

The Italian XVIII legislature: populism, law-making and procedures

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Abstract

The study explores the adjustment of the Italian parliamentary system to the change of balance between political parties. The results of several aspects of the breakdown of the March 2018 parliamentary elections are examined in the use of certain law-making mechanisms such as laws, decrees, delegations, votes of confidence and decentralised procedures, analysed as a dependent variable. An interpretation of the characteristics of the legislative process is then proposed on the basis of elements of continuity and change in three independent variables: parliament fragmentation, governability and electoral volatility. The case study is the XVIII legislature, focusing on the first year of activity of the government-parliament subsystem.

1. Introduction

The centrality that representative institutions still hold in the Italian political system is core to the relevance of this study in order to further explore the adjustment of the parliamentary system to the change of balance between political parties.

Here, the results of several aspects of the breakdown of the March 2018 parliamentary elections will be examined with the intention of observing the transformations they provoked within the government-parliament subsystem. The use of certain law-making mechanisms such as laws, decrees, delegations, votes of confidence and decentralised procedures will be analysed as a dependent variable. Therefore, an interpretation of the characteristics of the legislative process is proposed on the basis of elements of continuity and change of three independent variables: parliament fragmentation, governability and electoral volatility. The case-study will be the XVIII legislature, focusing on the first year of activity of the government-parliament subsystem.

The aim of the article is twofold: to expand the literature on legislative efficiency and on the role of law-making procedures in the recent evolution of the Italian political system and to give a contribution on the topic of the supposed decline of parliament along with the decline of traditional political parties in contemporary democracies, with an in-depth study of the Italian case.

The paper is structured as follows. The second section explores the new political context following the 4 March 2018 political elections; in the third section the theoretical foundations and the hypothesis of the study are discussed; the fourth section illustrates the methodological proposal for the empirical analysis of the case-study; the fifth and sixth sections are dedicated to the empirical analysis of the independent and dependent variables respectively; in the seventh section some preliminary findings are discussed while the eighth section concludes.

2. The new political context following the 4 March 2018 elections

The 4 March 2018 political elections furthered the erosion of the electoral force of the two coalitions that had opposed and alternated in government since 1994.¹ Consequently, the relationship between the poles changed radically [Pedrazzani 2018], clarifying and consolidating the premonitory signs which had already emerged in the results of the 2013 election. Parallel to this, the electoral results promoted the abandonment of old, ideological identities and the strengthening of those parties that had sprung up from new schisms. M5S and Lega, sharing a growing anti-European credo, became the two principal political forces. Such political party formations, which are both defined as populist² with anti-elite and anti-pluralist³ traits (the Lega also flaunts a high degree of sovereigntism), no longer appear classifiable as left or right wing. According to several observers [Chiaramonti and Emanuele 2017; 2019] M5S and Lega (whose ideological spectrum seems less ambiguous nowadays than in the past) are broadly defined expressions of a recent central/peripheral fracture. The south of the peninsula, which identifies with the movement, and the peripheral and provincial areas of the central north (consensus assured for Lega) as well as the outskirts of the big cities, are in opposition to a symbolic centre where the dominant liberal, urban and secular elite live.

The 2018 elections, which took place under the new electoral law 165/2017, appeared to explicitly question the liberal-democratic model of democracy [Baldini 2014; 2017; Moschella 2019]. The crisis of the majoritarian model is also displayed in other polyarchies (Great Britain, France and Germany)⁴ where anti-system parties have emerged, or sometimes re-emerged, and dismantled traditional political party systems. Compared with traditional party formations, the 'new' parties are reputed by the electorate to be more capable of satisfying their expectations of obtaining solutions to widespread inefficiency and zero or slow growth, as well as integration and globalisation issues.

At the same time, the populist movements maintain that problems caused by a financial crisis, inequality, political neo-liberalism, globalism, and austerity failure are produced by the ill-governance of the elites and can be resolved in simple and self-evident ways by the true representatives of the public alone. Such movements classify themselves

¹ The Italian political system can be illustrated by using the model of polarised pluralism from 1948 to 1992 and polarised bipolarism from 1994 to 2013.

² Reference is made to the contribution of Bartolini [2018, 52] who gives insight into the connotations of the concept of populism by proposing the following definition: 'a movement of political actions/reactions that principally refers to the people, presented in homogeneous terms, to which some kind of specific and desirable positive values are added which are in contrast with the entities that vary radically according to the context'.

³ According to Muller, the main characteristic of populist parties is that they present themselves simultaneously as anti-elite (at odds with the dominating elite from whom they want to distinguish themselves) and anti-pluralist forces (because they consider themselves the only groups to represent the true interests of the people) [Muller 2017]. These kinds of characteristics, with diverse intensity and coherency, have symbolised Lega (from 1989 until 2017 Lega Nord) since its beginning. To the two criteria of anti-elitism and anti-pluralism, Ronsavallon [2020] adds an instrumental element specifically to these political formations: indiscriminate solicitation of public opinion expressed (also virtually) through voting polls and street demonstrations.

⁴ For an in-depth study on the origin and consolidation of the populist parties in the European polyarchies please refer to the detailed volume by Grabow and Hartleb [2013] and the subsequent work by Kriesi and Pappas [2015], Mudde [2004].

as the sole legitimate representatives of society: all the others are illegitimate and pursue sectoral interests on behalf of different groups. Moreover, the populists show complete faith in public opinion and contempt for any intermediation or pluralist expression of democracy.

