they belonged to at the time of their election ceases to exist, or if they join another Group that is already represented in the Bureau;" in the Senate (Rule 5(9-bis)) a penalty is imposed for any group change. But in both Houses, it is only the additional Secretaries who lose office, that is to say, the ones that have been elected to guarantee representation of the smallest groups, but not for those who are elected initially as a result of the agreements concluded between the originally constituted groups.
60. Article 67 states that each Member of Parliament represents the Nation and carries out his/her duties without a binding mandate. A penalty towards a parliamentarian could limit his freedom guaranteed by the Constitution during the mandate.
tion, which provide that political parties are the instruments through which the people exercise popular sovereignty (art. 1 Const.) and use the democratic method to establish national policy (art. 49 Const). The parliamentary groups – mentioned in articles 72 and 82 of the Constitution by reference, respectively, to the composition of the Standing Committees and the Investigation Committees – are the natural parliamentary projection of the political parties.

As indicated above, the phenomenon of parliamentary "mobility" did not occur in the Fourteenth Parliament because crossing over from one group to another has been fairly limited. In the Fifteenth Parliament, which only lasted two years due to the fall of the Prodi Government, group-changing was a limited phenomenon: in the Chamber, sixty-five Deputies changed their group in contrast to fifty-five Senators. Similarly, in the Sixteenth Parliament, only twenty-four Deputies and sixteen Senators have switched groups. The Mixed Group has been a stop-over for parliamentarians that have not changed groups directly, but have moved from one political force to another, by way of the Mixed Group. All this shows that parliamentary mobility must be considered as deserving of attention, because of the political and institutional implications it entails.

VIII. COMPARATIVE REMARKS: THE U.S. HOUSE OF REPRESENTATIVES AND SENATE

In the light of what precedes, a comparison may be drawn with the system in place at the United States Congress. Such a comparison, however, must move from the premise that the basic political circumstances are different. Apart from the obvious difference in area and in population (the United States has more than 300 million inhabitants, whereas Italy has about one-fifth as much in the last census), in the U.S. House and Senate, the two-party system is solid and has been so for two centuries. Nonetheless, the Italian Houses are larger; the House counts 630 members and the Senate 315 (whereas the U.S. House has 435 members, with 100 senators). In the United States, the system springs from the "first past the post" electoral mechanism of British origin, and none of the politicians wish to change it. Members who are not elected as members of the Republican or of the Democratic Party (the Independents) are very few.

Italy has used three electoral methods in sixty-five years: (1) from 1948 to 1992, a strictly proportional system; (2) from 1994 to
2001, a mixed system, in which “first past the post” districts gave three-quarters of the seats in both Houses, while the other quarter was elected in a proportional manner; and (3) from 2006 to present, a new system based on proportional representation, but with an added premium for the party or coalition of parties that wins the most votes. Therefore, the first evident difference between the two nations’ systems is that party discipline is stronger in Italy, when compared to the U.S. Senate at least.

Fractions – more commonly known as called “conferences” or “caucuses” in the United States – have a different, stronger position in regard to the members, due to the fact that members are elected directly in their constituencies. In this respect, another couple of considerations must be added.

First, in the United States, the term in the House is two years. In Italy, both Houses last for a five-year term. As a result, in Italy campaigning is not as frequent and close. Second, based on the constant campaigning, the issue of fundraising in the United States is always of the essence. It is widely known, as reflected in the 1976 United States Supreme Court decision, Buckley v. Valeo,\(^1\) that members of the United States House and Senate spend a lot of their time in fundraising activities.\(^2\) A successful fundraiser is likely to be rather independent from his leader in either House.

In Italy, statutes bar television political ads and the publication of opinion polls within thirty days of Election Day. The need for campaign money is thus slightly less felt. Furthermore, once the electoral system shifted back to proportional representation in 2006, members of Parliament (and therefore members of Parliamentary Fractions) are mainly a self-appointed élité that does not campaign in any specific district.

In the United States, the legislative branch works on a majoritarian base, particularly in the House of Representatives: the Speaker of the House is by all means the leader of the ruling party, while the majority leader is the secondary leader. The Vice-

---

\(^1\) 424 U.S. 1, 21 (1976).

\(^2\) After the famous (or infamous, according to a different view) Buckley decision, the Court had accepted some legislative limits on campaign spending in the 2003 decision McConnell v. FEC, but then in 2010, in Citizens United v. FEC, it struck down almost all money caps. McConnell v. Fed. Election Commn., 540 U.S. 93, 223-34 (2003); Citizens United v. Fed. Election Commn., 558 U.S. 310, 372 (2010). The literature on the subject matter is vast. See, e.g., E. J. ROSENKRANZ, If Buckley Fell (Century Foundation Press 1999); and for a stark criticism of the system in place, see C. LEWIS, The Buying of the Congress (Avon Books 1998).
President of the United States presides over the Senate. Only if the President is a lame duck does the Senate have a Senator of the opposite party as a majority leader. The opposition party elects within its caucus a minority leader in the House and Senate.

Thus, there are no fractions in the European sense in the United States. The two parties hold caucuses (the Democrats) and conferences (the Republicans) to decide their strategy in legislative procedures. The few Independents caucus either with one or with the other party (there is no notion of “Mixed caucuses”). For instance, presently, Independent Senators Joe Lieberman of Connecticut and Bernie Sanders of Vermont caucus with the Democrats.

At the committee level, the majority caucus gets to elect all of the chairmen, and the minority designates its ranking member. Staff usually is accountable either to the chair of the committee or to the ranking member, according to party affiliation.

