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Political Parties and Political Foundations in Italy

Their Changing Landscape of Structure and Financing

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Il volume è stato pubblicato con il contributo del Dipartimento di Comunicazione e Ricerca sociale della Sapienza Università di Roma.

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Foreword

This book, published with research funds from the University of Rome La Sapienza[1], has the aim of disseminating knowledge about the Italian system of political parties and political foundations among non-Italian scholars, in the light of the recent legislative reforms in this field and the proposals currently being discussed in Parliament. As in many other European countries, the Italian party system is facing a profound transformation involving not only the very *raison d'être* of parties, but also their internal organisation in terms of democracy and protection of party members' participatory rights, as well as the system of party financing. With regard to political foundations and think tanks, Italy represents a special case: in the last twenty-five years the number of *policy-oriented* think tanks, similar to the Anglo-American ones, has increased, so has the number of *personal* think tanks, linked to specific political leaders. On these issues we have focused our research activities in recent years, of which this book represents a compendium.

Since the end of the Second World War, a growing number of European countries have included provisions on political parties in their Constitutions or have adopted specific rules concerning the *status*, functioning and financing of political parties. Indeed, with the sole exception of Belgium, Denmark, Ireland, and the Netherlands, all other Member States of the European Union mention political parties in their Constitutions and eighteen of them have also adopted laws on parties[2]. The European Union itself has regulated first the establishment, organisation and funding of political parties at European level and of political foundations linked to

[1] Project no. C26A15Y32X, financial year 2015, entitled «*Tra partiti e fondazioni: come cambia il finanziamento della politica. Prospettive giuridiche e politologiche*». Leader of the research team: Maria Romana Allegri. Other researchers: Mattia Diletti and Paola Marsocci.

[2] *Party Law in Modern Europe*: www.partylaw.leidenuniv.nl.

them[3], and more recently the statute and funding of European political parties and foundations[4]. Actually, the abundance of rules in this domain has led some to remark that the degree of state regulation of political parties has far exceeded what would normally be acceptable for private associations in a liberal society[5].

The Italian case is not an exception on the European scene of party law. The Italian Constitution refers to political parties in art. 49, stating that «All citizens shall have the right to associate freely in political parties in order to contribute by a democratic method to the determination of national policy». In this respect it has to be noted that citizens, rather than parties, are the subject of this provision: evidently, the Italian "Constitutional Fathers" have intended parties merely as means by which citizens can exercise their rights to political participation collectively and the determination of national policy as a function assigned primarily to citizens, not to parties directly, being the latter considered as intermediary agents only.

Because art. 49 Cost. does not contain any explicit indication that its provisions were to be implemented by the law, since the entry into force of the Italian Constitution, both at political and academic level, a long-debated issue has been that of the advisability of adopting a specific law on political parties. For many years the prevailing opinion has been that legislation on political parties was undesirable because it would have limited the freedom of association of citizens. Political parties should instead have been considered as free associations of citizens pursuing political goals and consequently disciplined by the existing provisions of the Italian Civil Code referred to associations in general. Due to their nature of associations on a par with any other, political parties should have maintained complete freedom of determining their own purposes, internal organisation and financial management. Along the same lines, the "democratic method" mentioned in art. 49 Cost. has been predominantly interpreted as an "external" requirement, concerning the way parties would democratically compete against each other in the political arena in order to gain consensus, having no concern with their internal organisation. In other words, art. 49 Cost. does not make intra-party democracy immediately forcible.

[3] Regulation (EC) no. 2004/2003 on the regulations governing political parties at European level and the rules regarding their funding (4 November 2003), amended by Regulation (EC) no. 1524/2007 (18 December 20017).

[4] Regulation (EU, Euratom) no. 1141/2014 on the statute and funding of European political parties and European political foundations (2 October 2014), applicable since 1st January 2017.

[5] R. S. Katz, *The Internal Life of Parties*, in K. R. Luther and F. Müller-Rommel (eds.), *Political Parties in the New Europe*, Oxford University Press, 2002, p. 90.

Still, in response to the rising pressure of public opinion demanding more transparency in the financial management of parties, in thatpolitical parties have long been financed by public revenues, as well as to the recommendations of the *Group of States against Corruption* (Greco) established by the Council of Europe, published in 2012, the Italian legislator has tried to restore a relationship of confidence between citizens and political parties by adopting first Law no. 96/2012 and later Decree-Law no. 149/2013, converted into Law no. 13/2014. This latter legislative intervention, overtly inspired by the above-mentioned regulation of the European Union on European political parties and foundations, was meant principally to assure overall transparency of party statutes and accounts. However, beyond that, it has also sowed early seeds of an internal regulation of parties in democratic terms. As regards Italian think tanks, the lack of transparency has been frequently denounced by media and by the National Authority Against Corruption established in 2014.

The first chapter of this book, written by Maria Romana Allegri, retraces the process which has led to the adoption of this regulation, highlighting that, despite any declaration, party funding still weighs on the state budget. It also describes and evaluates the conditions imposed on parties willing to have access to financing and conclusively analyses the statutes of some of the main Italian parties, in order to detect which seeds of intra-party democracy, if any, have sprouted as a result of the recent legislative reform. What emerges from that analysis is that legal provisions have been implemented in a variety of forms so as to notundermine the principle of freedom of association. Therefore, there is no uniformity in the level of internal democracy made explicit in party statutes and the nature of the political parties as legal entities seems very elusive at this stage. It follows that the process leading to an implementation of the democratic method indicated by the Constitution is far from being concluded.

In the second chapter, Paola Marsocci considers first the discussed question of whether the law should intervene or not, besides the self-regulatory autonomy of parties, in establishing and enforcing their internal rules. In fact, many argue that a law should be the least invasive possible, thus safeguarding the autonomy and responsibility of parties, which could instead proceed to self-reformation. Still others believe that legislative intervention should be as weighty as in other European countries, regulating the internal organisation and function of parties in detail. Secondly, this chapter examines the draft laws concerning party regulation proposed to the Parliament in recent years, with a special regard to the consolidated draft adopted by the *Camera dei Deputati* on 8 June 2016, still under discussion. In this regard the Author reaffirms that any legal

obligation of adopting "precompiled" party statutes, even as a pre-condition for taking part in elections, would not serve to enhance democracy, but simply to produce photocopy-parties. On the contrary, rules concerning the inclusion and expulsion of associates, denominations, emblems and headquarters, and the selection of internal and external candidates, should be established by the associates themselves, as they constitute the identity of the organisation and enable them to be distinguished from the others. The above-mentioned draft law on parties is analysed and commented also with reference to the registration of party statutes, the requirements parties should meet to be allowed to compete in elections, and the transparency of the internal life and funding of parties. A final section is dedicated to the issue of primaries, which the Authors consider mere consultations rather than proper elections, and to the long-debated issue of making them a legal obligation for parties. Some concluding remarks are dedicated to the unsettling propensity of the Italian legislator for adopting electoral laws with suchnumerous and significant flaws that they have required the intervention of the Constitutional Court. Surely, the long-awaited reform of the Italian party system is both cause and effect of its continuing instability.

In the third chapter, Mattia Diletti deals with the unknown territory of the new financing modelof post-2013 politics, in which foundations maintain their capacity for resilience and attraction. Some political leaders have preferred to use think tanks by virtue of the broad degree of autonomy they enjoy – also in building direct and personal relationships with the representatives of interest groups – outside the formal party structures. The stronger the erosion process of party organisations and of political cultures is, the more strongly affirmed will be the personalised models of political organisation, in which even the funding of the organisation's own public viability is managed autonomously. In the Italian case, it was considered useful to proceed with an *ad hoc* characterisation of the various models of think tanks present in our country. There are four types: "personal think tanks" (connected with individual political leaderships); "policy-oriented research centres" (those more similar to the American model, namely organisations with semi-permanent research structures whose primary objective is to use knowledge resources to influence the policy debate); "policy forums", which is to say, discussion centres in which the economic, cultural, and political elites can dialogue on specific problems of public policy; "foundations of political culture and memory" connected to the political/cultural tradition of an area or of a leader of reference from the past. The research concentrates only on the first type of think tank, bearing in mind that, of course, some of the functions and activities performed by those allowing a relationship between politics and interests to be built are

present in other categories of think tanks as well. Moreover, the first type of think tank is the most interesting, since it is the chief one implicated as a direct vehicle of funding for the political class.

The future development of the relationship between financing from private sources and political players is still uncertain. On one hand, the progressive reduction of public funding is probably giving way to a process of micro-personalisation of political financing where a certain do-it-yourself attitude is prevailing, with a not-so-remote risk of feeding influence peddling. On the other hand, the funding of parliamentary groups is likely to become the main source of party revenues, thus favouring the transformation of parties into organisations of elected representatives.

The Current Italian Regulation on Party Funding, Transparency and Democracy and Its Influence on Party Statutes[*]

SUMMARY: 1. The winding road to the 2013 Act. – 2. The "democratic method" required by art. 49 Cost. and intra-party democracy: is a party law expedient? – 3. The current sources of funding for political parties and movements. – 4. Conditions for party funding: representativeness above all. – 5. The second condition: the necessary content of party statutes. – 6. The third condition: the (optional) registration of parties. – 7. The fourth condition: the (temporarily dodged) scrutiny of party accounts. – 8. The fifth and last condition: transparency and publicity (and deficiencies in this respect). – 9. The influence of the 2013 Act: democratic principles in party statutes. – 10. Provisional conclusions and future prospects.

1. The winding road to the 2013 Act

In February 2014, Law no. 13, converting Decree-Law no. 149/2013[1] was approved[2]. It represented the final step of a process begun with Law no. 96/2012[3], which had tried to achieve a gradual reduction of public funding in favour of political parties. In fact, the system laid down by the previous Law no. 157/1999[4], based on reimbursements of the electoral expenses of parties, had given way to the inflow of an enormous amount of money towards political parties, absolutely disproportionate to the expenses

[*] Written by Maria Romana Allegri.

[1] Decree-Law 28th December 2013, no. 149, entitled *Abolizione del finanziamento pubblico diretto, disposizioni per la trasparenza e la democraticità dei partiti e disciplina della contribuzione volontaria e della contribuzione indiretta in loro favore.*

[2] Pursuant to art. 77 of the Italian Constitution, in extraordinary cases of necessity and urgency the government can issue a decree-law that should be converted into a law (the so-called *legge di conversione*) by the Parliament within sixty days. The *legge di conversione* may contain amendments to the original decree-law, as in case of Law no. 13/2014.

[3] Law 6th July 2012, no. 96, entitled *Norme in materia di riduzione dei contributi pubblici in favore dei partiti e dei movimenti politici, nonché misure per garantire la trasparenza e i controlli dei rendiconti dei medesimi. Delega al Governo per l'adozione di un testo unico delle leggi concernenti il finanziamento dei partiti e dei movimenti politici e per l'armonizzazione del regime relativo alle detrazioni fiscali.*

[4] Law 3rd June 1999, no. 157, entitled *Nuove norme in materia di rimborso delle spese per consultazioni elettorali e referendarie e abrogazione delle disposizioni concernenti la contribuzione volontaria ai movimenti e partiti politici.*

they actually incurred[5]. This attracted much criticism due to the reckless use parties were making of these public funds and the very little transparency they used in the handling of their resources. However, the reform of 2013 did not aim toward abolishing public funding in favour of political parties but at reducing it and making it more rational, in the belief that, as shown also by the experience of all other European countries, public funding is essential, in a liberal-democratic context, in order to impose equal and certain standards – transparent, measurable and subject to judicial review – on political competition (Amato 2012).

Before 2013, some significant adjustments had been already provided by Law no. 96/2012[6]: halving State contributions in favour of political parties for the financial years 2012 and 2013; anchorage of thirty percent of public funding to the parties'selffinancing capacity; access to grants linked to an effective party representation (at least one elected candidate); obligation to submit the financial statements of parties to an independent audit; establishment of a Commission composed of five judges[7] responsible for the supervision of audited financial statements; an articulate system of sanctions in case of non-fulfilment of the legislative provisions, including the full repayment of grants in the event of non-submission of party budgets; obligation for the parties to produce documentary evidence of the expenditures they incurred, so that the Commission could assess their suitability, appropriateness and adequacy; accessibility of party budget documents through the Parliament's and the parties' websites; reduction of five per cent of government grants in the event of non-compliance with gender equality rules in the composition of the lists of candidates; disclosure of those donations in favour of parties exceeding the yearly amount of five thousand euros; obligation (only for those parties wishing to make use of funding opportunities provided by law) to conform their statutes to democratic principles in their internal life, especially with regard to the choice of candidates, the respect for minorities and the rights of party members, as well as an incorporation deed to be sent to the Presidents of both Houses of Parliament; tax deductions (twenty-six percent of the gross tax) for donors, provided that donations to political parties and political

[5] This was highlighted also by the Italian Court of Auditors about the 2008 general election (Corte dei conti, *Referto sui consuntivi delle spese elettorali per le elezioni politiche del 13-14 aprile 2008*, Deliberazione CSE no. 9/2009).

[6] In regards to this law, see Biondi 2012, Dickmann 2012, Falcone 2014: 423-469, Flick 2012, Foti 2012, Marsocci 2012: 200-212, Pizzimenti and Ignazi 2011, Piccio 2013, Porena 2013.

[7] Designated by the three highest Courts (*Corte di Cassazione*, *Consiglio di Stato* and *Corte dei Conti*) and appointed by common consent by the Presidents of the two Houses of Parliament.

movements were comprised between fifty and ten thousand euros pro year; compulsory disclosure of personal assets and income of party treasurers; limitations on the expenditures that candidates and parties may incur in the context of municipal and European elections (previous legislation had introduced expense limits only with regard to general elections).

Law no. 96/2012 was meant to adapt Italian legislation to the recommendations of the *Group of States against Corruption* (Greco) established by the Council of Europe in 1999, especially to those adopted by the Greco plenary meeting in March 2012[8], which had stressed the need to disclose the donations received by political parties and movements, to manage public and private financial resources in a transparent way, to submit party financial statements to an independent audit, to establish an independent supervisory authority and to provide for an adequate disciplinary system. In particular, Greco had highlighted that that the weakest area in the regulation of party funding in Italy related to the control mechanisms (sect. 125) and that the time had come to improve on the transparency of political finances, to tighten public control and enforcement mechanisms, and, by doing so, to enable a more level playing field for all political contestants (sect. 124). However, Law no. 96/2012 had not absorbed the entire range of Greco's recommendations: it had not considered, for instance, the pivotal importance of regulating the legal status of political parties, being Italy among the few countries in Europe where political parties are not required to have legal personality (sect. 127), nor to consolidate the accounts of political parties so as to include local branches as well as entities related directly or indirectly to political parties or otherwise under their control, such as political foundations and associations (sect. 135).