This loss of authority, to which the parties unable to represent voters' request for change were subjected, is examined in detail by Schadee, Segatti and Vezzoni in their book. This crisis resulted in the emergence of political groups with no underlying organisation or structured ideological framework. The principle at the basis of their political offer is: 'we can do without politics'; everything can be immediately decided at first hand without useless negotiating and intermediation between groups. Governing is easy for the populist type of party because the policies to be formulated are self-evident, the solution is undisputed and only one, and the existence of inevitable conflicts of interest or necessary compromises is not acknowledged [Schadee, Segatti and Vezzoni 2019]. The new (M5S) and modernised (Lega) political movements used corruption and insecurity as a means of substituting the old political class (not without fault) and the 'traditional' political parties indicated as the main cause of the intense inefficiency of the system. These political movements transmit the image of a 'disintermediation democracy' and, in any case, symbolically deny confrontation between any acting aggregators of different political and social issues, increasingly discrediting the parliamentary institution, symbol of the representation and composition of a wide range of demands/interests.⁵

From this context, a legislative assembly without a clear majority, struggling to establish an executive, emerged from the national consultations of 4 March 2018 [Valbruzzi and Vignati 2018]. The process of forming the Cabinet was long, and negotiations were needed because the politicians had not agreed on the name of the candidate for the role of President of the Council⁶ who, following the mandate of the Head of State, initiates contact with the political forces in order to define the programme. Instead, after the polls, M5S and Lega started with the programme (called 'contract for the government of change') and then started looking for the name of a candidate, deciding on a technical presence [Valbruzzi 2018; Pedrazzani 2018]. In this way, a Lega-Five Star Movement executive was formed [Giannetti, Pedrazzani and Pinto 2018], replaced in less than a year by a PD-M5S coalition with the distinctive feature of maintaining the same head of government.

3. Theory and hypothesis

Our intention is to examine the legislative efficiency of the Italian government-parliament sub-system during the first year of the XVIII legislature by identifying the continuity/discontinuity of its functioning compared to previous legislatures. In fact, it is possible to isolate several original features of the legislative assembly as a consequence of the 4 March 2018 elections. Such characteristics regard parliament in the input phase, namely in the more or less fragmented representation of the political forces in the two

⁵ For the relationship between democracy, popular vote, majority rule and populism refer to the contribution by William Riker [1982].

⁶ In the majoritarian system legislatures such agreements occurred with an explicit pre-election pact. Yet, in this election, the M5S only presented themselves at the elections whereas Lega was already part of the centre-right alliance.

Chambers (parliament fragmentation); in the conversion phase, or rather in the capacity of a more or less stable majority to support a government (parliament governability), and in the output phase, that is, in the various ways that parliament acts in its legislative capacity. Our hypothesis, already subject to empirical tests in previous works [De Micheli and Fragnelli 2016; 2019], is that parliament fragmentation and governability constitute two fundamental independent variables able to influence the characteristics of parliamentary law-making. More precisely, the hypothesis states that behind the use of the different law-making procedures is the strategic behaviour of the government, which goes beyond the motivations that inspired the legislators when they designed these procedures. Strategic behaviour refers to the use of procedures which are different from the ordinary one, and which, according to the Constitution, were designed with particular situations, e.g., urgency, in mind. Nevertheless, these different procedures may sometimes allow the government to resolve a conflict with parliament, due to the weakness of the majority, which may be suffering for various reasons, the most important being low governability, i.e., the low efficiency of the government, and high fragmentation, i.e., the extent to which the seats of parliament are divided among several parties, each of them with similar percentages.

Furthermore, the independent variable of electoral volatility is introduced in order to understand how it intervenes and to what degree it influences the relationship between the other independent variables and the dependent variable. Electoral volatility refers to the number of voters who change their vote between elections. We can hypothesise that high electoral volatility tends to produce two interrelated effects on the government-parliament subsystem. One effect (supply-push strategy) concerns the party positioning of representatives, that is their tendency to form new parliamentary groups capable of supporting and making visible an innovative political offer, which can be attractive to the volatile voters. This dynamic, in turn, tends to increase parliamentary fragmentation and to decrease governability.

The other effect (demand-pool strategy) tends to occur on the decision-making strategies of the political player formed by the government and its majority. In a context of high electoral volatility, it is in fact conceivable that the incumbents try to improve their decision-making efficiency in order to follow the political demands of volatile voters, to gain the trust of the electorate and to balance the effects of increasing parliamentary fragmentation and decreasing governability. More particularly, we can hypothesise that, in high electoral volatility conditions, the legislator is more likely to enact very vague acts, showing to the volatile voter that the government is doing something while most of the implementing decisions (which are decisive for the impact of the measure) lag behind.

4. Methods

Albeit referring to the detailed analysis of previous contributions [De Micheli 2014; De Micheli and Fragnelli 2016] for their methodological considerations, our study proceeds along the operative phase through the use of indexes capable of summarising the complexity of the analysed variables in order to measure the effective transformation prompted by electoral change.