The Rules Committee in the House is in charge of setting the agenda and shaping the debate, allowing time and amendments to each bill to be discussed. The Rules Committee is chaired by a person with the trust of the Speaker and is composed of nine members of the ruling party and only four of the minority party. This means that the majority has a direct grip on the congressional agenda and usually allows the so-called ‘closed rule’ and not a full and open debate on the floor of the House on any given bill.

On the contrary, in Italy the majority’s control over the agenda is only indirect. The ruling party must give up some space to the opposition groups (something similar happens in the British Parliament with opposition days and Private members’ bill days). As stated above, the Speaker of the House is the leader of the ruling party of the House. The Speaker is in charge of promoting his party to achieve the maximum advantage point. In the Italian Houses, the Chief presiding officer – the Speaker of the House and the President of the Senate – should instead ensure fairness of proceedings and fidelity to the Constitution and precedents.

On the other hand, individual senators in the United States are much more relevant and powerful than in Italy. A United States senator represents his State and will not bow down easily to the whip, or even to the leader of his own conference or caucus, if he does not deem the party’s agenda fit for the interests of his State.

63. MCKAY & JOHNSON, supra note 1, at 188.
This is particularly obvious in two cases, confirmation procedures and filibuster.

When the President appoints a federal official and then sends for confirmation in the Senate, according to the “Advice and Consent” rule laid down in Article II, Section 2, Clause 2 of the Constitution, the senators from the State that prospective official is from have great influence. An informal ‘senatorial courtesy’ procedure is in place, by which the two senators from that State must be given the opportunity to express their opinion about the appointee, even before formal procedures of confirmation start at committee level. The senators must be given time to fill in a “blue slip,” a sheet of paper on which they might write their position on that person.

It is often understood that if one or both senators from the State do not return a favorable ‘blue slip’ (or do to not return it at all), the appointment will go no further. The position that Senators take in confirmation procedures are usually not compelled by the conference to which they belong. If a Senator does not wish to return the blue slip or vote for the appointee, his own Senate leader will have a hard time persuading him to do otherwise.

None of this occurs in the Italian Senate. Advice and consent (i.e. ‘confirmation’) does not exist in Italy, as it is understood in the United States. Some statutes call for parliamentary approval of Executive branch appointments. But on these issues, Committees usually vote along party lines — that is, the individual member does not have much of a say.

Regarding the filibuster, it is well known that at least forty-one Senators can virtually paralyze the United States Senate, preventing the whole from coming to a vote on any given matter. To break the filibuster in the Senate, sixty Senators are needed. The decision to filibuster is usually a matter settled by the leadership of the party in the minority. However, decisions in this field are delicate, and individual senators can decide differently and go against their own leadership.

All this does not happen in the Italian Senate. No filibuster is permitted in Italy. The Senate in Italy is much more similar, in its political workings, to the United States House.

---

IX. CONCLUSIONS

The trends in the new ways that parliamentary work is organized are very promising for the changes that are coming to the Italian institutional system. To initially assess the way the reforms of the Thirteenth Parliament’s Rules of Procedure of the Chamber of Deputies are working, one has to ask whether the innovations that have been introduced are a major signal of the Italian system joining the stable majoritarian democracies, or whether it is still a marker that the system is still in a transitional phase.

There is no single answer to this question. All of the amendments that have been introduced attempt to give both Houses of Parliament efficient decision-making rules that expedite political processes and adjust them to the pace of processes of civil society. However, there are nevertheless a number of contradictions in the modification of parliamentary rules because, on the one hand, they try to anticipate the institutional innovations being debated in Parliament, while at the same time, they reflect the painfully slow process of restructuring the party system.

The reforms of the Rules following the new electoral system introduced in 1993 anticipated the constitutional reforms that have taken place at three different levels: the first level, the interaction between government, majority and opposition; the second level, in which the parliamentary groups are the main players, as well as the political forces that do not have enough members to form a Group, and which set themselves up as political groupings within the Mixed Group; and the third level, the individual deputies who are given adequate scope for political initiative within the group or majority or opposition coalition to which they belong. Thus, the Italian political-parliamentary system has in a slow and convoluted way oriented itself towards new rules which have made it very different from the past, even though it has not

69. COZZOLI, supra note 6, at 129.
achieved a full coherence due to the ostensible and incomplete bi-
polarization of the political-parliamentary system produced by the
electoral system. To compound the picture, this system has
changed again following Law no. 270 of 2005,71 while the political
system remains fragmented.

Ten years since their adoption, the reforms of the Rules of Pro-
cedure of the Chamber of Deputies, which are a major piece of the
mosaic in the process of reforming representative institutions and
the Italian form of government, emphasize the linkage between
the government and its parliamentary majority within the frame-
work of a system that guarantees enhanced rights for political mi-
norities. Relatedly, the decrease in the number of parliamentary
groups following the new electoral legislation in 2005 is a crucial
factor for the streamlining of the political system and a more effi-
cient Parliament.72 From this point of view, parliamentary groups
tend to supersede the established model of parliamentary practice
of an opposition working through the method of disorganized and
fragmented obstructionism, while placing emphasis on the role of
the opposition as a rival force, standing as an alternative to the
political majority in government.73

71. See Legge Dicembre 2005, supra note 23.
72. Regarding the effects of the recent electoral law in terms of political fragmentation
see L. GIANNITI, in Gruppi e componenti politiche tra un sistema elettorale e l'altro, rela-
zione al seminario di studio "le regole del diritto parlamentare nella dialettica tra maggio-
ranza e opposizione" Roma 17 marzo 2006, now in E. Gianfrancesco, Le regole del diritto
parlamentare nella dialettica tra maggioranza e opposizione 31 (N. Lupo ed. 2007).
73. See V. Di PORTO & E. ROSSI, Ostruzionismo, in Digesto-Discipline pubblicistiche, X