For these reasons, Law no. 96/2012 was soon considered inadequate for restoring a relationship of confidence between citizens and political parties, in that confidence had seriously and perhaps irreparably been fractured by some news stories of shameful affairs concerning embezzlement and peculation by party leaders or treasures. Added to this was the perception of an abnormal amount of public spending for political parties amid the economic crisis the country was undergoing and the inadequacy of the party system to effectively represent and convey the demands coming from civil society and implementing them through appropriate regulatory instruments. Many clamoured for a significant reduction in the cost of politics by cutting back the remuneration of elected representatives,

[8] Greco, *Evaluation Report on Italy Transparency on Party Funding*, Strasbourg, 23 March 2012, Greco Eval III Rep (2011) 7E, Theme II.

regarded as absolutely disproportionate to that of the average worker, and by abolishing any kind of public financing of political parties and movements. This latter claim was taken into serious consideration by a consistent part of the political forces that tried to ride on it, hoping to reinstate public approval in sight of the upcoming election campaign, despite the fact that public funding of political parties is largely practised in almost all European countries.

In April 2013 the working group established by the former Head of State Giorgio Napolitano released a report highlighting a strong demand for a radical change in public ethics arising from civil society, faced with deep dissatisfaction with the services that politics provided to citizens, the excessive costs of politics and the improper advantages of political parties and institutions. It indicated sobriety, transparency, spending review and probity of public institutions as essential objectives to be achieved. Nevertheless, it considered public financing of political activities, provided that funds are adequate and proportionate and expenses verifiable, an unavoidable factor for the correctness of democratic competition in order to prevent it from being improperly influenced by private wealth. Therefore, the working group proposed only minor adjustments to the regulation already in force, among which a minimal level of internal democracy to be imposed upon parties, appropriate rules for preventing conflict between private and public interests, a better transparency of lobbying, the establishment of ethical committees in both Houses of Parliament, and harmonised provisions for monitoring the cost of politics[9].

A few months later, the former Government chaired by Enrico Letta deemed it appropriate to give a stronger signal of acknowledgement of the needs expressed by civil society. It first released a draft law and only ten days later, in order to hasten the process, a decree-law with the same title and contents[10] which entered immediately into force, leaving the Parliament a sixty-day time limit for its conversion. Law no. 13/2014 (*legge di conversione*) was finally approved on 20 February 2014[11]. To this respect some have argued that, although a new party law was certainly among the Government's priorities, there was no extraordinary necessity or urgency to justify the recourse to a decree-law instead of an act of Parliament. Indeed,

[9] In fact, a special branch of the Court of Auditors was in charge of the supervision on party funding and expenses related to the election campaign (Law no. 515/1993), whereas the Commission established by Law no. 96/2012 was responsible for auditing party accounts and, according to Decree-Law no. 174/2012, financial reports from political groups in regional assemblies were to be submitted to the regional branches of the Court of Auditors.

[10] Decree-Law 28th December 2013, no. 149.

[11] Comments about this regulation in Allegri 2014a and 2014b and Dickmann 2014.

the preamble of the decree-law identifies as "unavoidable reasons" what are mainly political principles, not facts (Dickmann 2014).

The explanatory memorandum introducing Law no. 13/2014 (*legge di conversione*) helps to clarify the rationale behind the new regulation. Firstly, it declares the will of finally complying with the result of the 1993 referendum, wherein the citizens chose to abolish direct State contributions to political parties and movements, as a means of reducing the cost of politics and, above all, to help bring the parties back to their *raison d'être*: namely, as vehicles of articulation, aggregation and representation of interests and not as a means of seizure – sometimes irresponsibly – of public and private spaces. Secondly, the report expresses the need to structurally tie the new model of party funding to a system of rules guaranteeing a certain internal democracy of political parties, as well as transparency of party operation and accounting, thus balancing the principle of freedom of political association (which is a foundation of any democracy) and the equally relevant legal requirements that government intervention in support of political parties and movements must always meet. Thirdly, the report states the intention of implementing art. 49 of the Italian Constitution [12] without limiting the freedom of establishment and internal organisation of political parties, being Italian parties the same as free associations without legal personality[13] subject to the provisions of law applicable to the *associazioni non riconosciute* [14]. Therefore, the submission of party statutes to the Commission is not compulsory but rather, it is discretionary, being only aimed at selectively regulating the access to economic benefits according to legal provisions. Consequently, any political party or movement is allowed to participate in elections, regardless of its internal organisation and the transparency of its management, whereas only parties willing to profit from the financing opportunities established by law are bound to comply with legal provisions referred to party registration, contents of party statutes, financial auditing and transparency.

Decree-Law no. 149/2013 has a hybrid nature that may be regarded as a good compromise to safeguard the ambivalence of political parties: on one hand, parties are free expressions of the associative will of individuals, which is protected by both articles 49 and18 of the Italian Constitution[15]; on

[12] Art. 49 Cost.: «Tutti i cittadini hanno diritto di associarsi liberamente in partiti per concorrere con metodo democratico a determinare la politica nazionale».

[13] Associations can still be recognised as legal entities under private law by joining the registering with the prefectures, as determined by Presidential Decree no. 361/2000.

[14] Italian Civil Code, articles 36-42.

[15]Art. 18 Cost.: «I cittadini hanno diritto di associarsi liberamente, senza autorizzazione, per fini che non sono vietati ai singoli dalla legge penale. Sono proibite le associazioni segrete

the other hand, according to the Constitutional Court's decisions no. 79/2006 and 120/2009, they may be considered as instruments of representation of politically organised interests, upon which some public functions are conferred, but not State powers in themselves, despite the substantially constitutional nature of their attributions (Marsocci 2012: 137-139; Gennusa and Ninatti 2008: 23-28; Rivosecchi 2016). Therefore, the regulation introduced in 2013 does not have the ambition of fully implementing art. 49 Cost. nor of organically regulating political parties. It is only slightly penetrative, not compulsory and based on rewarding incentives: it may be considered an adequate solution for encouraging political parties to improve the clarity and transparency within their organisation and structure without forcing them into a uniform model. This emerges from the "*considerato*" section by which the law begins: it refers to the deep economic crisis the county is passing through which requires a serious spending review, as well as the need of cutting back on State financing of parties as expressed by citizens in the 1993 referendum, thus allocating a decisive role in party funding to the citizens' free will. Moreover, art. 2 reaffirms that political parties are free associations by which citizens contribute to democratically determine national policy and it emphasises an explicit relationship between the democratic method mentioned in art. 49 Cost. and compliance with the rules introduced by the Decree-Law.

2. The "democratic method" required by art. 49 Cost. and intra-party democracy: is a party law expedient?

Recurring references to art. 49 Cost. require a brief digression on the interpretation and implementation of this constitutional provision, focusing on the demanded democratic method in determining national policy. However, this is not the place to retrace the dispute within the Constituent Assembly regarding the drafting of this provision nor the one following the entry into force of the Constitution regarding the proper meaning of the phrase "democratic method" and whether or not art. 49 Cost. should be implemented by law. With regard to this debate one may refer to the vast literature on this subject[16], whereas only a few suggestionsat this point may be sufficient in order to carry on with the reasoning.

e quelle che perseguono, anche indirettamente, scopi politici mediante organizzazioni di carattere militare».

[16] *Ex multis*: Aic 2009; Catelani 2015; Gambino 2008; Lanzafame 2017; Marsocci 2012; Merlini 2009; Mortati 2015; Pasquino 1992; Piccio 2015a and 2015b; Poggi 2015; Ridola 1982; Rossi and Gori 2011; Rossi 2011; Ruggeri 2010; Rivosecchi 2016.

In the debate within the Constituent Assembly (Pasquino 1992, Rossi 2011, Ridola 1982, Ruggeri 2010) political parties were exactly described by Costantino Mortati as an engine of political dynamics, a focal point in the relationship between voters and elected representatives on the one hand, and between representatives and elected assemblies on the other. Mortati then affirmed that the role of parties was that of preparing citizens for political life, allowing them to express their will organically and selecting those who would represent the Nation in the Parliament. Consequently, Mortati and Carlo Ruggiero proposed that art. 49 Cost. should explicitly state that parties were bound to the democratic method not only in their external actions but also in their internal organisation. Aldo Moro added supportively that, without a basis of internal democracy, parties would not have been able to democratically orient national political life. However that proposal, firmly rejected by Umberto Merlin, was finally set aside because of the fear that contingent political and parliamentary majorities might restrict the internal freedom of parties. Since then, a general party law has never been introduced in the Italian legal system due to various reasons: fear that a legislative regulation of a field traditionally reserved to individual autonomy would turn into a limitation of both that autonomy and the constitutional right of individuals to associate themselves in political parties; impossibility of subjecting political parties, being free associations pursuant to art. 18 Cost., to any kind of authorisation; perplexity about setting up an ideological control on the internal life of parties.

The same perplexity seems to have been transfused in the regulation of 2013 that, although it mentions the democratic nature of parties in its title, binds party statutes only to a few merely formal obligations with regard to their content, without forcing them into any predetermined structure. However, not only is there no univocal definition of a party's "internal democracy" but there is also little agreement on the fact that, in order to render the functioning of the political system democratic in itself, parties must be bound to democratic internal procedures even though they are free associations of citizens (Piccio 2015a). Nevertheless, the Constitutions of twenty-three Member States of the European Union explicitly acknowledge political parties and eighteen of these countries have a specific party regulation, although often it is not particularly detailed or penetrative with regard to rules referring to internal democracy. The most in-depth party laws are those in force in Germany, Finland, Spain and Portugal. Only four States (Belgium, Denmark, Ireland and the Netherlands) do not have any party law nor do they mention political parties in their Constitutions (Di Mascio and Piccio 2015: 386-388). These references show that a party regulation in Italy is far from being exceptional among European countries

(Lanzafame 2017). Moreover, the European Union itself recently introduced a Regulation concerning the statute and financing of European political parties (no. 1141/2014) by which the Italian legislation is overtly inspired (Allegri 2014b).

If one assumes that the distinctive feature of parties is their peculiar role of intermediaries between the people's will and State institutions – as the Constitutional Court stated in 2006 – one cannot escape considering that an essential indicator of party functioning according to the democratic method required by the Constitution is represented by the manner in which parties integrate their members and allow them to represent their own interests. Indeed, according to Scarrow (2005) inclusiveness is one of the two most relevant indicators of intra-party democracy (the second is decentralisation).

Inclusiveness is described as a «very broad term describing a wide range of methods for including party members in intra-party deliberation and decision making» (p. 3). Hence, although there is no one-size-fits-all model for how to democratically run a party, inclusive parties allow members or even supporters to decide on important issues, such as the choice of party leader or the selection of party candidates.

Nevertheless, some contend that inclusiveness is essential for intra-party democracy. On the contrary, widely inclusive parties – eroding the boundaries between formal members and supporters, by-passing any form of intermediation between members and leaders, and making use of "plebiscitarian democracy" in internal party decision making – may lead to a vertical and centralised organisational model where leadership turns out in fact to be reinforced (Katz and Mair 2009). Moreover, it is not axiomatic that rules on the internal democracy of parties would help contain the process of power centralisation in the hands of political leaders and increase the level of democracy of the entire system (Piccio 2015a), being the latter not a static sum of the organisations by which the system is composed but the result of their interaction. Therefore, the quality of a country's democracy derives from the competition and interaction among parties and not only from the internal order of its parties (Sartori 1993).

Going back to the Italian constitutional doctrine, although the word "inclusiveness" was not used, Esposito (1954, Poggi 2015) argued that representative democracy is substantial only when it enables citizens to participate uninterruptedly in determining national politics by means of political parties that, due to an internal democratic life, actually render this participation effective. More recently, Ferrajoli (2007) has claimed that the democratic method required by art. 49 Cost. prescribes that parties should be organised so as to facilitate the formation of a bottom-up collective will with regard to all political choices, in order to hinder the tendency towards

political personalisation and concentration of all powers in the hands of the leadership. Despite these indications, while parties are progressively losing their representativeness, aggregation ability and popularity, they are increasingly shaping themselves as decision making institution[17], instruments for the management of power and poles of centralisation in selecting political personnel. Hence, the democratic method the Constitution requires cannot be implemented without a sufficient degree of transparency in the internal organisation of the parties, as it seems to be the only way to consent the citizens' supervision of the actions of the parties.

In those circumstances, the idea of the necessity – as well as the constitutional eligibility – of a general party law imposing at least a minimum level of internal democracy has slowly made its way in recent years due to the following evaluations: firstly, the provision of public financial support to parties requires some form of public control on the use of these resources; secondly, the role played by political parties in electoral procedures, with particular reference to the selection of candidacies, requires procedural rules which, although limiting the autonomy of the parties, are functional for ensuring protection to individual rights of constitutional rank; thirdly, being that parties are mere tools in the citizens' hands by which they express themselves in the determination of national policy, the rights of individuals within the parties are to be guaranteed in order to ensure that the parties comply with their instrumental function; finally, a general party law might contribute to restore the role of parties as a *trait d'union* between citizens and institutions, which is essential in a pluralistic democracy (Rossi 2011). Therefore, a law fixing basic levels of intra-party democracy, while not constituting a panacea for all the ills of politics, may be considered a necessary step in a process of self-reform of politics aimed at re-establishing a coherent and sustainable link among participation of citizens, exercise of power, representation of interests, and responsibility of political decision-makers (Lanzafame 2017: 15).

3. The current sources of funding for political parties and movements

As already highlighted, Decree-Law no. 149/2013 contains provisions concerning some minimum rules about the compulsory content of party

[17] Recent Italian institutional history reaffirmed the central role of parties in determining the most relevant public offices appointed by Parliament, with a consequent marginalisation of the latter, which is reduced to a mere "recorder" of the choices taken at times by the government, at others by parties themselves (Lanzafame 2017: 7).

statutes, control over the compliance with these rules entrusted to a special commission, registration of parties in line with legislative requirements, and transparency of party accounting. However, these rules apply only to parties willing to profit from the forms of public contributions the law provides for, while gradually abolishing direct State funding in favour of political parties. Therefore, before examining these rules it may be helpful to describe what kind of party financing Decree-Law no. 149/2013 has introduced in place of the reimbursements for the election expenses laid down by Law no. 515/1993 (Dickmann 2014).

Briefly, public funding to political parties (Tarli Barbieri and Biondi 2016) was introduced in Italy by Law no. 195/1974 alongside private contributions which were not subject to transparency. In 1981 (Law no. 659) State contributions were redoubled and a minimum of rules on financial reporting were introduced, although they did not impose a radical financial transparency. The opaque accountability of parties favoured corruption, whose seriousness emerged abruptly at the beginning of the 1990s with a series of scandals known as *tangentopoli,* which led the majority of voters to express themselves against this system of party funding in the 1993 referendum. Logically, the referendum result should have caused the abolition of State contributions to political parties. However, parties were allowed to count on reimbursements of the expenses they had to bear for election campaigns (Law no. 515/1993), which later (Law no. 157/1999, in force since 2001) turned again into a rank system of party funding through State contributions, because the so-called "reimbursements" had no proportional correlation to the expenses parties actually incurred. in the following year (Law no. 156/2002) the mechanism was adjusted in order to further increase the resources parties could rely on and in 2006 (Law no. 53) it reached its climax by allowing parties to continue receiving yearly "reimbursements" until the end of the legislature also in case of its early termination. Public opinion turned progressively from resignation to indignation when faced with the excess of public resources parties could benefit from amid the growing economic crisis distressing the country, added to some corruption scandals the press brought to light. This is why Law no. 96/2012, complying with Greco recommendations, halved the amount of public money allocated to political parties with immediate effect and redesigned the financing mechanism, separating the public contribution as reimbursement for election expenses and political activity (70% of the allocated funds) from that as mere co-financing (30% of the allocated funds).