As mentioned above, the study takes into account three independent variables: parliament fragmentation, governability and electoral volatility. Five indexes will be specifically considered. Two of these are expressed in degree of fragmentation of the elected assembly, i.e., not only the number of parties, groups, or official factions inside the representative arena, but also their weight in terms of seats⁷ (it is considered useful, for deeper insight into this variable, to apply the index not only to the whole parliament, counting all the groups present in the representative assembly, but also to the parliamentary majority, counting the groups it is made up of and therefore defining the degree of cohesion). Other two indexes refer to the degree of parliament governability, i.e., to the greater or lesser capability of the party to establish a strong government in terms of decisional efficiency.⁸ The last index refers to electoral volatility. This index displays the combined percentage of voters who have changed vote from one election to another and can be distinguished by ‘inter-block’ or ‘external-block’ volatility where the former concept indicates the voters who switch within the same policy sector area.⁹

The dependent variable consisting of law-making of the first year of the XVIII legislature will then be analysed (the widest sense of the word *law* is intended, i.e., the production of binding rules by the government-parliament sub-system, whether they are primary or secondary acts). In this regard, besides the ordinary procedure, different

⁷ In order to analyse the factions, i.e., the fragmentation of the parties in the government and the party system on the whole, the Rae index [1971] will be used. The Rae index evaluates parliament fragmentation, that is to say, the higher the number of political formations, the higher the value of the index. It is defined in:

$$Irt = 1 - \sum_{i \in N} S_i^2$$

where $N = \{1, \dots, n\}$ is the set of the parties and S_i is the percentage of the party seats $i \in N$.

⁸ The operationalised definition by Migheli and Ortona [2009] will be used, according to which governability is a measure of the transaction costs a government has to face when making a decision. Governability principally depends on two parameters: the number of parties that form the majority of the government and the total number of seats these parties hold. More specifically, governability is inversely correlated to the number of political formations (counting the cost of reaching an agreement) and directly connected to the number of seats which make up the majority itself (weighing up the different consequences of absenteeism and/or defectionism).

The first index of governability g_1 , considers the number m of the critical parties, i.e., those parties whose withdrawal can damage the majority, and the number f of the number of seats of the majority. The parameter m is considered more important than f so f -element, gf , is lexicographically added to m -element, gm . More precisely, given that $gm = 1/m$ then the formula for g_1 is as follows, where T is the total number of seats in parliament:

$$g_1 = gm + gf = \left(\frac{1}{m+1}\right) + \left(\frac{1}{m(m+1)}\right) \left(f - \frac{T}{2}\right) / \frac{T}{2}$$

In order to understand the importance of the number of seats in a majority coalition more exactly we must use a second index of governability in which the sum of the percentage of the majority seats divided by the number p of the parties in the majority is taken into account. This operationalisation comes from Migheli and Ortona (2009) whose proposals suggest that in evaluating governability the following index is used:

$$g_2 = \frac{f/T}{p} \left(\frac{p}{pf}\right)^\alpha$$

where pf is the total number of factions in the parties in the majority and $\alpha \in [0,1]$ is a parameter that represents how ‘monolithic’ the parties are.

⁹ Measuring electoral volatility is found to be easy and undisputed both at the level of single parties and that of the party system. In general, this measurement is labelled as ‘net electoral change’ or ‘aggregated’ between one election and the subsequent election (Bartolini 1986).

decisional methods used by the politicians in the government-parliament subsystem will be discussed. Among the legislative procedures established by the Italian Constitution, those most applied are the following. The *ordinary procedure* (art.72, c.1) can be used to approve all types of bill but for some you need a special quorum. In the ordinary procedure the government does not play any special role: it can propose a bill like any member. Then, a committee (called 'Referral Commission'), often integrated with an executive's representative as observer, discusses and amends it. Eventually, the floor examines the bill and votes it article by article and in full.

The *decentralized procedure* (art.72, c.2) allows that the legislative process (final approval included) takes place only in a committee, called 'Legislative' or 'Deliberative Committee', if there is consensus among political actors. The bill, otherwise, may return to the plenary session if requested by 1/5 of the members of the Committee, 1/10 of the floor, or by the government. The decentralized procedure cannot be used to convert decrees, to legislate constitutional amendments, electoral rules or budgetary norms, to ratify international treaties, or to approve delegating laws.

The *decree law procedure* (art. 77, c.2) enables the executive to issue a decree in 'extraordinary cases of necessity and urgency'. The executive's decree becomes law immediately and remains in effect for sixty days without any parliamentary approval. If, after this period, parliament has not 'converted' the decree into a perfect law, then the previous status quo is re-established.

The *delegating law* (art. 76 and art. 77, c.1) is approved by the ordinary procedure. This type of bill has at least a section delegating to the executive the power to promulgate the legislative decrees according to some general framework voted for in the delegating law, and within a limited period of time. The *legislative decree*, approved by the Council of Ministers, is sent to the President of the Republic, at least 20 days before the deadline required by the delegating law, so that the President can check it and, if necessary, send it back to the Chambers. Each delegating law can contain a variable number of 'delegations', and de facto, they give the last word to the government.

Another legislative procedure, which has become more and more frequent over the years, is the *maxi-amendment* that compacts extended regulatory measures into a single article or amendment of an ordinary law, or a conversion law of a decree law. Frequently, when considered strategically appropriate, the government asks for the parliament's *vote of confidence* on the maxi-amendment. It is worth mentioning that in a parliamentary system the government remains in office for as long as it enjoys the confidence of the parliamentary majority, whose existence, in Italy, can be verified at any time.

This case study is descriptive and interpretative in nature. As a consequence, the following sections will illustrate descriptive trends in the independent and dependent variables, respectively.

5. Descriptive trends in fragmentation, governability and volatility

The XVIII legislature presents a high degree of fragmentation compared to the previous one (Fig.1). It is also worth remembering that the Italian parliament is more fragmented than the representative assemblies of many other European democracies, namely Great

Britain, France and Spain [De Micheli and Fragnelli, 2019] and the average degree of governability is lower (Fig.1).¹⁰

During the last twenty years, successive reforms were meant to change the behaviour of politicians for the purpose of making government coalitions less conflictual, discouraging any party's strategy aimed at gaining excessive visibility and maintaining veto power.¹¹ However, for the most part, in order to make the reforms work, they have to represent the final stage of a shared process of change, sustained by almost all the political forces, as occurred in the First Republic for the renewal of the parliamentary regulations of 1971. On the contrary, the political parties supporting the views of the of the Second Republic appear more confused, controversial and changeable.

After long negotiations, the eighteenth Republican Parliament produced its first government led by Giuseppe Conte. This government was unstable, partly because of poor control over the parliamentary majority (it is considered an oversized coalition government with two crucial parties reflecting the values of the *average* G1 and G2 in the republican context, Fig.1). Moreover, as regards the distance of position between the two parties, at that time the M5S were ambiguous and unstable.¹² Contrasts and long negotiations arose even for the nomination of the President of the Chamber¹³ and the

¹⁰ The variables were operationalized as follows:

1. *Range: independent variables*

Governability:

Gov.1: below or equal to 0.3: low; more than 0.3 and up to 0.6: medium; over 0.6: high.

Gov.2: below or equal to 0.1: low; more than 0.1 and up to 0.2: medium; over 0.2: high.

Fragmentation of the Chamber of Deputies:

Between 0.5 and 0.75: medium; over 0.75: high.

The degree 'low fragmentation' has not been used because, given the oscillation of the Rae index between 0 and 1, the rate of our parliament always exceeded 0.5.

2. *Range: dependent variable*

Commissions: fewer than 20% of the laws produced with decentralised procedure - -; between 20% and 50% -; between 50% and 75% +; over 75% ++.

Laws converting the decree laws: fewer than 10% produced -; between 10% and 20% +; over 20% ++.

It must be underlined how this analysis grid underestimates recourse to the decree, because here each decree law is counted only when it is converted into law. In this way the relevant phenomenon of reiteration is excluded.

Delegated laws: fewer than 1% -; between 1% and 5% +; more than 5% ++.

Confidence: monthly average of the times that a vote of confidence is used for legislative measures, up to 0.1 -; from 0.1 to 0.5 +; more than 0.5 ++.

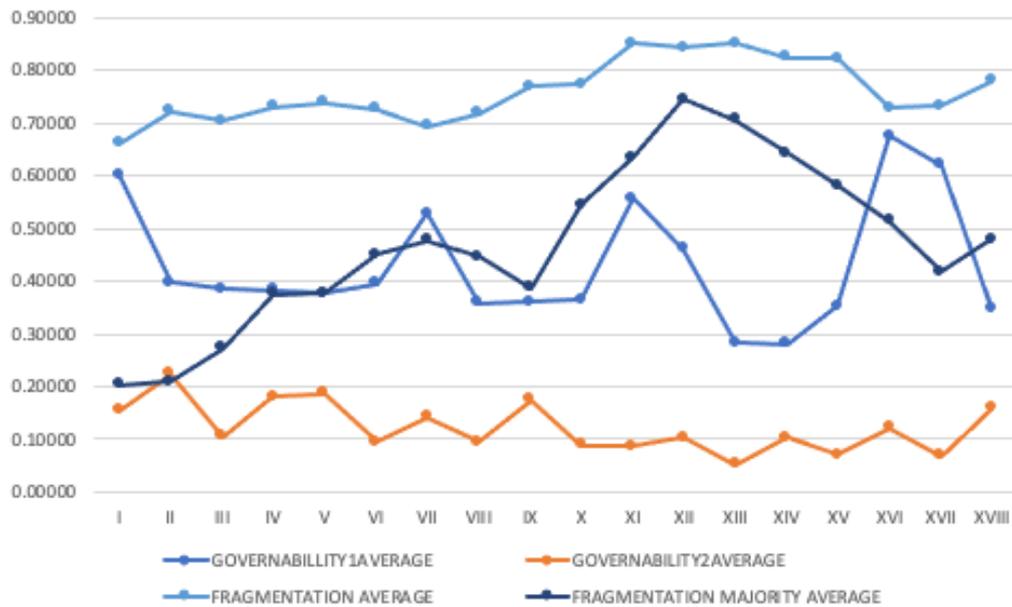
¹¹ Due to the large number of majoritarian reforms and reform proposals during the last twenty years [De Micheli and Verzichelli, 2004; Ceccanti, 2013], the list would be too long to enumerate and describe for the aims of this article. Among the most relevant adopted reforms, we can mention at the electoral level, the law 270/2005 introducing a proportional system with closed lists and a majority bonus to the party or coalition obtaining the highest number of votes; as far as the parliamentary rules are concerned, we can recall the 2017 reform of the Senate, which adds a political requirement, other than a numerical one, to establish a parliamentary group.

¹² The short duration of the Conte I government and its substitution with an apparently more stable Conte II could indicate greater steadfastness and placement more to the left in the political arena for the M5S. The differences (and commonalities) between the M5S and the Lega are investigated more in depth by Carloti and Gianfreda [2018].

¹³ From the XIV to the XVII legislature, the President of the Chamber was normally a leader from a party in the coalition, not the same as the President of the Council (up until then chosen by the coalition through a pre-election agreement).

designation of each collective organism. The marked territorial coverage of this executive makes the discontinuity more notable as there is an evident southernisation of the M5S whereas the Lega’s stronghold is in the north (more evident compared to the successive executive Conte II).