Recently, art. 14 of Decree-Law no. 149/2013 – as converted into Law no. 13/2014 – has prescribed a progressive reduction of direct public

funding to political parties over a four-year period starting from the entry into force of the new regulation, until its complete cessation with effect since 2017. This gradual decrease in direct State contributions to parties is supposed to be compensated for by two new channels of party funding: voluntary allocation of two per thousand of the personal income tax (art. 12 of Decree-Law no. 149/2013) and private funding fostered by fiscal benefits for donors (tax deductions up to 26% of the amounts of between thirty and thirty thousand euro per donor per year), according to art.11 of Decree-Law no. 149/2013. These provisions outline a mechanism of private contribution on a voluntary basis, which at any rate affects public resources: in the first case, the voluntary allocation of two per thousand of the personal income tax removes part of the revenue from taxation from different uses; in the second case, the tax relief regime for donations to political parties implies a curtailment of the revenue available for the State. Therefore, although such choices are within private autonomy, they have implications in collective interests and, for this reason, need to be regulated as for requirements which are necessary for taking advantage of these contributions and methods of their utilisation.

More specifically, as for the voluntary allocation of two per thousand of the personal income tax, since the fiscal year 2014 taxpayers can allocate two per thousand of their income tax in favour of a political party of their choice – provided that it is regularly registered, consistent with financial transparency obligations[18] and holds a minimum level of representativeness in consequence of the election result[19] – or they may simply refrain from any choice, so that the corresponding revenue will not be allocated to any party. What has happened in recent years is that taxpayers have not proved particularly well-disposed towards political parties, so that revenues from voluntary allocations resulted as considerably lower than expected[20], which parties have not failed to deplore.

As for donations to political parties – which only registered parties can receive, provided that they have attained a minimum electoral result[21] – provisions set forth many years ago by Law no. 195/1974, according to

[18] See sect. 8 of this chapter.

[19] See sect. 4 of this chapter.

[20] The yearly amounts from voluntary allocations were to be collected in a specific State fund managed by the Ministry of Economy and Finance and distributed to political parties up to the maximum limit of € 7.75 million for the year 2014, € 9.6 million for the year 2015, € 27.7 million for the year 2016 and € 45.1 million since 2017. However, until now available resources have been less than expected.

[21] See sect. 4 of this chapter.

which donations to political parties from public companies[22] are illegal, are still effective. Moreover, it has to be emphasised that donations (as well as any payments made in fulfilment of obligations related to bank guarantees and any real or personal guarantees in favour of political parties) of more than one hundred thousand euros per year per donor are prohibited, under penalty of administrative sanctions equal to twice the amounts received in excess and exclusion from the voluntary allocation of two per thousand of the personal income tax for three years (article 10 of Decree-Law no. 149/2013, par. 7-12). The rationale of this provision is clearly to avoid that a single donor may too heavily condition party autonomy through excessive disbursements. However, although article 7-bis of Decree-Law no. 149/2013 fixed a term of two months for the Minister for Economic Affairs and Finance to adopt implementing measures aimed at identifying donors, guaranteeing the traceability of such transactions, and carrying out effective supervision on them, one cannot but bemoan that up to now (March 2016) none of these measures has come to light. Therefore, the limit of one hundred thousand euros per year per donor seems to be apparently ineffective. In addition to this, since there is still no legal limit for donations in favour of individual members of Parliament or Government, there are other ways to bypass the threshold.

Finally, transparency requires that donations may not be made in person but only through a bank, post office, electronic payment system, or other equally suitable method to be identified by ministerial decree, in order to guarantee the traceability of the operation, identify donors and enable tax authorities to carry out the due controls. However, also in this case, no implementing decree has been adopted until now (March 2016). As already mentioned, the fiscal regime applicable to donations to political parties since 2014 favours donors, thanks to tax deductions up to 26% of the amounts of between thirty and thirty thousand euros per donor per year; a favourable fiscal regime is also applicable to donations to parties made between 2007 and 2013 (noticeably *before* the entry into force of the current law), according to art.15 of Presidential Decree no. 917/1986[23] (art. 12 par. 4-bis of Decree-Law no. 149/2013). However, in recent years the inclination of citizens to subsidise political parties has proved to be somewhat less than expected, so that the parties lamentincreasing financial difficulties.

[22]Actually the prohibition refers to donations from companies whose share capital is owned by public bodies for more than twenty per cent or subsidiaries of public companies.

[23] According to which deductions were limited to 19% of yearly amounts comprised between € 52 and € 103.000.

In addition to the above commented provisions, art. 13 of Decree-Law no. 149/2013 has allowed parties to launch vat-free fundraising through sms or other applications from fixed or mobile phones for campaigns promoting political participation, according to a self-regulatory code subscribed by telephone companies. Moreover, article 11-bis (introduced by Law no. 13/2014) states that properties owned by political parties, whatever their purpose, are nevertheless subject to the real estate tax, while those lent to parties for non-commercial activities are exempt: this rule favours property owners (who may also be political foundations, for instance) from the tax point of view, provided that real estate is made available to parties for their political activity.

4. Conditions for party funding: representativeness above all

Parties wishing to avail themselves of the funding opportunities legally provided for shall comply with certain conditions, some of which have not been properly fulfilled thus far. The first one concerns political representativeness, since only an active electoral participation, being a function of public interest, justifies a legislative framework in relation to party funding. Therefore, pursuant to art. 10 par. 1 sect. *a* and *b* of Decree-Law no. 149/2013, parties will be able to benefit from the voluntary allocation of the two per thousand of the personal income tax, provided that in the last election they have achieved at least one candidate elected in the upper or lower Houses of the Parliament or in the European Parliament, whereas they will be able to receive donations under a favourable fiscal regime for donors, provided that they have achieved at least one elected candidate in a regional assembly or, should they have achieved none, they have taken part in the election in a minimum number of constituencies[24].

However, the latter provision referred to donations seems to clash with the amendment later added to art. 10 par. 1 by Law no. 13/2014, according to which parties that are no longer represented in the Parliament are excluded from any kind of funding. Hence, one may assume that the correct interpretation is that parties may receive donations under a favourable fiscal regime for donors even though they take part in regional elections or in the European election without success, provided that they are already represented in the national Parliament.

[24] Regardless of the election result, parties should have presented candidates in at least three constituencies for the Chamber of Deputies, three Regions for the Senate, one constituency for the European Parliament, one Region for regional assemblies.

Moreover, to complicate matters, one has to also take into account art. 18 and art. 10 par. 2 of Decree-Law no. 149/2013, as amended by Law no. 13/2014, according to which funding opportunities provided for by the law are also available for those parties a parliamentary political group (even the mixed group) declares to pertain to or those parties that took part to the last general election or European election in coalition with other parties under a common symbol, provided that they achieved at least one elected candidate.This provision is meant to attribute funding opportunities also to parties that competed in the last election before the entry into force of the 2013 regulation, although they were no longer existing in the same form (because, after the election, they had changed their names/symbols or split into two smaller parties or fused together or other similar events had taken place).

Apart from the above highlighted inconsistencies – which are mostly due to Law no. 13/2014 (*legge di conversione*) – the regulatory framework obviously has the purpose of preventing that, as already happened in the past, parties no longer represented in elected assemblies keep on burdening the State budget. However, it puts the newly established parties at a disadvantage, which cannot benefit from any form of financing before taking part in elections, and the same time it puts parties represented only at regional and local level at a disadvantage, as they cannot benefit from the two per thousand of the personal income tax.

5. The second condition: the necessary content of party statutes

Only those parties intending to avail themselves of the means of financing provided by Decree-Law no. 149/2013 are bound to have statutes set by acts of public authority[25], whose contents shall conform to the prescriptions of art. 3.

In particular, according to art. 3, party statutes shall indicate the legal representative of the party andthe address of the registered office in the national territory, and contain provisions referred to party bodies (their appointment, composition, powers, mode of election, duration of the appointments), the frequency of party assemblies, the procedures for the approval of documents, therights and duties of party members and the system of guarantees for them, the disciplinary measures to be taken against party members and the procedures for their application, which shall guarantee the right to defence and the adversarial principle, the modalities of the participation of party members in party activities, the rights of

[25]According to the provisions set forth by art.14 of the Civil Code with regard to free associations.

minorities[26], the promotion[27] of gender equality, the territorial branches of the party, the methods of selecting candidates to positions in the party and public offices, the procedures for statutory amendments, the party symbol and name (Maestri 2014), the bodies responsible for the economic, financial and asset management of the party and for ratifying financial statements, rules to ensure transparency (especially with regard to the economic and financial management of the party) as well as the respect for private life and protection of personal data. Party statutes may also provide rules for out of court settlement of disputes arising in the application of the statutory provisions. Civil Code provisions related to free associations provide for anything not expressly indicated by art. 3.

Art. 3 originally stipulated that party statutes were bound to the respect of the fundamental principles of democracy, protection of human rights and fundamental freedoms, and the rule of law. Upon conversion into law, however, its original formulation was replaced by a mere call to the respect of the Italian Constitution legislation of the European Union. Although undoubtedly the basic principles of democracy, respect for human rights and fundamental freedoms and the rule of law are established both by the Italian Constitution and Eu Treaty, the modified phrasing is not as incisive as the original one.

As art. 3 refers only to parties intending to avail themselves of the opportunities for legal funding, the status of political parties such as free associations of citizens in accordance with art. 49 Cost. is not compromised. Nevertheless, almost all political parties are not likely to give up the economic benefits introduced by Decree-Law no. 149/2013 and, consequently, legal provisions will supposedly affect their internal organisation somehow, compellingeven the most reluctant ones to conform to minimum standards of internal democracy. It is however possible that some political parties or movements, being not interested in receiving State contributions, will continue to not comply with the discipline of art. 3 (as for instance the *MoVimento Cinque Stelle* so far).

Actually, the various elements that art. 3 indicate as necessary in party statutes consist of merely formal requirements, which allow parties to freely implement their content and do not effectively influence intra-party democracy. For instance, statutory rules providing for the convening of party assemblies only every five years, or the composition of party governing bodies exclusively comprised of a single person, or the selection

[26] Actually, statutory provisions shall "promote" (not "ensure", as stated in the original decree-law) the rights of minorities.

[27] Likewise, the original decree-law used the verb "ensure", but Law no. 13/2014 (*legge di conversione*) has changed it into "promote".

of candidates solely entrusted to the party leader, would formally comply with art. 3 without being in themselves democratic (Calvano 2015: 184-185). On the other hand, also in most European countries party laws, while addressing intra-party democracy as a principle, have committed to party statutes the detailed ruling of the internal organisation of parties (Di Mascio and Piccio 2015: 384-390). Furthermore, even guidelines drawn up in 2011 by Osce/Odhir and the Venice Commission invite States to refrain from interfering in the internal functioning of parties and stress that these aspects should instead be regulated by the parties themselves (Di Mascio and Piccio 2015: 394).

A peculiar aspect of party democracy is that concerning the promotion of equal access of men and women to elected office. The Italian Constitution calls for it in art. 51, and Decree-Law no. 149/2013 (art. 9) implementing that provision by imposing economic sanctions to parties presenting lists of candidates where one sex has representation under 40%, as well as to parties devolving less than 10% of the contributions from the voluntary allocation of the two per thousand of the personal income tax to initiatives aimed at increasing the political participation of women. Moreover, according to the same art. 9, the proceeds from these sanctions are to be distributed among parties whose elected candidates represent both sexes almost equally[28]. Actually, all political parties are bound to promote equal opportunities for women and men in access to elected offices in implementation of a constitutional provision (art. 51 Cost.). However, the penalty and prize mechanism of art. 9 is applicable only to those wishing to obtain the economic contributions legally provided for, as penalties consist of a reduction of the revenues from the voluntary allocation of the two per thousand of the personal income tax. Hence, parties that are not interested in receiving State funding may ignore the principle of equal opportunity without any negative effect on their budget.

6. The third condition: the (optional) registration of parties

The Italian Constitution (art. 18, par. 1) gives citizens the right to freely associate, provided that the associations' purposes are not forbidden to individuals by criminal law. Therefore, an ordinary law submitting the establishment of new associations to any kind of authorisation, or demanding that individuals obtain someone's permission to join in, or imposing further

[28] The proportion of the underrepresented sex among party candidates elected in each election should be equal or greater than 40%.

limits on associations than those explicitly set forth in art. 18 Cost., would be considered unconstitutional. Consequently, Decree-Law no. 149/2013 does not change the status of political parties, which remain free associations without legal personality, and regulates party registration (art. 4) so that it is purely optional and simply aimed at obtaining the economic benefits the law sets forth. However, a prerequisite for registration is the compliance of party statutes with the provisions of art. 3, as seen in the previous section of this essay: only party statutes whose content is consistent with art. 3 of Decree-Law no. 149/2013 can be registered in the first part of the *Registro nazionale dei partiti politici*.

The Registry is actually comprised of two parts: the first part includes parties whose statutes comply with the requirements of art. 3[29]; the second part includes parties which have been admitted to economic benefits[30], as it implies the compliance to the requirements related to representativeness, pursuant to art. 10 par. 1 and 2 of Decree-Law no. 149/2013, as illustrated at the beginning of sect. 4 of this essay). The two parts are not identical: parties can be considered eligible for registration (the Registry's first part) but not for the obtainment of funds (the Registry's second part), so that parties can be considered (temporarily) eligible for funding and registered in the Registry's second part although their statutes are (still) not consistent with the elements indicated in art. 3.

The task of carrying out a check on statutory contents is up to a Commission[31] specifically designated for the purpose. The Commission – originally established by Law no. 96/2012 and redesigned by art. 4 of Decree-Law no. 149/2013 – is based within the Chamber of Deputies and composed of five judges (one of which designated by the President of the *Corte di Cassazione*, one by the President of the Council of the State and three by the President of the Court of Auditors) appointed for a four-year term (renewable once) by the Presidents of both Houses of Parliament by mutual consent[32]. The Commission's members do not receive any extra emolument for their services[33] and they cannot perform other tasks or duties during their mandate. The Commission was first established in December

[29] The list of political parties currently enrolled in the first part of the Registry is available here: http://www.parlamento.it/1063.

[30] The list of political parties currently enrolled in the second part of the Registry is available here: http://www.parlamento.it/1067.

[31] *Commissione di garanzia degli statuti e per la trasparenza e il controllo dei rendiconti dei partiti politici*.

[32] The current composition of the Commission is available here: http://www.parlamento.it/1057.

[33] They maintain the same emoluments they used to receive from the institutions they belonged to at the time of their appointment to the Commission.

2012[34] and later, after the resignation of all members, was re-established in January 2015[35].

The Commission scrutiny on party statutes can consider only statutory formal elements (the mere presence of the requirements indicated in art. 3) and cannot extend to the actual level of intra-party democracy or the effective respect for constitutional and Eu provisions by the statutes (Biondi 2012: 64). Therefore, one cannot assume that registered parties actually guarantee internal democracy better than unregistered ones.