Figure 1. Fragmentation and governability of Chamber of Deputies I-XVIII Legislature (1948–2018)

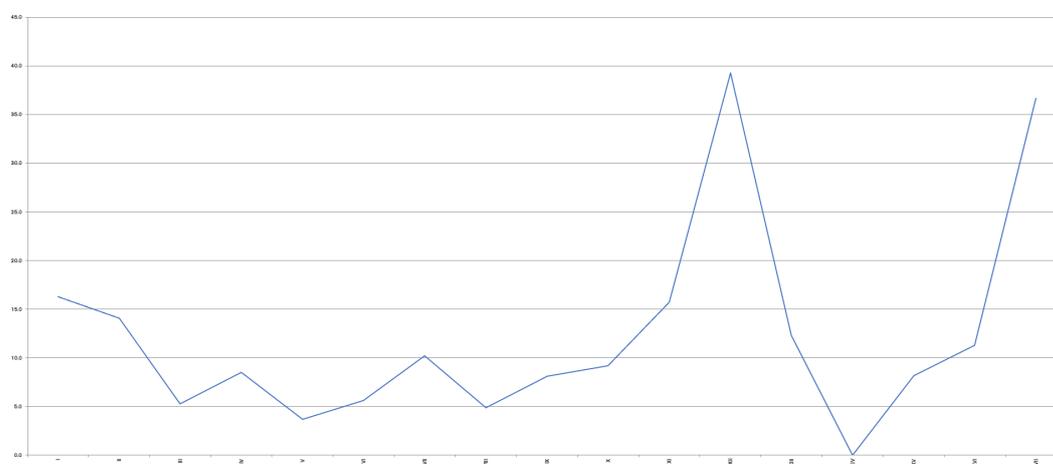


Source: Compiled by the author, based on data of the Chamber of Deputies (<https://www.camera.it>) and Presidency of the Council of Ministers (<https://www.governo.it>)

Electoral volatility has gained significance in light of its increase over the past three legislatures¹⁴ (Fig. 2). The extensive repositioning of the voters, measured by the high degree of volatility displayed in the March 2018 elections, rewarded a new, innovative political formation (M5S) and/or a modernised one (Lega). However, this did not result in a reduction of the number of groups present in parliament. Conversely, although it changed in this election,¹⁵ the method of selection used by the political class of the Second Republic had created a direct link between politicians and voters. The mixed majority system, which involved single name lists, weakened the obligation between voter and party that had already been impaired by the radical crisis within the parties and the decline of ideologies. This made the voters look for imminent and direct representatives of their specific interests (appreciated and emphasised by opinion polls and especially social media) up to the point of doubting a pillar of liberal-democratic representation like the ‘imperative mandate ban’.

¹⁴ The increase in electoral volatility also affected other European countries, such as Germany and the United Kingdom, both nationally and locally [Emanuele 2015].

¹⁵ Electoral law 195 from 2017 was used for the first time.

Figure 2. Volatility per Italian legislature

Source: Chiamonte and Emanuele [2019]

Strategical position change inside the representative assembly was increasingly more frequent by politicians looking for urgent consensus, as was blatantly displayed in the previous legislature (XVII) with the highest mobility of the elected in the republican era. In the preceding parliament, over 35% of the elected had changed their position in the Chamber and almost 50% in the Senate. Such levels of *switching*¹⁶ during the elections provoked a distortion of the political framework which resulted in a change of the power relations between the political groups. Besides passing from one group to another, we also witnessed the creation of new identities and the establishment of new parliamentary groups: in every part of the assembly (including the mixed group) out of 11 groups present in 2013, only 4 in the Chamber and 3 in the Senate maintained the same denomination in the eighteenth Republican Parliament [Curreri 2017].

Therefore, the XVIII legislature is an interesting case for examining the consequences brought about by the different re-positioning of politicians and voters, both in terms of seats and in terms of strategies pursued in the process of law-making.

6. Law-making activity and procedures

The conditions for changing the characteristics of the legislative function in the parliament of the XVIII legislature were initially expressed with the proposal of the party leaders of the parliamentary majority to exemplify a clear-cut discontinuity with respect to the recent past.

In quantitative terms, the historical trend has been a constant decrease in the number of laws passed by the Italian parliament. Starting with almost forty laws a month in the First Republic, there is a drop to roughly three laws a month issued by the XVIII legislature (the lowest average along with that of the XV legislature).

Frequent use of legislative delegation continues (shared with the previous legislature, the Letta and Renzi governments) but the number of legislative decrees issued overall has risen. In this first year of legislature the government capitalised on the use of

¹⁶ Switching can be considered the degeneration of parliamentary mobility; it is due to personal reasons linked to career prospects, expectations of connections or even economic gain [Curreri 2017]

this procedure, using it, first of all, to announce extensive reforms [Marchetti 2019] and obtain consensus and immediate support (the previous paragraphs underline the importance gained by immediacy with the advent of the populist parties) despite the uncertainty which comes with an effective and/or complete implementation of this type of procedure. Conversely, the parliament derived an advantage from the fact of not assuming direct and visible responsibility in sensitive areas but maintaining a minimum of formal control over delegated policies.

There is also a preference to resort to delegations in order to discipline certain crucial sectors when the majority coalition is in particular difficulty. In accordance with the delegated law, the risk of having an implementation or a partial or incompatible implementation, as we have pointed out, is compensated by the publicity the politicians receive from the enactment of the decision. The delegation is a medium which can be subject to the needs of urgent policies.¹⁷

From a quantitative point of view, the relationship of the legislative delegations compared with decree-laws shifts in favour of the former, while the quantitative relationship of the bills compared with decree-laws grows in favour of the latter (Fig. 3).