The registration process involves several stages. Firstly, the party's legal representative submits a certified true copy of the party statute to the Commission. Secondly, the Commission verifies that the statute is consistent with the provisions of art. 3. Should the statute pass the Commission's scrutiny, the party can be registered and, finally, its statute shall be published in the *Gazzetta ufficiale della Repubblica italiana*. On the contrary, if the statute is not deemed to comply with the requirements of art. 3, the Commission, after hearing a representative appointed by the party itself, may refuse registration[36] or invite the party to amend its statute within a certain time limit. Amendments must be submitted to the Commission in accordance to the same procedure. If, despite the amendments, the Commission still refuses registration, the party has the right to appeal to the administrative courts within sixty days (art. 4 par. 3 and art. 13 bis of Decree-Law no. 149/2013)[37].

Parties have been given a twelve-month time limit since the entry into force of the legal provisions to submit their statutes to the Commission (art. 4 par. 6), although no consequences have been provided for by the law in the event parties fail to respect the deadline. Actually, it happened that many parties – among which the Democratic Party, the upholder of such regulation – submitted their statutes far beyond the expiry of that time limit, often due to the need to approve statutory amendments in order to comply with art. 3. As unregistered parties could not apply for funding, the crucial point in the political debate soon became how to allow parties to have access to funding opportunities regardless of registration, at least temporarily. This problem was already foreseen at the time Decree-Law no. 149/2013 was approved. In fact, art. 4 par. 7 states that parties can apply for funding under articles 11 and 12 even before the expiration of the twelve-month period, provided that

[34] Decision of 3 December 2012, published in *Gazzetta Ufficiale* no. 283/2012.

[35] Decision of 29 January 2015, published in *Gazzetta Ufficiale* no. 23/2015.

[36] Upon refusal, parties have the right to appeal to the administrative courts.

[37] Whereas the jurisdiction in disputes between individuals and political parties with regard to the compliance with the statutory provisions is entitled to the ordinary courts, according to the Civil Code provisions referred to free associations.

they were established before 28 December 2013, were represented in Parliament by at least one elected candidate, complied with the other requisites concerning representativeness laid down by art. 10 of Decree-Law no. 149/2013 (see sect. 4 of this chapter), and ensured transparency of their balance sheets through their websites. Later, the deadline was postponed to 31 January 2015[38] and, thereafter, Law no. 175/2015 ruled that the expiration date for the submission of party statutes to the Commission should be calculated starting on the day of the entry into force of the *legge di conversione* (Law no. 13/2014, in force since 27 February 2014), not of the original Decree-Law.

Nonetheless, many party statutes were submitted to the Commission even after this new, extended deadline. That happened – as explained in the next section of this chapter – because Decree-Law no. 193/2014 (so-called *Milleproroghe*) and Law no. 175/2015 (so-called *Boccadutri*) allowed parties to obtain funding for the years 2013, 2014 and 2015 regardless of the Commission's scrutiny. Once contributions had been obtained, the urgency of submitting statutes in due time was no longer felt.

However, the most recent electoral law (no. 52/2015, known as *Italicum* and applicable only to the lower House of Parliament) states (art. 2 par. 7b) that parties willing to present lists of candidates to the general election are bound to submit their statutes to the Ministry of the Interior, pursuant to article 3 of Decree-Law no. 149/2013. Although no sanction is explicitly provided for in case of non-submission of party statutes, one wonders if such provision is meant to oblige parties to adapt their statute to the requirements set forth by Decree-Law no. 149/2013. If so, the adaptation of party statutes would no longer be optional and connected merely to the access of parties to economic benefits, but would become compulsory to avoid exclusion from the electoral competition. Actually, in a hearing before the Parliament[39] the former Minister Maria Elena Boschi excluded this latter interpretation. However, that provision remains unclear. Nevertheless, the electoral Law no. 52/2015, after being declared partially unconstitutional, is likely to be soon replaced by a new one[40].

The Commission also verifies which parties comply with the minimum level of political representativeness required to join the second part of the Registry, the one relating to parties entitled to the economic benefits. Indeed,

[38] Decree-Law 31 December 2014, no. 192, art. 1 par- 12-*quater*, converted into Law no. 11/2015.

[39] Parliamentary sitting of 4 May 2015, Minister's speech referred to the *ordinedel giorno* no. 9/3-bis-B/4 Cozzolino.

[40] Constitutional Court, decision no. 35 of 25 January 2017. In fact, a new electoral law was recently approved, in sight of 2018 general election (Law 3rd November 2017, no. 165).

three parties appealed to the administrative court (Tar Lazio) against the Commission's decision of 20 March 2014 which denied their registration, due to the lack of parliamentary representation prescribed by art. 10 par. 1 of Decree-Law no. 149/2013 as amended by Law no. 13/2014. One of these parties was re-admitted to registration considering that it was actually represented in the European Parliament, whereas the other two, which were represented only in regional assemblies, were excluded (Calvano 2015: 195-200; Biondi 2016: 57-58). However, from then on the Commission seems not to have considered the requirement of parliamentary representation as a necessary condition for including parties in the Registry's second part: indeed, during the year 2015 various parties have been admitted to funding although not represented in Parliament (Biondi 2016).

7. The fourth condition: the (temporarily dodged) scrutiny of party accounts

Already since 2012 (Law no. 96, art. 9) political parties have been bound to entrust the audit of their accounting and financial management to accountancy firms registered with the national authority for corporations and the stock exchange (Consob), with the caveat that an audit cannot be performed by the samefirm for more than three consecutive financial years. These provisions, referred to registered parties, have been confirmed by Decree-Law no. 149/2013 in order to ensure transparency and sound financial management of parties that seek to obtain funding (art. 7). Additionally, since the financial year 2014, registered political parties and movements have been bound to submit to an audit not only their own financial statements but also those of their regional branches and affiliated political associations or foundations in a consolidated form (art. 6). Moreover, pursuant to art. 8, the Commission (see the previous section of this essay) is in charge of monitoring the regularity and compliance with legal provisions of party accounts (financial statements and other legally required documents to be annexed), to be drawn up and submitted according to the guidelines the Commission itself ratified in May 2016[41].

The Commission's examination of party accounts should be not merely formal but should concern also the conformity of actual party revenue and expenditure to the documentation produced as proof. In case of irregularities,

[41] The Commission decision 3 May 2016, no. 2, is available here: http://www.parlamento.it/application/xmanager/projects/parlamento/file/repository/commissione_trasparenza_partiti/deliberazioni/2016__Deliberazione_2_del_3_maggio_2016__CON_linee_guida.pdf.

the Commission may invite parties to remedy them within a certain deadline. Non-compliance with legal provisions or the Commission's requests are subject to sanctions varying from cancellation from the Registry (in case financial statements have not been submitted at all) to economic penalties consisting of partial curtailment of the revenues from the voluntary allocation of the two per thousand of the personal income tax. The Commission submits an annual report concerning the legality and regularity of party accounts to the Presidents of both chambers of Parliament, to be published on the Parliament's website, as well as the list of compliant and non-compliant parties with regard to the previous financial year.

However, as already mentioned at the end of the previous section of this chapter, the so-called *Decreto Milleproroghe*[42] (art. 1 par. 12-*quater*) allowed parties to apply for economic contributions with regard to the financial year 2015 even though the Commission had not carried out its scrutiny on party accounts in due time, provided that they were represented in the Italian or European Parliament by at least one elected candidate. Moreover, thanks of the so-called *Boccadutri Law*[43] the same happened with regard to the financial years 2013 and 2014. As party balance sheets and lists of donors are supposed to be published on the Internet (see the next section of this chapter) only after the Commission's scrutiny of party accounts, the approval of such dispensations has represented, in fact, a real circumvention of the principles of publicity and transparency in party accounts that Decree-Law no. 149/2013 had tried to introduce, without any penalty for parties. Actually, such exemptions were motivated by the fact that the Commission itself had declared to the Presidents of both parliamentary houses[44] that scrutiny could not be carried out in due time because of an overload of work and lack of personnel. This is why the *Boccadutri Law* increased the number of the Commission staff members from five to seven[45], so that it could work more efficiently, and set the deadline of 30 December 2015 for the Commission to submit its reports on party accounts for the years 2013 and 2014[46]. From then on, scrutiny of party accounts seems to be proceeding regularly. Nevertheless, one cannot help but

[42] Decree-Law no. 192/2014, converted into Law no. 11/2015.

[43] Law 27 October 2015, no. 175, entitled *Modifiche all'articolo 9 della legge 6 luglio 2012, no. 96, concernenti la Commissione di garanzia degli statuti e per la trasparenza e il controllo dei rendiconti dei partiti politici*.

[44] Letter signed by Commission President, dated 18 May 2015.

[45] Five staff from the Court of Auditors and two from other public administrations.

[46] Commission reports are available here http://www.senato.it/4614 (Senate) and here http://www.camera.it/leg17/1234 (Chamber of Deputies).

notice that the inefficiency of the Commission was not the only reason behind the approval of the derogatory rules described above. Indeed, some parties have long been reluctant to adapt their statutes to legal provisions and to conform to the principle of transparency of accounts (Allegri 2015b, Calvano 2015: 188, Cardone 2016: 81-82).

8. The fifth and last condition: transparency and publicity (and deficiencies in this respect)

Art. 5 of Decree-Law no. 149/2013, amended by Law no. 13/2014, is dedicated to transparency, which is considered one of the pilasters of the entire regulation (Allegri 2015a). First of all (par. 1), not only political parties or movements but also associations and foundations linked to parties[47] are obliged to equip themselves with websites on which information about their statutory framework, governing bodies, internal functioning, balance sheets and financial statements can be published. Actually, this obligation seems to weigh on all political parties (and affiliated associations and foundations), not only on registered ones. However, no sanction is foreseen at all in the event of non-construction of the website, whereas an economic penalty applies in the event of missing or incomplete information published on the websites, consisting of one third of the proceeds from the two per thousand of the personal income tax (art. 8 par. 3). Therefore, unregistered parties that do not benefit from the "two per thousand" are not sanctioned in any caseand may remain non-transparent.

Moreover, according to the provision of art. 5 par. 1, the websites of parties shall meet high standards of accessibility also by disabled people, completeness, clarity, reliability, simplicity of consultation, quality, homogeneity and interoperability. It is unclear how and by what parameters the compliance with these standards is to be verified. Supposedly, one may refer to arts. 53-54 of the *Code of Digital Administration* (Legislative Decree no. 82/2005), to the *Guidelines for the Websites of Public Authorities* published in 2011 and the annexed *Vademecum for the Measurement of the Quality of Public Authorities' Websites* released in 2012, and to the *Guidelines for the design of Public Authorities' Websites* published in

[47] Pursuant to art. 5 par. 4, associations and foundations are to be considered linked to political parties when the composition of their governing bodies is determined, in whole or in part, by party decisions or when they contribute to party funding (donations or financing of specific initiatives or services in favour of parties, their regional branches or even party members elected in Parliament or regional assemblies) with more than 10% of their annual revenues.

2015[48], although political parties are certainly not administrative authorities. With regard to the accessibility of digital resources for disabled people, one may also consider Law no. 4/2004[49] implemented by Presidential Decree no. 75/2005, setting up general principles, criteria and even an evaluation procedure for accessibility; however, the procedure is applicable only to public authorities and private entities carrying out public services or services of general interest, among which is at least dubious that political parties can be included. Indeed, although it may be argued that political parties perform public functions, as they constitute a link between the citizens and institutions, their role is not comparable to that of public authorities and it is therefore not obvious that the requirements for websites of public authorities should also apply to those of parties. Furthermore, Decree-Law no. 149/2013 does not clarify who is in charge of scrutinising the websites of parties and monitoring their compliance with the indicated standards, since the Commission has not explicitly been given this task, and penalties for non-compliance are not provided for in any case.

Pursuant to art. 5 par. 2, amended by Law no. 13/2014, party statutes and accounting documents[50] are to be published on the websites of parties every year within 15 July after the Commission has scrutinised and approved them. This phrasing clarifies that such obligation pertains only to registered parties, since unregistered ones do not submit themselves to any scrutiny. Therefore, transparency is meant only as a condition related to the mere obtainment of party funding, with no reference to the role of parties as the means of citizens' active participation in political life and representation of their political will. Yet, publicity on the Internet can be regarded as a form of implementation of art. 49 Cost., because it can be included among the "democratic preconditions" enabled by new technologies: it provides new ways for representative institutions to relate with civil society and allows citizens to more clearly identify those responsible for policy decisions (Costanzo 2003). This has become of fundamental importance nowadays, since public and political governance of the economy has been replaced by private and economic government of politics (Cassese 2008) and many forms of covert lobbying, corruption and conflicts of interest are behind a process of private appropriation of public affairs, undermining confidence in and the credibility of democratic institutions (Ferrajoli 2007).

[48] All these documents are available here: http://www.funzionepubblica.gov.it/norme-accessibilita-siti-web-trasparenza-usabilita.

[49] *Disposizioni per favorire l'accesso dei soggetti disabili agli strumenti informatici*.

[50] In detail, documents to be published consist of financial statements with notes and management reports, records of their approval by the competent party organ, and audit reports.

Parties are also bound to communicate by letter to the Presidents of both Houses of Parliament that they have published what is required by the law in their own websites. Such letters are to be hosted in a dedicated section of the Parliament's website[51] (art. 5 par. 2). However, failures in this regard are not penalised. On the contrary, should parties fail to publish their statutes and accounting documents on their own websites, as required by the law, by Commission decision they shall be subject to penalties consisting in the payment of one third of their annual revenues from the "two per thousand" (art. 8 par. 3). Furthermore, should the accounting documents of parties be incomplete, imperfect or unreliable, various economic penalties are applicable, weighing on party revenues from the "two per thousand", provided that the sum of all sanctions does not exceed two thirds of the total amount of party revenues from that source (art. 8 par. 4-10).

Registered parties are also bound to disclose the amount of funds received from private individuals and entities, as well as the identity of donors. According to some still applicable provisions of a previous law dating from 1981[52] (art. 4 par. 3), a document proving each financial contribution is to be signed jointly by the donor and a representative of the beneficiary party and notified to the President of the *Camera dei Deputati*. However, pursuant to art. 5 par. 3 of Decree-Law no. 149/2013, this provision does not apply to contributions not exceeding the yearly amount of € 100,000 per donor, provided that they have been made by means of payment other than cash that guarantee the traceability of the transactions and the identification of the donors. In these cases, provided that the amounts received from each contributor exceed € 5000 per year, parties shall communicate to the Presidents of both Houses of Parliament the list of those who have funded them within three months of receipt of the contributions, together with the relevant accounting documentation, otherwise the same penalties provided for by Law no. 659/1981 shall be applicable[53]. Moreover, the list of donors and the amount of each contribution received by parties is to be published on a dedicated section of the Parliament's website[54], as well as on the websites of the parties as an annex to the party's financial statements. Unpublished donations are sanctioned with economic penalties whose amount is equal to the undeclared one, pursuant to art. 8 par. 4.

Still, disclosure is not meant to be complete. First of all, these provisions apply only to registered parties, as unregistered ones are not obligated to any

[51] http://www.parlamento.it/1174.

[52] Law no. 659/1981.

[53] Penalties will consist of two to six times the undeclared amounts and a temporary ban from public office for reticent party legal representatives.

[54] http://parlamento17.camera.it/199.

form of transparency. Secondly, minor donations (amounts lower than € 5000 per year per donor) and the identity of the donors can legally remain undisclosed. Thirdly, an amendment added by Law no. 13/2014 allows donors to remain anonymous if they so wish, pursuant to the relevant provisions of the 2003 Privacy Act[55], according to which one has to consent in writing to the disclosure of personal identity. Therefore, the lists published in the Parliament's website[56] include only the names of those who have given their written consent to publication. Indeed, in the name of personal data protection the principle of transparency of private funding to political parties has been effectively bypassed, thus transgressing the rights of citizens to political participation, as citizens are not put in a position to acquire full knowledge of private interests that influence party life.

Decree-Law no. 149/2013, as amended by Law no. 13/2014, requires a certain degree of transparency not only in regards to political parties, but also to individuals holding public office by means of parties. In fact, art. 5 par. 2 prescribes that the Parliament's website shall also host information referring to the financial position and income of the members of the Parliament and Government, who shall disclose them pursuant to Law no. 441/1982[57], together with information referred to any donation exceeding € 5000 per year that they received directly or by means of any of their support committees. The same obligation, regardless of party registration, weighs on party treasures as well, pursuant to art. 12 of Law no. 96/2012. However, one can easily verify that the available information in this respect[58] is meagre, too concise, difficult to consult, often insufficient and incomplete, as neither Law no. 441/1982 nor Law no. 96/2012 nor Decree-Law no. 149/2013 provide penalties for non-compliance, apart from a formal notice and possible disciplinary measures for the defaulter. It serves as evidence, then, that legislation in this area is largely ineffective.

9. The influence of the 2013 Act: democratic principles in party statutes

How far has Decree-Law no. 149/2013 influenced the content of party statutes? Have party statutes been recently amended in order to render

[55] Legislative Decree no. 196/2003, entitled *Codice in materia di protezione dei dati personali*.

[56] http://parlamento17.camera.it/199.

[57] Law no. 441/1982, entitled *Disposizioni per la pubblicità della situazione patrimoniale di titolari di cariche elettive e di cariche direttive di alcuni enti*.

[58] http://www.parlamento.it/1092.

internal democracy more effective? This section attempts to answer such questions by analysing – albeit partially and non-exhaustively – the statutory rules of the main registered parties currently (January 2017) represented in the Italian Parliament. Simulating an imaginary parliamentary hemicycle from left-wing to right-wing parties, the examined ones are: *Sinistra Ecologia e Libertà* (Sel)[59], *Partito Democratico* (Pd)[60], *Nuovo Centro Destra* (Ncd)[61], *Forza Italia* (Fi)[62], *Lega Nord* (Ln)[63], *Fratelli d'Italia - Alleanza Nazionale* (FdI-An)[64]. Statutory rules of unregistered parties, although widely represented in Parliament such as *MoVimento Cinque Stelle*, have not been taken into consideration, assuming that Decree-Law no. 149/2013 has not conditioned them significantly. Likewise, small political parties or parties represented only at regional level, albeit registered, have been excluded from this investigation so that the research area is not excessively expanded.

Party statutes have been examined from a merely formal standpoint, with regard to the provisions contained therein, without considering their actual implementation and application in practice. It is not excluded, therefore, that rules designed to foster a high level of internal democracy can be concretely set aside or applied in a distorted manner, producing different effects from those for which they were intended[65].

Among all statutory provisions, particular attention has been paid to those which directly bind to the concept of "democratic method" mentioned in art. 49 Cost. and interpreted, as highlighted above, as the broadest possible implementation of political participation opportunities. Albeit with a certain degree of arbitrariness, which is probably inevitable, account has been taken of provisions concerning participatory rights of party members and possibly also of voters, protection of minority rights in party governing bodies, party bodies responsible for ensuring compliance with statutory rules, measures promoting gender equality in political participation and party life, methods of selecting candidates for public office (either for elected assemblies or one-person positions), methods of determining party leaders, and finally, procedures for changing party symbols and statutes. The findings of this research are presented below.

[59] Statute lately amended on 25 January 2014 and published on Guri 28/10/2014.
[60] Statute lately amended on 18 July 2015 and published on Guri 18/12/2015.
[61] Statute lately amended on 26 July 2014 and published on Guri 20/10/2014.
[62] Statute lately amended on 4 August 2015 and published on Guri 20/10/2015.
[63] Statute lately amended on 20 June 2015 and published on Guri 18/12/2015.
[64] Statute lately amended on 23 July 2014 and published on Guri 28/10/2014.
[65] Rossi (2011: 18) remarks that statutory provisions concerning intra-party democracy are scarce and often ineffective.

Participation in party life. All examined statutes accord party members participatory rights, albeit in slightly different ways from case to case. Not everyone, however, concedes some kind of participation to those who are not full party members, but instead are simple sympathisers, supporters or voters. From this point of view, the statute that provides the most extensive and diversified participation, at least formally, is that of *Partito Democratico* (Pd), which extends the rights of political participation, information and even election (for instance, the selection of candidates running in primaries for party positions or public office, as well as the determination of fundamental policy guidelines) not only to full members but also to "certified" voters, namely those who consent to be listed in a special register. However, only full members of Pd enjoy additional rights (including the right to stand for election, to vote in any internal referendum, and to be consulted on the choice of candidates). Moreover, Pd's statute mentions an Information System for Participation, which is supposed to allow both party members and voters to be informed, to take part in the internal political debate, and to make proposals. An Online Information System is mentioned also in the statute of *Sinistra Ecologia e Libertà* (Sel), although it reserves participatory rights (such as to determine policy guidelines, to vote and stand for elections with regard to party bodies, to have full access to the internal party democratic life, to appeal to party guarantee bodies) only to full members of the party, with no reference made to any other category. Also in *Nuovo Centro Destra* (Ncd) only full members of the party can enjoy participatory rights also through the modern digital information systems. On the contrary, the statute of *Forza Italia* (Fi) is very elusive as to participatory rights, mentioning only the right to vote and to be elected. In any case, in line with the company-like structure of this party, such rights are reserved only for associates in good standing with the payment of annual dues. Two more party statutes (those of *Fratelli d'Italia - Alleanza Nazionale* and *Lega Nord*) formally provide a twofold level of participation: that of full members, who regularly pay annual registration fees, and that of "friends" (FdI-An) or "supporters" (Ln), who do not formally adhere to the party and are not required to pay dues. However, the requirements to be qualified as friend/supporter are not clarified by the statutes (is this not the case of those who have made donations to the party?), nor is the degree of participation in party life attributedto these "accessory" categories indicated. In fact, these two statutes do not connect any specific right to the status of "friends" or "supporters", so that one may assume that their participation is virtually none. Significantly, Ln's statute defines "supporters" only in negative terms: they do not have electoral rights or duties of active political participation. This statute is also interesting because it defines party

members as "ordinary militant associates", uses the term "militancy" in place of "participation" and confers a privileged status to "militants" with more than ten years of service: they alone, for example, can elect party congress members or hold high office in the party.

Presence of minorities in party governing bodies. In this respect, once again the statute of the Pd is the most careful among those examined. It declares that Pd recognises and respects the diversity of cultural options and policy positions within the party, ensures minorities are represented at all party levels by means of internal electoral systems of a proportional type, guarantees minorities also in the method of appointment of delegates to the party's National Assembly, and finally, provides that an internal referendum may also be requested by 30% of the delegates to the National Assembly or 5% of the party members. Furthermore, it states that excluded candidates for the office of National Secretary, provided that they have obtained at least 5% of the votes validly cast in the primaries, have the opportunity to appoint some delegates who will join the national assembly on the election of the National Secretary. The statute of Sel is also sensitive towards minority issues. It declares that Sel respects the pluralism of cultural options and policy positions within the party, adopts proportional criteria for the composition of non-executive party bodies and the election of delegates, provides that National Presidency can be called at the request of 30% of its members, allows a certain percentage of party members to request the convening of an extraordinary Congress (in particular, an extraordinary Congress at national level can be called at the request of 20% of the party members from at least five Regions). Yet, the other examined statutes tend not to pay too much attention to this respect. The statute of Ncd, for instance, declares that it respects the pluralism of cultural options and internal policy positions, although the only explicit openness towards minorities is that the National Directorate can be convened in extraordinary session at the request of at least one quarter of its members. Likewise, the statute of Ln proclaims the protection of minorities but, as the only form of protection, guarantees the first non-elected candidate to the position of Secretary General the right to speak and vote in the Federal Council. In FdI-An the protection of minorities is even weaker: the statute merely provides that 10% of the National Assembly's members are allowed to carry a motion to convene an extraordinary Congress, although it has to be approved by the majority; an extraordinary session of the Congress can also be requested by one-third of the National Directorate's members. Finally the statute of Fi sets forth that the National Council can be convened at the request of one-fourth of its members; apart from that, the only other reference to minorities is that the electoral methods mentioned in the statute

are meant to guarantee internal democracy, pluralism and protection of minorities.

Party guarantee bodies. Normally, parties entrust the function of ensuring compliance with statutory rules, rules of procedure and ethic codes, as well as imposing disciplinary measures in case of infringement, to *ad hoc* bodies, which usually only party members are allowed to appeal. Pd is the only party whose statute allows mere voters, as long as they are registered, to appeal the Commission of Guarantee, whose members can be chosen not only among party members, but also among "certified" voters. Pd, Sel and FdI-An have guarantee bodies at every territorial level (national, regional, local), whose members are elected by party assemblies of the correspondent level and may not hold other positions in the party simultaneously. Against the decision of a guarantee body, one may appeal to the guarantee body belonging to a superior territorial level. On the contrary, in Ncd the decisions of the only guarantee body – called *Collegio dei Probiviri* – are final and actions against them are to be brought before a court. The five members of Ncd's *Collegio dei Probiviri* are appointed every three years by the party's Congress. In a democratic context, the independence and autonomy of party guarantee bodies are essential for an effective protection of the participatory rights of party members. Yet, this is not always the case. For example, any member of *Forza Italia* can request the opening of a disciplinary procedure to the national or regional *Collegi di Probiviri*; however, disputes concerning the election of the President of the party and the six members of the Presidential Committee can be dealt solely by the national *Collegio dei Probiviri*, complemented by the group leaders in both Houses of Parliament and in the European Parliament. Moreover, final decisions on disputes about the admission of party members and the revocation of the member status in case of non-payment of membership fees are due to a Commission of Guarantee directly linked to party leaders: actually, it is composed of seven members elected by secret ballot by the Presidential Committee, or even by show of hands if the President of the party makes a proposal that is likely to be unanimously adopted. Finally, the statute of Ln mentions a disciplinary Committee closely linked to the party leadership, as it consists of the federal President, the federal Secretary, the federal Officer in charge of the territories and six members appointed by the federal Council. This Committee takes disciplinary action against the party founding fathers, the associates (militants) with at least ten years of service, the provincial Presidents, party members elected in the national and European Parliament and regional assemblies, mayors of the main cities belonging to the party. On the contrary, disciplinary measures against militants having served less than ten

years are to be taken by national Councils, which are party governing bodies, while national and local Councils are responsible for disbarring party supporters in case of conduct incompatible with the purposes of the party. Notably, Ln's statute does not clarify by which procedure guarantee bodies are to be appealed and disciplinary actions are to be initiated, so that one cannot exclude it might be top-down.

Promotion of gender equality in political participation. This is a very relevant issue (Leone 2016: 177-187; Allegri 2016) because art. 9 of Decree-Law no. 149/2013 binds parties to devolving at least 10% of their proceeds from the "two per thousand" to actions aimed at boosting the political participation of women, under administrative pecuniary penalties in case of infringement. Further sanctions are to be applied against parties presenting lists of candidates to general or European elections in which one sex is represented by less than 40%. Revenues from these penalties will constitute a fund to be distributed among "virtuous" parties (those whose elected candidates belong to the underrepresented gender for no less than 40%). Actually, only the statute of FdI-An states explicitly that 10% of party funds are to be allocated to the promotion of female political participation. None of the other examined statutes contain such a clause, apart from that of Pd which declares some resources (of undetermined entity) are to be destined to boosting the political participation of women. Although some party statutes indicate which is the minimum percentage of candidates of each gender to be included in electoral lists, it seldom corresponds to 40% as prescribed by the law. Indeed, the statute of Sel sets forth that electoral lists shall respect the principles of pluralism and gender difference, and each gender shall be represented in electoral lists for at least 40%. However, according to Ln's statute no more than two-thirds of candidates can belong to one gender, and according to Fi's statute this percentage corresponds to one-third, whereas FdI-An's and Ncd's statutes do not indicate any minimum gender quota. The only statute that formally sets forth the principle of *equal* representation of men and women in candidacies for party governing bodies and elected assemblies is that of Pd, which imposes the alternation between genders in electoral lists and commits the invalidation of non-alternating lists to the party guarantee body.

Selection of candidates to elective office. In a democratic context, the selection of candidates to national, local and European elections is supposed to reflect the result of the freely expressed will of party members. To this effect, in recent years Italian parties – particularly centre-left ones – have frequently resorted to primaries, in an attempt to identify more inclusive modes of political participation as an antidote to their crisis of legitimacy (Marsocci 2011; Di Mascio and Piccio 2015: 407-415). Nevertheless,

primaries or other similar consultations are merely for selecting those eligible for being candidates, as actual candidacies need to be approved by party governing bodies or party assemblies, pursuant to those rules of procedures that each party prescribes (Marsocci 2011). Actually, Italian parties have opted preferentially for open primaries (not reserved to party members, but open to voters and supporters) especially in case of contested one-person posts. However, even in case of primaries, party leaders exert a certain control over candidacies and procedures of bottom-up participation, so that one may assume there is no direct relationship between the degree of inclusiveness in the selection of party leaders and the democratic quality of party life. Moreover, with regard to primaries and similar consultations, many commentators have criticised the procedures by which the electorate is defined and candidates selected, the modalities of voting that are not always respectful of the principles of personality and secrecy, the system used for covering the expenditures, the presence or absence of a validity quorum, the sometimes lack of transparency of the rules, and so on (Marsocci 2011: 7). Among the examined party statutes, only that of Pd imposes the necessary recourse to primaries: candidates to one-person posts (such as city majors or regional presidents) are selected in primaries reserved to party members, whereas candidates to elected assemblies (such as Italian and European Parliament or regional and local councils) are selected in primaries open to both party members and voters, so that the so-called "selectorate" is naturally difficult to determine. The rules according to which primaries are organised shall be approved by the party's national directorate by a majority of 3/5. Yet, the Pd candidate for Prime Minister is not selected in primaries, because the statute sets forth that he/she coincides necessarily with the party's national Secretary. With regard to other statutes, that of FdI-An considers primaries the preferable but not exclusive method for selecting candidates to positions in the party and public office, although candidacies are subject to the approval by the party directorate. In addition to primaries, the same statute mentions the "consultations of party members and citizens" as another method – probably less incisive and binding than primaries – of selecting candidates. According to Ncd's statute, candidates for public office are first *preferably* selected in primaries, and later submitted to national and regional party governing bodies for approval. Sel's statute does not mention primaries: candidacies are simply proposed by party assemblies at national, regional or local level in accordance with the criteria proposed by the party's Presidency and approved by the party's national assembly. On the contrary, the statutes of *Forza Italia* and *Lega Nord* adopt a top-down approach to the selection of candidates, which hardly ties in with the democratic method by which

citizens can contribute to defining national policy, pursuant to art. 49 Cost. In *Forza Italia* the lists of candidates are decided by the *Comitato di Presidenza* after hearing the opinion of regional coordinators; party members can contribute to this decision merely by providing the *Comitato di Presidenza* with useful information. Finally, the statute of Ln states that the composition of the lists of candidates is decided by the Federal Council (that is, the party governing body, not the party assembly) after hearing the opinion of the national Secretaries and national Councils.