In the XVIII legislature the decree-law signals discontinuity not from a quantitative point of view but in the way it is used. The decree-law (previously the main means of legislative output at primary level in the Second Republic, Fig. 3) affirms a political willingness that should be collective but, in fact, in this legislature is increasingly more often attributable to individual ministers and/or leaders.¹⁸ Such an adaptive manner of use seems congenial to the type of government fragmentation that presents two parties with two distinct policy areas in which they are orientated to maintain almost exclusive control. Furthermore, the decree-law press conference sometimes becomes a means of political announcement of the contents which have not, or not yet, been shared¹⁹ as is also inferred by the long delay between the moment of deliberation in the Council of Ministers and the publication of the same decree in the Official Gazette (decree-law 32/219 was published 28 days after the Council of Ministers meeting on 20 March)²⁰ [Razza and Bartolucci, 2019]. Such a delay is in ulterior contrast with the urgency of the instrument: increasingly, the decree-laws are neither urgent nor necessary and not even appropriate (lacking the requirement of instantaneous application in accordance with art.15 l.400/1988) and barely presented with diligence to the Chamber. A progressively high number of the decree-laws have become manifesto laws – empty containers, only externally justified by short excerpts announced by the media, who are often aware of the draft before the competent offices.

¹⁷ We will not go into detail here about the critical notations on the excess of delegations and its executive self-empowerment, but in any case, please refer to [Marchetti 2016].

¹⁸ A lack of ministerial collaboration in issuing decree laws started to manifest itself in the preceding legislature but in the Conte I government it became routine and a governmental resource [Marchetti 2019].

¹⁹ By way of example, the budget bill, whose regulatory contents were anticipated in a brief press conference, was only submitted to parliament many days after the Council of Ministers.

²⁰ The important new element of the wider distance between the two occasions, the deliberation and publication during the XVIII legislature, is thoroughly presented in the table of all the decrees created by Razza and Bartolucci [2019]. Moreover, we recall the increasingly common practice of *'fuori sacco'* decrees, or rather, decrees not included in the Council of Ministers' items of the day because the accord is finalised only a few minutes before the same Council starts.

The most relevant choices made by the Conte I government were all passed through use of the emergency decree (decrees for workers, safety, citizenship income and unblocking building sites)²¹ [Di Cosimo 2019], even though the government-parliament subsystem can achieve the approval of draft legislation in a relatively short time following the customary procedure [Ibrido 2019; Gazzaretti 2013]. The tendency to use the decree is even more detached from any evaluation of the time frame of the decision, as the aim is for the implementation of the new policies to make an immediate impact on public opinion. In fact, it is not to be forgotten that a rapid decision is synonymous with a good decision and is a metaphor for good government. However, it is not so much the actual speed of approval that determines the choice of a procedure but the certainty of its approval and, above all, its greater media impact.

It seems that in recent years the emergency regulation has been performed primarily through the issue of civil protection ordinances: from 2009 the relationship between the use of this procedure and the decree-law has always been clearly in favour of the former and even more distinctly since 2016.²² When faced with a disastrous event, decree-laws are less frequent and slower to take action while ordinances are ready and presented more often [Arcuri 2019]. Due to this more frequent use, several dysfunctions have arisen like the case of the *omnibus* ordinances (multi-sectoral laws) or the paradox of decree-laws that act notwithstanding ordinances by derogation, as well as the standardisation of emergency, i.e., the transformation of the same ordinance from an extraordinary instrument to an ordinary one in order to adjust recurring situations.

The Constitutional Court recognised an intrinsic mutation of the emergency decree with sentence 244/2016 during the preceding legislature. This ruling affirms that, from a material point of view, heterogeneousness is compensated by a substantial 'objective uniformity'. The use of decree-laws is confirmed to be useful when the levels of inter-governmental rivalry and the autonomy of government departments are high. It is a way of working similar to Northon's *baronial model* [2011], according to which ministers are like feudal lords who hold the power to make political decisions on their 'territory', and either clash or make alliances with other barons in order to achieve their own goals.

In this first year of the XVIII legislature other innovations were consolidated: notably, more frequent appeals to the provision 'subject to agreements', which allows the adoption of a regulation even when it has not been formulated in detail. In other words, the politicians involved achieve political sharing (which is the objective of the Council of Ministers' resolutions), yet they reserve the detailed draft for a later date which is then specified by the competent offices. Consequently, there is a post-Council meeting where negotiations²³ are continued. In fact, with this clause, the government reserves the right to modify the text. The time from the approval of the decree-laws by the Council of Ministers to their publication in the Official Gazette is prolonged. Thus, such procedure is not noted for the transparency and certainty of its contents but for the distorted political value that is firmly underlined by the participation of the President of the Republic.

²¹ These are decree-laws that usually derive from various emergencies condensed into a sort of key word used like a journalistic slogan, conveniently utilised in terms of public opinion [Lupo 2019] to demonstrate the immediate acceptance of the government's legislation and maintain/gain consensus.

²² We recall that up until 2012 (decree-law n.59) the ordering power was entrusted to the President of the Council of the Ministers and then to the Head of the Civil Protection Department.

²³ The first time this clause was mentioned was by the Monti government (23 March 2012).

President Mattarella revealed an abuse of ‘approvals subject to agreements’, commenting on the procedure chosen by the Conte II executive for the so-called ‘growth’ decree even before this kind of procedure was also used for the substantial ‘building site unblocking’ decree. After the withdrawal of the requirements of article 77, this legislature affirms the de-specialisation of the now legitimate decree-laws to be considered as the ordinary instrument for pursuing political goals alongside deputations (and legislative decrees). The first Conte government used this instrument in a casual manner in order to implement the programme, overcoming the profound contrasts between the two majority groups, and, principally, to publicise political activity. Instead, this legislature issued the first ordinary law well after 149 days from its constitution,²⁴ the vote of confidence after 75 days and another three months were needed to constitute the commissions.²⁵

Rather than proceeding with an ordinary programme of activities of their own initiative, the first cabinet led by Conte chose to gather the various emergencies at hand and, at the appropriate time, incorporate them together in a decree-law possibly ‘subject to agreement’ (*approvazioni salvo intese*) and/or *omnibus*. In this way, the executive obtains a more immediate and visible implementation of the programme as regards forcing the attention of the majority towards placing their vote of confidence.