Election of party leaders. Hopefully, in a democratic context party leaders should be chosen according to the will freely expressed by the majority of party members. However, this is not always the case. In fact, it not infrequently happens that consultations of party members and/or voters are somewhat under the control of party leaders (Di Mascio and Piccio 2015: 312-413). The statute of Pd sets forth that the national Secretary is automatically indicated as candidate for Prime Minister. His/her designation is carried out in three stages: firstly, primaries reserved for party members in order to select the three candidates who have obtained the largest number of votes, provided that they have exceeded the threshold of 5% of votes validly cast; secondly, election of the national Secretary among the three candidates by the national Assembly; thirdly, in the event that none of them has obtained the absolute majority of the votes, run-off among the two most voted candidates. The only other statute that explicitly mentions primaries – although as a mere possibility – for the selection of party leaders is that of FdI-An: every party member is allowed to stand as a candidate for party President, who is elected by the national Congress or, in case his/her designation has resulted from primaries, simply appointed by it. The statute of Fi rules that the President is elected by the national Congress by secret ballot, provided that he/she has obtained at least 40% of the votes. However, procedures for presenting candidacies and consequences in case no-one exceeds the prescribed quorum are not clarified, whilst the statute sets forth that, in case there is only one candidate, he/she can be designated by show of hands. The other examined statutes do not declare much about the procedures for the designation of party leaders. In Ln the federal Congress elects the federal Secretary among those who have been party members for at least ten years. In Ncd and Sel the national President is elected by the national Congress.

Modification of party symbols and statutes. The procedures for amending the statutes deeply affect party lives. In fact, entrusting them to a party body that is more or less representative of party members can be considereda sign of a greater or lesser intra-party democracy. This is the reason for which the statute of Sel prescribes that modifications to the party statute, symbol or

name are to be decided by the national Congress or, only in the event they are requested in the interval between two Congress meetings, may be approved by the national Assembly by a majority of two-thirds; the national Presidency can only take decisions on adaptations requested or made compulsory by the law. Pd's statute commits modifications of the party statute, symbol, name or rules of procedures to the national Assembly, which should sanction them by a majority of two-thirds; decisions taken by a lower majority may be subject to internal referendums. Ncd's statute can be amended by the national Assembly by absolute majority but, should amendments be proposed by the party President between one Assembly and the following, they can be approved by the national Directorate by a majority of two-thirds; with regard to party name and logo, the statute does not clarify the procedures for their modification. The statute of FdI-An indicates different procedures for statutory amendments and modification of the symbol, assigning the party leadership a relevant role in any case. As for the statute, it can be amended directly by the national Congress or by the national Assembly delegated by the Congress; in both cases, the statute does indicate the necessary quorum for decision-making. Alternatively, the national Assembly can take charge of it without being delegated by the Congress only in the event amendments have been previously approved by the party's national Executive by a majority of two-thirds. The party symbol, instead, can be modified by the national Assembly, directly or by delegating the decision-making role to the national Directorate; however, solely in sight of regional and local elections, the party President can decide to modify the symbol after hearing the opinion expressed by the regional or local party bodies in charge. The statute of Ln delineates a quite centralised supervision on the party symbol and statute. The usage of the party symbol is to be authorised (and revoked where necessary) by the federal Council and modifications are allowed, on the federal Council's binding opinion, only in relation to regional and local elections. Instead, statutory amendments fall within the competence of the federal Congress, although they have to be proposed by an *ad hoc* Commission appointed by the federal Secretary on a proposal from the federal Congress. Amendments to the statutes of the so-called "Nations" (namely, the regional branches of *Lega Nord*) are decided by the Congress of the relevant "Nation", following a favourable opinion from both the federal Secretary and Council. Finally, the statute of *Forza Italia* commits the supervision on the party symbol to the Presidential Committee, that is also responsible for its modification, whereas statutory amendments are entrusted to both the national Congress and Council – jointly? Or by which division of powers? – whose decisions are to be taken by a majority of

those present, provided that they constitute at least two-thirds of all members entitled to vote.

10. Provisional conclusions and future prospects

This brief analysis of party statutes highlights that, although the 2013 Act has forced parties to introduce several internal rules aimed at encouraging the involvement of party members (and sometimes supporters and/or voters) in party life, this has resulted in a variety of forms such as to not undermine the principle of freedom of association. Therefore, while pointing out that the formal elements of the statutes are not always a sign of an actually substantial intra-party democracy, and that in any case there is no uniformity in the level of internal democracy made explicit in party statutes, these early effects of Decree-Law no. 149/2013 can be assessed positively after all. However, one cannot overlook the fact that such regulation has not been fully implemented so far: there have been shameful delays in making the Commission fully able to exercise control over party accounts, which has not prevented parties from receiving public funding anyway, and the implementing decrees concerning the transparency of donations and their value limits are still waiting to be adopted.

Many believe that the time has come to implement the principle of "democratic method" mentioned in art. 49 Cost. by a legislative act. However, there is very little consensus on how, in practice, intra-party democracy should be regulated and to which obligations parties shall be subject. Five draft laws were presented on this issue between March 2015 and February 2016[66], which were joined by several others in the following months. The result of this legislative ferment is a consolidated draft law entitled *Disposizioni in materia di partiti politici. Norme per favorire la trasparenza e la partecipazione democratica*, which was approved by the *Camera dei Deputati* in June 2016 (C. 3610) and since then is waiting to be examined by the *Senato* (S. 2439)[67]. On one hand, it leaves aside provisions concerning the legal personality of registered parties, which had been proposed by some of the previous draft laws and strongly contested by many. On the other hand, it places special emphasis on the rights of party members to political participation and on the transparency of the parties'

[66] An analysis of these first five proposals is contained in a paper released by the *Camera dei Deputati* (*Attuazione dell'articolo 49 Cost. in materia di disciplina dei partiti politici*, no. 398, 17 February 2016), available here: http://documenti.camera.it/Leg17/Dossier/-Pdf/AC0482.Pdf.

[67] The draft law can be read here: http://www.senato.it/leg/17/BGT/Schede/Ddliter/-46504.htm.

statutes, structures and accounts, with regard both to registered and unregistered parties. Notably, these obligations would be incumbent on parties because of their nature of associations representing the interests of citizens, regardless of their expectations of economic benefits.

Whether these new rules will ever see the light is unpredictable at present, therefore a detailed examination of this draft law may be inappropriate at this point. Apparently, political priorities currently seem to be of a different nature than intra-party democracy. However, should this draft law or a similar one be approved sooner or later, parties (registered and unregistered ones) will be compelled to amend their statutes once again. Then, a new investigation on party statutes will turn out to be useful in order to verify the effect of the new rules on the lever of intra-party democracy. For now, those who observe these processes can only take note of their extreme fluidity and changeability: in fact, the nature of the political parties as legal entities is, at this stage, very elusive and the reflection on what should be the application of the democratic method indicated by the Constitution is far from being concluded.

2. A Possible (Legislative) Regulation of Italian Political Parties and Its Connection to Their Funding[*]

SUMMARY: 1. Regarding a possible specific law on political parties: evolution over time of the academic debate and proposals in Parliament. – 2. A brief comparison with other European countries. – 3. Previous proposals for implementing art. 49 of the Italian Constitution. – 4. The legislative proposals adopted by the Camera dei Deputati during the XVII parliamentary term. – 4.1 The registration of political parties and the submission of their statutes regarded as a legal burden or a legal obligation. – 4.2 Transparency of the elections and internal transparency of the life of parties and other political groupings. – 5. The selection of political ruling classes. The case of primaries between the (temporary?) surrender of their regulation by law and their actual incorporation into party statutes. – 6. Intra-party democracy and electoral system: concluding remarks.

1. Regarding a possible specific law on political parties: evolution over time of the academic debate and proposals in Parliament

Designing and building spaces for the meeting, aggregation and selection of political élites, in order to discuss and promote public policy issues, means concurring with art. 49 of the Italian Constitution. This provision not only prescribes the form of parties (free associations of individuals) but also defines their fundamental function: being an instrument in the hands of citizens, so that they can contribute to determining national policy through a democratic method. Furthermore, from the analysis of the preparatory work and the choice of dedicating a specific article of the Constitution to political parties, it clearly emerges that the intent of the Italian constituents was to assign a persistent leading role to them.

There is no doubt that an individual's thought and political action can be better expressed within an organised collective context. These organisations must have solidity and appear to be robustand long-lasting (which does not mean that they are immutable) and it is with this in mind that we can continue to assert that parties are currently necessary. The party form has therefore been identified by the constituents as *privileged*, because it corresponds to associations tending to be generally stable and consistent

[*] Written by Paola Marsocci.

with their specific purposes, they freely individuate internally, as well as with the democratic system as a whole. For these reasons, such organisations should also be able – in some respects, especially – to identify and train those who will hold public office.

Parties, however, do not have the "monopoly" of political action. The implementation of the pluralistic principle that characterises the Italian form of the State would not allow the exclusion or an excessive limitation of the action of other collective political identities. Moreover, our legal system is designed to guarantee the activities of any democratic movements and political groupings, whether they intend to adopt a persistent and detailed organisational form or not (Marsocci 2012a: 41 et seq.; Poggi 2014: 7). Nevertheless, it has to be stressed that only since 2013 have political movements been considered alongside political parties in Italy, thus implicitly recognising their equalisation[1]. In the context of the transformation of political representation (not least, of the supranational one), the history of political parties and movements is a mirror of the changes in the political society, which allows us to shed light on the current characteristics not only of our form of government[2], but also on the rule of law.

The constitutional foundations of both the political participation of citizens (and also of non-citizens) and political representation are found in the interpretation of the nature of the form of our State. Therefore, merely looking at art. 49 of the Constitution, which recalls the freedom of association pursuant to art. 18, may be not enough (Rivosecchi 2016: 3): one should also consider the principles of democracy, popular sovereignty, recognition and guarantee of freedoms for individuals and social groups, political solidarity, formal and substantial equality, secularism in cultural terms, which means that art. 49 Cost. is to be interpreted in connection not only with art. 18 Cost., but also with the first three articles of the Italian Constitution. Precisely, this paper seeks to highlight the relationship between the democratic nature of the Republic and the exercise of freedom

[1] The Court of Naples has recently ruled on the expulsion of some members of the *MoVimento Cinque Stelle* (*M5S*) which occurred in the context of the consultations for choosing the candidate of Mayor of Naples in the local elections held in the spring of 2016 (supervision order of 14 July 2016). The judge accepted the request from the expelled members and assimilated the *M5S* to a political party, because it is a political association articulated in territorial seats, with the aim of contributing to the determination of national policy. Therefore, also the *M5S*, when it presents electoral lists, is subject to the provision referred to the expulsion of associates contained in the Civil Code.

[2] Observing, in particular, the relationship between art. 49 Cost. and art. 67 Cost. (prohibition of a binding mandate), as well as the relationship between these two constitutional provisions and art. 1 Cost., as interpreted by the Constitutional Court (Zanon 1991, Ridola 1995, Merlini 2009, Azzariti 2009).

in a duly supportive environment. Political participation means promotion of individual activism in the society; therefore, individuals are free to pursue political aims within and through social groups (solidarity can only be expressed in collective contexts), where their own personality is carried out, as written in art. 2, par. 2, of the Italian Constitution. In my opinion, the need to regulate the system of parties and other political organisations, ensuring both external and internal pluralism, is grounded in this constitutional provision. One must be able to choose a political party from among a sufficiently large number of proposals, and – if wishing to commit oneself directly – an individual must have a real opportunity to contribute with his/her own personality to the definition of the programmes and implementation of the activities of that grouping.

Still, what organisational forms are today not only compatible with but effective for each of these purposes? Are those political parties that focus almost all their energy on the electoral period, with the sole aim of acquiring institutional positions and power, interpreting their constitutional "function" properly?

As we know, external pluralism can be guaranteed first and foremost by the electoral systems, namely the combination of the proper electoral law and other laws connected to it (regarding financing, election campaigns, political and institutional communication, benefits to publishing and broadcasting). Italy remains, after decades, in search of an electoral system not only limited to portraying the state of the balance of power (which is in constant and convulsive transformation) among parties in competition. We are still waiting for a law guaranteeing the deserved equilibrium between pluralistic democratic representation and governability, that is, the formation of two parliamentary Chambers able to express their confidence in a predictably stable Government. The organisational form of parties and other political groupings is partly a cause and partly an effect of the good or bad functioning of this circuit. Therefore, now more than ever we are in need of a political system that is not only pluralistic but efficient as well, also in order to counter the consolidation of instances of extremist values that are emerging across Europe.

As for internal pluralism, it is well known that in Italy an interest in a party law, concerning the organisation of parties and other political groupings, was revived a few years ago. What is certain is that, in both an external and internal perspective, it is essential to implement the principle of publicity (or transparency, if you prefer) of the life of associations with political aims, as those aims are still of public relevance even though they

are pursued by private legal entities[3]. In summary, if each of us has the right to choose to actively participate or give consent to a political party, these parties have to be in some way different from each other and those differences should somehow emerge.

This chapter considers the debate over whether ordinary law can intervene alongside the autonomy of parties in establishing and enforcing their own internal rules. No commentators have ever argued for a radical choice between the self-reform of parties and their reform by law, although not everyone remembers that the latter *is not prescribed as compulsory* by the Constitution.

On the contrary, words often used in the academic, political and institutional debate drive public opinion to believing that we are currently facing a formal non-implementation of the Constitution, as if art. 49 Cost. required an explicit intervention of Parliamentary law (as in the case of the provisions of art. 39 Cost. concerning trade unions). Actually, I consider that one should rather wonder to what extent and for what reasons in the almost seventy years of our Constitution there has not been the full implementation or the fulfilment of its potential as a fundamental law capable of leading the transformation of our State (as a community and as a public structure) in the sense indicated by its fundamental principles. What matters is not merely implementing the Constitution – namely, doing what is prescribed by a fundamental written rule (Amato 1964: 209) in order make its content effective – but continuing on the path set out in the constitutional design and interpreting current events and the transformations of the Italian political community accordingly.

After all, art. 49 Cost. represents one of the most significant examples to which the teaching of Carlo Esposito (1954) may be applied: the Parliament only can implement the constitutional provision on political parties, while it can never be held responsible for not having done it. Moreover, nowadays we have to come to terms with the (pathological) imbalance – which has seen a progressive increase in Italy – among parliamentary and governmental law sources, with the latter being favoured. Just consider the approval of rules on financing by decree-laws (Saitta 2013, Dickmann 2014, Calvano 2015), as

[3] The Italian Constitutional Court (court order no. 79/2006) has in fact denied that parties can be qualified as State powers and noted that they should be regarded as civil society organisations to which ordinary laws have assigned some public duties. Parties are not institutions, but rather they are private and social entities by means of which individuals can express themselves in the political society. Therefore, individualism and personality, as well as profit-making, are simply anachronistic purposes for political parties (see also *Corte di Cassazione – sezione lavoro*, decision no. 26, 7 January 2003).

well as the pressure deriving from the (appropriate) attempt of the European Union to build a European party system.

Therefore, it can be argued that the doctrinal confrontation, which already started in the first years of constitutional implementation, is based on a few still relevant considerations: the parties' gradual loss of political authoritativeness and effective capacity to mediate; the persistence of (not only) ethical abuses within parties; the necessity of providing for a system of funding to parties subject to stringent controls by impartial bodies. Two more factors have come to light more recently: the seemingly relentless party transformism, which is producing an overtly multi-party system, and the temptation to reinforce party leadership to the point of making the other bodies of the party (such as assemblies of party members or delegates, steering committees, bodies of internal guarantees) irrelevant, although they are expressions of internal pluralism. Last but not least, the scenario in which the crisis of parties (or, more specifically, the crisis of the twentieth century party model) resides is that of the transformation of capitalism and of the profound changes in the relations between politics and economy, where the main steering and regulating role is now carried out by the latter (Algostino 2015: 10).

Nevertheless, in the 1950s, many influential voices had argued that a legislative intervention, although desirable, would not have cured the political and party system of all ills, but would have brought the system back to the spirit of democratic constitutionalism, stimulating and guaranteeing those who did not feel disinterested in politics, those willing to participate, those hankering for power (Elia 1965: 29). The essential lever for activating and satisfying such ambitions by means of political representations was then considered available to politics itself and to its players.

Today, opinions are diverging about what should be prescribed for by law.

On one hand, many argue that a law should be the least invasive possible, thus safeguarding the autonomy and responsibility of the single political forces, which could proceed to a self-reformation by means of ruling instruments at their disposal, such as statutes, regulations, ethical codes, common law and constitutional conventions. Therefore, parties and other political groupings would need "good" rules, starting from those belonging to parliamentary law, which have a direct and potentially profound effect, although they are often disregarded or used improperly, only for distinguishing between parties and political groups. Conversely, a single law concerning the parties' juridical status would not be necessary, nor would any model of party statute containing detailed and standard rules about their entire organisational life or even part of it be required (Rescigno 2009: 323, Barbera 2007). On the other hand, some believe that an Italian legislative intervention should be weighty, as in other European countries

and recently in the law of the European Union. A party law should not only indicate which elements are necessary in order to democratise the internal life of parties, but also to prescribe their content and function in detail (Cheli and Passigli 2013, Ferrajoli 2016). However, a limit is represented by the free development of each party's political purposes (Merlini 2009, Rossi 2011).

2. A brief comparison with other European countries

A glimpse at other European countries reveals that especially those which have most recently adopted a democratic system – such as Eastern European countries – have often opted for a formal regulation of party democracy, sometimes even at constitutional level. In some cases, rules make the core values parties should comply with explicit, which are often protected by the constitutional courts. Moreover, there is close link between rules on party funding and on the internal organisation of parties (Bonfiglio 2015).

However, the number of countries that have adopted party laws, very often as a reaction to cases of corruption, is growing. At times the law may have an impact on party autonomy (Poggi 2014), but more often it provides for incentives and duties without interfering directly with the internal organisation and functioning of the parties, thus complying with what is indicated by the *European Commission for Democracy through Law* (the Venice Commission) in the *Guidelines on Political Party Regulation* published in 2010.

At the same time, another delicate question is emerging: should the legislator take action and establish controls over the constitutionality of the values proposed and represented by parties and other political groupings? Today, with societies facing domestic and international terrorism, political options are susceptible to being radicalised and are openly challenging the pluralistic principle that has nourished all democracies in the aftermath of the Second World War. With this in mind, there is the desire expressed by some that the Italian legislator is animated in the future by a realistic attitude, capable of contextualising the Italian experience in the current European context (Buratti 2003, Clemente 2015).

According to the summary recently produced by the study service of the *Camera dei Deputati*, published on 16 March 2016, many European countries (among which Austria, Portugal, Spain and most of the Eastern European countries) oblige parties to acquire legal personality, whereas in Germany and Belgium parties can choose whether to acquire it or not. In France parties are defined as private-law legal entities, whereas in the United

Kingdom they are free associations with no obligation to register. Moreover, in most countries the law prescribes, to a greater or lesser extent, what the minimal requirements of the internal statutes of the parties should be. In a few cases (Albania, Czech Republic, Hungary, Latvia, Lithuania, Montenegro, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia) the presentation of electoral lists is subject to an obligation to register, whereas in some other cases (France, Switzerland, the United Kingdom) registration is a mere legal burden to be complied with in order to have access to funding.

Some further elements of comparison are also worth mentioning.

In France a liberal view of the constitutional function of parties has prevailed, based on art. 4 of the Constitution (revised in 2008 adding an explicit mention of the pluralistic principle). French parties are legal entities largely subsidised by public funding. They are not subject to the control system generally applicable to associations or foundations, but to a specific one entrusted to an independent Authority composed of judges. The most recent legislation on party financing and the related one on the transparency of public life have produced new rules on party statutes which have replaced the previous ones referred to all kinds of associations. As for the electoral competitions, some obligations are imposed only on single candidates, not on parties (Catalano 2016: 350 et seq.).

The German legal system is characterised by the rule of law on party regulation and by express prohibition of parties against the establishment. The federal constitutional tribunal ensures that this provision is respected, as art. 21 par. 1 of the German Constitution sets forth that the internal regulation of parties shall comply with democratic principles and it demands that parties disclose the source and use of their funds and properties. The *Gesetz über die politischen Parteien* sets forth – the first case in Europe – the requirements by which parties can benefit from state funding, in compliance with the principle of equal treatment of all competitors. Particular attention has been paid to political foundations, which are functionally linked to parties, although formally independent from them (Pellizzone 2016).

The Spanish legal system has privileged a heteronomous approach in the *Ley orgánica* no. 6/2002, modified by the *Ley orgánica* no. 3/2015. It was approved in accordance with a constitutional model that, although largely inspired by the German *Grundgesetz* of 1949, has only reproduced the internal constraints to be imposed on parties and not the external ones with regards to their purposes. The establishment of a new party has to be formalised by a public agreement. It will acquire legal personality by registering in the *Registro de Partidos Políticos* kept by the Ministry of the Interior, after producing its founding act and all documents proving the compliance with all legal requirements. The minimum content of party

statutes is regulated in detail and, in accordance with the principle of political pluralism prescribed by the Spanish Constitution, the law sets forth the conditions for parties taking part in elections as well as the rules on party financing, by balancing a necessary State contribution with other sources of funding, which are subject to some limitations (Cappuccio 2016).

In the United Kingdom, laws, statutes or customs do not attribute a legal personality to parties in the sense conceived by continental legal systems, although they regulate their foundation, activities and financing. Therefore, parties are private-law entities without legal personality, and disputes involving them are to be brought before civil courts. However, political parties may optionally register, pursuant to the *Registration of Political Parties Act* (1998) and the *Political Parties, Elections and Referendums Act* (2000): an Electoral Commission (an independent authority in charge of monitoring the compliance with rules concerning elections and party financing) is responsible for supervising the application procedure and consenting to the enrolment of the applicant party in a public register. Registered parties benefit from the protection of their submitted emblems, exclusive rights to make use of them in the electoral lists and access to radio and television for their election campaign. However, registration is subject to some conditions: applicant parties shall have a "constitution", that is to say, a statute indicating the party's purposes, governing bodies, internal organisation, and decision-making procedures. Moreover, they shall designate a leader, a treasurer and a "nominating officer", namely a person responsible for usage of the party's name and emblem on the ballot papers. Finally, parties applying for registration shall have clear rules concerning its financial management and accountability of electoral expenditure. As regards party financing, political parties are mainly funded by private contributions. Public funds, although gradually increasing, are still residual. They consist of "policy development grants", dedicated to the development of political platforms to be incorporated in the election manifestos, and annual payments to Opposition parties in the House of Commons (Short Money) and in the House of Lords (Cranborne Money), in proportion to the representation of each party's members in parliamentary groups (Rosa 2016).

Novelties regarding political parties have recently occurred in European Union law which, starting from the provision concerning political parties incorporated in the Maastricht Treaty[4], has continued to pursue the goal of

[4] Sect. 41 of the Maastricht Treaty inserted a new article (138a) in the former Treaty on European Union, stating that «Political parties at European level are important as a factor for integration within the Union. They contribute to forming a European awareness and to expressing the political will of the citizens of the Union». The Treaty on European Union currently in force (art. 10 par. 4) sets forth that «Political parties at European level contribute to forming European

linking the statute and the financing of political entities together, ultimately culminating in a specific European statute of political groupings. Although the European Union seems to have the ambition of building a common legislative framework (Ciancio 2009, Allegri 2013, Decaro and Fasone 2016), it has not promulgated a uniform electoral procedure (Marsocci, 2016) nor it has given birth to any European system of popular political players that can take root in the society, determining the preliminary conditions for the establishment of a European public sphere and building an interaction between European citizens and representative institutions (De Fiores 2014: 3). The legal basis of political parties therefore involves three levels of sources: Eu law, national law and, for anything that remains unregulated, party statutes.

Not without difficulty, the need to improve the legal and financial framework in this respect led to Regulation (Eu, Euratom) no. 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations, whose provisions became applicable only on 1st January 2017. It rules on the legal status of European parties by attributing them, if registered, a European legal personality, and subjecting them to a reinforced supervision over their internal democracy. European parties' compliance with a number of formal requirements should ease their possibility for operating in the whole European Union. Actually, the European legal personality is expected to exist alongside or even to substitute the national ones, thus overcoming any obstacles deriving from the disparity in national legal systems. At present, European political parties and foundations, although financed through the Eu budget, are indeed national legal persons.

From now on, political alliances pursuing political objectives – where "alliance" means "structured cooperation between political parties and/or citizens" – will be able to register as proper European political parties (no longer "political parties at European level"), provided that they do not pursue goals of profit, have their seat in a Member State, observe in their programmes and activities the values on which the Union is founded (namely, respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities), have participated in elections to the European

political awareness and to expressing the will of citizens of the Union». Moreover, the current Treaty on the Functioning of the European Union (art. 224) prescribes that «The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, by means of regulations, shall lay down the regulations governing political parties at European level referred to in Article 10(4) of the Treaty on European Union and in particular the rules regarding their funding».

Parliament, or have expressed publicly the intention to do so, are represented in at least one quarter of the Member States by members elected in the European Parliament or in national or regional assemblies, or finally, have received, in at least one quarter of the Member States, at least three per cent of the votes cast in each of those Member States at the most recent elections to the European Parliament (Allegri 2014: 3).

However, the original proposal from the Commission was in some respects significantly different from the final version of the regulation. In particular, the supervision of the compliance with the values on which the European Union is founded is now limited only to the parties' programme and activities and is no longer referred, as it was originally, also to the party's internal organisation. Control responsibilities are no longer up to the European Parliament, but have been entrusted to a specific independent Authority with legal personality, which will be able to carry out financial supervision on the parties' account and even to disbar parties from the Register.

Regulation no. 1141/2014 also contains several innovative provisions about the financing of European political parties and foundations (Grasso and Tiberi 2016). The previous system based on subsidies for the functioning of parties has turned into a regime of contributions to party expenditure: therefore, European parties are no longer bound to submit their annual work programmes and the draft balance sheet in support of their application for funding, but are simply required to justify the expenditure incurred *ex post*. As regards private donations to parties, they cannot exceed the threshold of eighteen thousand Euros per year per donor. Finally, with regard to transparency, all information concerning European political parties will be available for citizens in a dedicated section of the European Parliaments' website, since overall transparency is intended to reinforce parties'accountability.

3. Previous proposals for implementing art. 49 of the Italian Constitution

In Italy the political programmes of current parties and the most recently proposed bills seem to have a propensity for the idea of approving a law in order to determine a common framework of the internal life of all political parties and movements and to define the composition and the tasks of those bodies called upon to guarantee it in a democratic sense.

It should not be forgotten that the regulation of a variety of associative phenomena shall not be identical: the Italian legislator is free to submit

certain types of associations to stricter limitations and more penetrating controls; therefore, in the case of parties, one should start from the (renewed) demand of interpreting the reference to the "democratic method" contained in the constitutional provision. In short, one wonders how the wording of art. 49 Cost. can be transposed into effective legal arrangements and how far the legislator can venture in imposing obligations and limits to the internal and external action of the parties, considering that citizens express their political will by exercising their rights (not only the right of association but also the right to freedom of political opinion, the right to vote, the right of assembly, and so on).

It is not easy to establish by law even the mere "skeleton" of a party statute, as already shown by the just cited example of the party regulation the European Union is gradually trying to consolidate. The matter does not concern only which issues a potential regulation should fix in an organic framework, but also which principles and possible limits party action should be subject to, and which bodies are to be called upon to guarantee each party component, and in what way. This legislation should refer to all political groupings, also to those that – perhaps temporarily or out of necessity – do not intend to present candidates in elections but still wish to carry out political activities (such as referendum campaigns, political education, promotion of political culture about specific issues, and so on). In my opinion, these options, if made compulsory by the law, might contribute to rendering the fundamental principle of party autonomy (and accountability) meaningless, as well as igniting the sensitive issue of the correct balance between that principle and its judicial review (Rivosecchi 2016, Siclari, 2016, Lanzafame 2017: 16 et seq.).

To this day, the law does not provide for any formal recognition of political parties by the State. Parties are considered *associazioni non riconosciute* (unrecognised associations) without legal personality, subject to the rules of the Civil Code concerning free associations (Pace 1992: 362, Catelani 2015). Parties enjoy full organisational autonomy, which means they can structure themselves in any way they consider best to serve their interest, albeit with the limit of the "democratic method" prescribed by art. 49 Cost. Actually, they could opt for acquiring a legal personality, should it be demanded by the law as a condition for receiving funds or reimbursement of election expenses. Moreover, parties are now free to establish internal rules for the admission or expulsion of members, the selection of candidates to internal positions in the party or public office, the articulation of territorial branches, the handling of disputes and the establishment of supervisory bodies. Similarly, parties can also opt for having extremely "light" rules, even ones that are not well disclosed inside and outside the party. However,

internal rules aimed at impeding or limiting the judicial review of the individual rights of party members (arts. 2 and 24 of the Italian Constitution) or their access to the compensation for damage would be declared invalid[5].

As mentioned before, the existing legal system already contains some very significant rules having an influence on the organisational autonomy of political groupings. First of all, electoral laws and laws on party financing and election campaigns, secondly, Parliament rules of procedures (where they consider the role of political parties in the organisation of parliamentary groups) and Eu regulations, that have recently taken the road towards a system of European political parties and foundations (Allegri 2014 and 2015). Moreover, one should mention the obligations deriving from the European Convention on Human Rights, guaranteed by the case-law of the European Court of Human Rights, as well as the documents about political parties and selection of candidates released by the European Commission for Democracy through Law (the so-called Venice Commission). Today, the latter guarantee parties much room for their internal organisational autonomy, albeit with the already mentioned limits of representativeness, transparency and accountability, thus making it arduous for party members to pursue any possible claim against the decisions made by party bodies through the judicial process (Girotto 2017: 3).