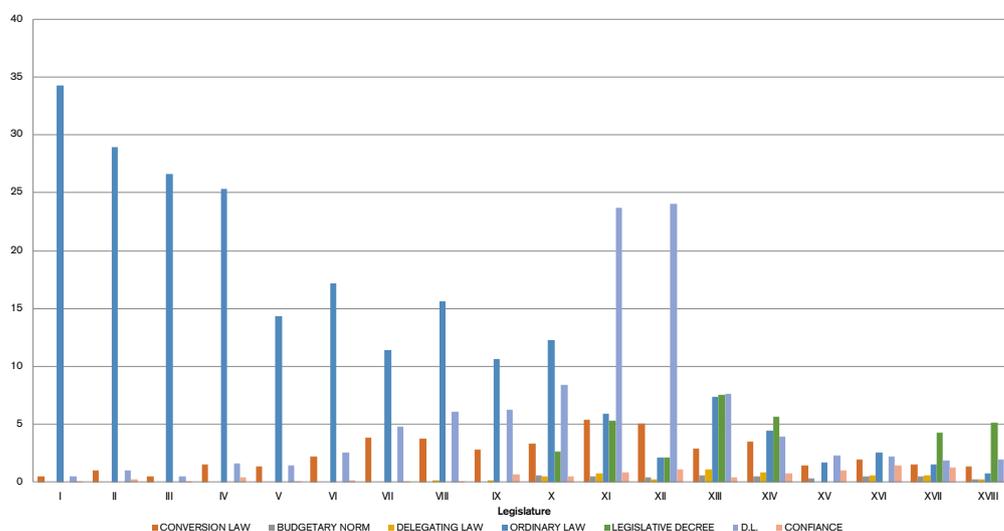
In the XVIII legislature the use of the decree-law is not as it was in the preceding decades i.e., similar to a fast lane, consequent to a more autonomous functioning of the department, with ministers lobbying for a high degree of control over their *own area* of policy unlike before [Laver and Shepsle 1996]. A more decentralised decisional process than in the past takes shape. The M5S-Lega alliance was formed to enable these parties to implement the policies that had brought them ample, but perhaps unforeseen, success:²⁶ namely, it was indispensable for the Five Star Movement to incorporate the concession of the citizenship income with the proposals on immigration and public order by the Lega.²⁷ In recent years, a high level of *volatility* (Fig. 3) predominantly conditioned party attitude inside the coalition to make the implementation (and/or the perception of the implementation) of certain policies more prominent in order to maintain and win votes.

²⁴ In addition to being quantitatively scarce, the ordinary laws are also reduced from the point of view of content if you count the number of letters [Legislation Committee, 2019].

²⁵ In fact, the difficulty in coming to an agreement is also evident by the laboriousness of the obligations relative to the setting up of the bodies (indicator of the ease with which the majority politicians establish any kind of accord). Diversely from what happened in the previous assemblies, in the XVIII legislature it is unusual for the policy-making process to be quicker than the process that leads to the nominations in the different organisms [Di Porto and Piana 2009].

²⁶ According to Downs [1957] the position of policy is merely instrumental: political parties are exclusively interested in governmental power but in order to obtain it they have to generate positive utility in the electorate by means of the issuance of public policies (or even through the communication of their issue). The positions of the political parties mutually affect the various dimensions (positions and politics).

²⁷ For an in-depth analysis of the legislative activity of Lega (Nord) and MS5 in their parliamentary beginnings see De Giorgi and Dias [2018].

Figure 3. Average per month of norms

Source: compiled by the author, based on data of the Chamber of Deputies (<https://www.camera.it>)

The advent of a majoritarian system heightened the trends of governments in the nineties and afterwards to reduce parliamentary confrontation to a minimum. The autonomy of the cabinets in the Chamber, which could be presumed to be a contingent factor, was institutionally claimed in the name of the direct relationship that would be established between the voters and the chosen executive, expressed in the winning coalition. It is no longer like this in the XVIII legislature because a coalition agreement never existed from the beginning. This kind of agreement promotes the *governance* of the coalition by being useful for the party leaders when they find themselves forced to seek the approval of their party members for a controversial decision, but most of all, to the benchmark voters who will be more inclined to accept concessions from coalition partners, if these arise from a compromise stipulating a preceding pact²⁸ [Strom, Muller and Bergman 2008; Pedersen and Christiansen 2012]. The government agreement signed by two political forces at the moment of the constitution of the executive does not seem to have the same force as one legitimated by the actual voters.²⁹ Therefore, governing and *law-making* is crucial for the Lega and M5S for the coalition and its endeavour for control is extended in the convoluted form of the cogent regulations issued: ‘thousand extensions’ decrees, omnibus, the application of votes of confidence, delegations and remedial delegations. All these procedural contrivances are not only for shortening the time of the legislative procedure but mainly to impose measures on parliament. The first test for the government is precisely the use of the question of the vote of confidence for the sole article of the draft law of the ‘thousand extensions’ decree law conversion, and for the autonomous and separate ministers to continue functioning through the frequent use of

²⁸ It is worth remembering that pre- and post-agreements can involve policies, rules and distribution of positions [Pedersen and Flemming 2012].

²⁹ Generally, the major conflict in parliamentary systems does not arise from the opposition between the two arenas – government and parliament – [King 1976], but between the parties, or factions, with diverging objectives that choose to converge on certain goals that are not individually achievable, hence, form a coalition [Vercesi 2012; Hubner 1996].

legislative delegation. The absence of coalition agreements makes the relationship between parties more difficult in the legislative process.

In the XVIII legislation, the law has lost its value as a point of equilibrium between the will of the people and the expression of the rule of law in the most tangible manner. It is balanced 'between the means with which it expresses the political will of the majority and instrument – once virtually exclusive – for the protection and implementation of the constitutional rights' [Lupo 2019, 253].

The populist tendencies of the governing forces tend to consider the regulatory measures as expressions of *only* the will of the people, virtually direct and instantaneous implementation not so much of the will of the representatives who are called to establish acceptable points of agreement on a case-by-case basis, but rather that of the same represented. As a consequence, in the formulation of a policy or a law, the populist legislator tries to manipulate the consensus of those represented, not only by satisfying their interests but, most of all, by going along with their responses and desires collected from surveys and social media. As Lupo [2019, 253] clearly stresses this point 'in contemporary democracies, due to the growing populist influences, the law tends to get too close to popular will and in this way [the law] becomes the pure and bare expression [...] of the same represented. Consequently, the contents of the law reflect not only the interests or the demands of the represented but also and above all their immediate reactions, their desires and moods, as they are accurately and promptly captured, not without unavoidable and sometimes drastic simplifications, by surveys and social media, and as they are declined and exploited by the populist leaders'.

Therefore, the provisions issued are increasingly more subject to specifications, reformulations, extensions, cancellations and more frequently in response to the voters' reactions than for necessary corrections.³⁰ Furthermore, for the most part this legislation is constituted by measures of eclectic content, usually extensions and various emergencies (for instance the conversion laws for the above stated decrees): from the *little laws* (micro-sectoral laws) of the First Republic to the *omnibus laws*. Instead, the delegating law is increasingly used to provide complex measures and reforms, seeking through this regulatory tool the fusion between government and parliament, which becomes increasingly weaker with the passing of legislatures.

7. Preliminary findings

Based on the empirical evidence of the case study and given the descriptive and interpretative nature of the analysis, some preliminary (theoretically relevant) findings can be argued.

This first year of the XVIII legislature appears to have completely capsized the characteristic traits of the Italian Republican Parliament. The distance between the parliament of 'transformation' [Polsby 1975], and 'settlement centre' or 'compensation room' [Sartori, 1963] and the system has never been so great. However, if this distancing can be physiological and functional to profound political change, both national and

³⁰ One of the consequences highlighted by Lupo [2019] is the phenomenon of the precariousness of the law since the content is uncertain.

international, which has occurred in recent years, on the other hand, the assembly seems to be heading towards the expropriation of its function of mediation and settlement.

The fluidity of the party system caused substantial instability in the parliamentary set-up due to runaway political fragmentation accentuated by a high degree of switching.

Discontinuity did not occur in the dysfunctions of the legislative process, as announced by the leaders of the M5S (Luigi Di Maio) of the Lega (Matteo Salvini) and by the neo-President of the Chamber (Roberto Fico). Indeed, recourse was made to all the dubious procedures used up until then.

Consequently, starting from the hypothesis validated by the preceding comparative analysis [De Micheli and Fragnelli 2016] which, added to the increase in parliamentary fragmentation and decrease in governability, carrying out the normal governmental functions becomes progressively more complex and influences the course of the *law-making* process (besides all the other functions that require widespread agreement like nominations and the constitution of commissions), the high level of volatility has changed certain features even more.

The higher propensity level of the voters to switch their preferences from one party to another can be considered an independent variable that modifies the use of the available tools to the policy makers so as to exploit visibility and publicity as much as possible. If, with time, the different degrees of fragmentation and governability have affected the abandonment of ordinary legislation and decentralised approval in favour of decrees, delegations and provisions protected through votes of confidence, the high volatility rate of the voters has motivated the use of these instruments in such a way that they have become more flexible, modifiable and easier in promoting their contents.

The case-study gives empirical support to the hypothesis that, due to high electoral volatility, the governmental actors tend to follow the political demands of volatile voters, showing a high degree of decision-making efficiency, even resorting to procedural tools to make the implementation (and/or the perception of the implementation) of certain policies more prominent.

8. Conclusions

This paper has analysed the characteristics of the legislative process in the first year of the Italian XVIII legislature on the basis of elements of continuity and change of three independent variables: parliament fragmentation, governability and electoral volatility.

Descriptive trends of the independent variables and of their impact on law-making activities and procedures have confirmed that high parliamentary fragmentation and low governability tend to influence the law-making characteristics of the parliament-government subsystem, drastically reducing ordinary legislation and decentralised approval in favour of decree-laws, delegating-laws and legislation protected through votes of confidence. Moreover, high electoral volatility has modified the use of these regulatory tools and procedures in order to make them more flexible, changeable and promotable in their contents, making it easier for policy makers to follow the political demands of volatile voters and to show them a high degree of decision-making efficiency.

These empirical and theoretical findings, although preliminary and based on a descriptive analysis of a case-study, enrich the literature on the role of law-making

procedures in the recent evolution of the Italian political system. They also offer promising arguments to frame, with further empirical investigations, the topic of the supposed decline of Italian parliament along with the decline of the traditional political parties.

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