By reference to the past parliamentary terms[6], the draft bill proposed to the Senate in the year 2006 by two constitutionalists (Massimo Villone and Cesare Salvi), later combined with other proposals that were examined but never approved, ought to be mentioned. Taking inspiration from the German model, this was meant to enhance the first part of art. 49 Cost., namely an idea of party as the fruit of the freedom of association of individuals to a political group. Its proponents set forth what they considered as "light" rules, opened to different solutions in accordance with party options (for instance, as regards primaries). Still, the premise was the modification of the legal status of parties: no longer *de facto* associations but legal associations subject to civil law. In order to have access to public funding, parties should have provided themselves with a statute primarily aimed at protecting party members. Its contents should include: the registration of party members at a specific registry office; the possibility for

[5] On a more incisive level, the current case-law protects the members of the individual parties (joined civil sections of the Corte di Cassazione, no. 10094/2015).

[6] For instance, regarding the proposals put forward during the XIII parliamentary term, concerning party organisation and financing, see Pinelli 2000: 154-157. See also Pinelli 1984 regarding the past debate on the constitutionalisation of political parties and on the democratic method in the post-Weimar period.

parties to challenge the sanction of the total or partial withdrawal of public funding before a civil court, which could be applied in case of non-compliance with the rules implementing the "democratic method"; some instruments of direct democracy, such as the "recall" of the executive bodies (namely, the possibility of invalidating and replacing the party's executive bodies through the vote of party members) and the referendum for changing the party's name and symbol. Furthermore, the proposed bill considered that the general Assembly of all party members – to which one could take part also through a vote by electronic means – should be the party's representative body, while other bodies, all of them connected somehow to the party members' will, should have executive or guaranteed tasks, among which the protection of the internal minorities.

In the XVI parliamentary term, at the initiative of some members of Parliament, a few proposals were put forward with regard to the implementation of art. 49 Cost., concerning the legal status and the regulation of the parties' activity and function (Maestri 2012). They all shared a need to "define" political parties and offered some practical solutions in this regard. Moreover, they all contained obligations for the adoption of party statutes, albeit with different solutions in this respect, starting from the proposed restrictions to party autonomy in terms of the required procedures, majorities, forms of publicity and publication of acts. In particular, only some prescribed parties should be recognised a legal personality, which in other European countries is generally considered a due requirement for parties willing to benefit from public funding. Finally, some of the proposed bills also contained rules related to party financing, whereas only one of them was focused on the establishment of political and cultural foundations.

In 2012 the above-mentioned legislative proposals were unified in a single text (C. 244 and abb.) entitled *Attuazione dell'art. 49 Cost. in materia di partiti politici*, but it was never adopted. However, a draft bill concerning the control over public funding to parties and the transparency of party accounts took a separate path and finally was adopted as Law 6 July 2012, no. 96, entitled *Norme in materia di riduzione dei contribute pubblici in favore dei partiti e dei movimenti politici, nonché misure per garantire la trasparenza e i controlli dei rendiconti dei medesimi. Delega al Governo per l'adozione di un testo unico delle leggi concernenti il finanziamento dei partiti e dei movimenti politici e per l'armonizzazione del regime relativo alle detrazioni fiscali*. Its approval was stimulated by the decisions taken by the former Government chaired by Mario Monti, concerning a reduction in public spending and a stricter control over it, which had a significant impact on the public opinion. For the first time,

Law no. 96/2012 has considered party statutes and articles of association (bound to a generic compliance with the principle of internal democracy) as necessary requirements for having access to funding[7]. State contributions were meant as incentives or disincentives which could have steered the organisation and activities of those political forces that had obtained at least a minimum level of electoral consensus.

4. The legislative proposals adopted by the Camera deiDeputati during the XVII parliamentary term

Currently, the consolidated draft bill adopted by the *Camera dei Deputati* on 8 June 2016, entitled *Disciplina dei partiti politici. Norme per favorire la trasparenza e la partecipazione democratica*, is being examined by the *Senato* (S. 2439).

Art. 1 identifies the addressees of the proposal: not only political parties, but also political movements and organised groupings. The same provision also makes clear the overall purpose of the proposed legislation, that is, to encourage the widest participation of citizens in political life, and indicates which objectives are to be achieved in order to pursue it, namely the promotion of transparency in the action of parties and the enhancement of their level of democracy. Art. 2 has taken a step forward compared to the previous legislative proposals[8], as it provides an interpretation of art. 49 Cost., setting forth that the freedom of association for political purposes, which shall be guaranteed to all citizens, is useful for helping them contribute to defining policy guidelines, drawing up programmes for national and local governments, selecting and supporting candidates to public office, with due regard for the principle of gender equality. It seems, then, that the legislator is inclined to accept the argument that political groupings that tend to be stable and organised have the function of implementing such principles by interpreting them in the light of

[7] Art. 5 of Law no. 96/2012 states that party statutes and articles of association shall be drawn up in the form of authentic instruments, and shall indicate which bodies are responsible for approving party accounts and financial statements, as well as for the economic and financial management of the party. Party statutes have to conform themselves to democratic principles in the internal life of parties, particularly with regard to the selection of candidates, the respect for minorities and the rights of party members.

[8] As well as compared to Law no. 13/2014, entitled *Conversione in legge, con modificazioni, del decreto-legge 28 dicembre 2013, n. 149, recante abolizione del finanziamento pubblico diretto, disposizioni per la trasparenza e la democraticità dei partiti e disciplina della contribuzione volontaria e della contribuzione indiretta in loro favore*, that in its art. 2 par. 1 has simply reproduced the constitutional provision of art. 49.

constitutional current events, in particular as regards the appointment of candidates in elections and the preparation of political programmes. These powers have indeed the most significant and immediate impact on the functioning of the public institutions.

However, the draft bill does not mention the other function of the Italian constitutional model, which has been considered in the first section of this essay, that is, the promotion of the personality of individuals by means of political activism. Parties ought to be places – not exclusive, but privileged[9] – where people could freely propose themes of general interest as matters for discussion, where they can train and be trained in regards to the debate of ideas and understanding of social conflicts (Azzariti 2010, Luciani 2017). It is a place where people can guide their political part towards certain positions, trying to broaden the external consensus by any suitable means of communication, promoting dialogue between different territorial levels by making use of political networks, stimulating institutions to fully implement the existing laws. This model of party or political grouping is necessary today more than ever.

The second paragraph of art. 2 certainly moves in this direction, as it enshrines the right of all party members to participate without discrimination in the political choices the party is committed to. If the organisation and functioning of parties, movements and political groupings are guided by the principle of transparency and the democratic method, the exercise of this right will be guaranteed. Therefore, the draft law indicates some solutions for achieving this goal, clarifying that it should also be pursued by means of internal rules (party statutes, rules of procedures, ethical codes)[10].

The draft law under consideration reaffirms that parties shall be regarded as *associazioni non riconosciute*, governed by the Civil Code. To this respect, it is worth recalling that art. 36 of the Italian Civil Code sets forth that the internal legal order and administration of the associations that are not recognised as legal persons are governed by the agreement of associates. This provision does not foreshadow a specific framework for associations nor does it establish particular forms, conditions or limitations to the autonomy of associates. The sole exception is the indication of the purpose, by reference to art. 18 Cost. that prevents associations from purposes that are forbidden to individuals under criminal law and prohibits secret associations and associations of a military nature from pursuing

[9] In line with the ideas of Costantino Mortati.

[10] In fact, it sets forth that the respect for transparency and the democratic method pursuant to art. 49 Cost. is to be achieved *also* by the compliance with legal requirements.

political aims, even indirectly. Therefore, the internal regulation of associations is largely autonomous, as confirmed also by the most recent case law. In particular, associations cannot fail to have a decision-making body (assembly) composed of all members or associates, even though it is not mentioned in the articles of association (*Corte di Cassazione*, decision no. 5791 of 3 November 1981). Pursuant to art. 23 of the Italian Civil Code, the decisions made by this body shall be open to legal challenge at the request of any of the association's bodies, associates or members.

Thus considered, it ought to be reaffirmed that, together with its ideals and political options, the peculiar organisational form of a party or any other political grouping represents its Dna. Only by being familiar with it will someone feel politically "at home" and only by appreciating it in comparison with other political groupings will someone be able to choose his/her level of active involvement in these organisations. That is why specific rules – such as those concerning the inclusion and expulsion of associates, denominations, emblems and seats, selection of internal and external candidates – should be established by the associates themselves, as they constitute the identity of the organisation and enable them to be distinguished from the others.

In my opinion, any legal obligation of adopting a substantially precompiled statute or making it a pre-condition for taking part in elections would not serve to enhance democracy. It would simply produce photocopy-parties and, moreover, it would eliminate one of the elements by which party members and voters can exercise a democratic control over internal party organisation and methods. This idea, which was actually considered by some of those endorsing the proposed bill, still does not occur in the one we are here considering. However, voters or political activists would be able to opt for a certain party with greater awareness if they were informed that it has submitted to further requirements, in order to promote and broaden its interaction with the social fabric. Therefore, if the law to be adopted corresponds to the text of the bill under consideration, there will not be a radical breach of the paradigm of civil law, but some choices will be made with regard to the extent and variety of its contents. To conclude on this point, if the obtainment of a legal personality will be maintained as a burden for parties, provisions in this regard will have to be carefully motivated and calibrated. To avoid infringements of the principle of equality, legal provision should be reasonable and non-discriminatory, and should not restrict *de facto* the possibility for other political players, although not registered, to contribute to determining the general policy. Along these lines, some measures seem to be appropriate *inter alia*, such as incentives associated with the potential allocation of public resources or the reduction

of some burdens concerning, for instance, the number of necessary signatures on lists of candidates, or even some further benefits consisting in the free or discounted use of spaces suitable for hosting historical archives or meetings or for political training courses.

4.1 The registration of political parties and the submission of their statutes regarded as a legal burden or a legal obligation

As already mentioned, some national legal systems bind parties to the acquisition of legal personality. This has some consequences: better legal protection of party members, greater clarity on party assets (total financial autonomy), more transparency and openness of the history and identity (even symbolic and visual) of the association. These elements, all of them essential in a democracy, can and must be pursued by parties and political movements effectively and spontaneously, thus directly implementing the constitutional principles. With or without a compulsory registration, the function of political parties remains as dictated by the Constitution, namely different and more demanding compared to that of other types of associations (Zagrebelsky 1989).

Between two possible choices – obligation or burden – Italy has opted for the acquisition of legal personality by political associations as a legal burden connected with a few specific incentives (art. 5 of Law no. 96/2012). Should a political party or movement be willing to profit from the reimbursement of election expenses or any other type of public funding, that law requires them to submit their statute, which has to be drawn up in the form of an authentic instrument and respectful of the principle of intra-party democracy, especially with regard to the selection of candidates, the protection of minorities and the rights of party members.

The Decree-Law no. 149/2013, converted into Law no. 13/2014, has regulated the necessary content of party statutes in detail (art. 3), whilst changing the funding regime. The sources of party funding have become private, although substantially borne by the State in the form of indirect contributions consisting of tax relief for donors to parties and voluntary allocation of the two per thousand of the personal income tax filed by taxpayers. This new system will operate at full capacity from 2018. To this respect, some have highlighted the paradox that Italy has abolished public funding to parties exactly at the same time as it has introduced stricter obligations in terms of intra-party regulation, whereas throughout Europe public financing constitutes in fact the counterpart to the intervention of the legislator in the autonomy of political associations.

Moreover, as compared with Law no. 96/2012, the Decree-Law no. 149/2013 maintains, albeit with ample modifications, the part concerning transparency and budgetary supervision, as well as the bond between intra-party democracy and enjoyment of economic benefits.

As for statutory content, the Decree-Law no. 149/2013 mentions: the denomination and the description of party emblems, as elements that consent identifying a party and distinguishing it from others; all matters that concern party decision-making, executive, financial management, supervision and guarantee bodies, in terms of their composition, functions, duration and so on; the rights and duties of party members, with special regard to the protection of minorities and to gender balance; the relationship, also financial, between the party central body and its territorial branches; the internal disciplinary measures and the provided guarantees on disciplinary proceedings; the selection procedures for candidates to representative assemblies; the procedures for statutory amendments; the rules on transparency and the limitation to it as a guarantee for party members[11].

If the draft law considered in the previous section of this essay is adopted, it will amend the current legislation in order to better specify the legal status of party members. Party statutes will have to indicate the forms of membership and the application procedures, the members' rights and duties and the bodies in charge for their protection, the modalities that comprise the members' participation to the shaping of the party policy and the selection of candidates in elections, the establishment of a register of party members and the procedures by which each member can have access to it, in conformity to the applicable legislation on the protection of personal data. Moreover, statutes will have to clarify the criteria for the distribution of resources between the party's central bodies and local branches.

Another issue being discussed in Parliament deserves attention. Some of the legislative proposals that gave rise to the consolidated text of the draft bill contained some ideas that had been long considered also in the past, starting from those Costantino Mortati had expressed prior to and after the Constituent Assembly (refer to Maestri 2015). In particular, they concern the possibility of preventing associations lacking of a complex and stable structure over time (namely, non-party organisations) from taking part in the electoral competition.

[11] Unregistered parties, provided that they comply with legal requirements, can also benefit from some types of indirect public financing. In regards to the registration of political parties and the function of the Commission in charge of it, see Biondi 2016a.

A democratic system cannot forbid the presentation of lists of candidates in case they are not linked to political parties or are not rooted in the entire national territory or, again, if they cannot count on a substantial budget. Otherwise none of the political associations or movements that gave substance to the constitutional democracy of the twentieth century would have ever been born, or developed over time and characterised our national experiences. A political force must be legitimately allowed to be born and to develop – even, if it succeeds, on the occasion of the elections – although the existence of well-rooted political parties with structured and distinctiveprinciples, history and ideas is equally desirable. A pluralist and democratic legal system should rather provide the leverage for achieving this second objective in particular, although it cannot be assumed that all political groupings should have these features.

Along these lines, some of the solutions envisaged in the above-mentioned legislative proposal would have been preferable instead. Among them, the provision of a significant simplification or even a radical elimination of the petition for the submission of nominations when the political organisation has already given poof of stability over time.

To take part in the electoral competition, the existing legislation (Law no. 52/2015) requires parties to submit their symbols and, in case they wish to profit from the economic benefits provided for by law, their statutes as well. This provision would be applicable also to those political associations that declare themselves as "parties" and, even though they have a statute that should be submitted, are not registered. The draft bill under consideration would complement that provision with one stating that, at the cost of rejection of the list, any parties or political organisations lacking of a statute are bound to submit a declaration signed by the party's legal representative and certified by a notary, that should indicate the following minimum elements of transparency: 1) the identity of the party's or political organisation's legal representative and of the person responsible for the submitted symbol, as well as the legal seat in the national territory; 2) the bodies of the party or political organisation, their composition and powers; 3) the process for selecting candidates for electoral lists.

Actually, some of the initial proposals would have complemented the burden of party registration with the one of presenting candidates in all types of elections. That provision would surely have been questionable, as it would have supported the idea – that I consider unconstitutional – that a party ought to be "national and/or European" in order for it to be considered properly as a party. I shall confine myself to recalling, in this respect, that in the recent past some Italian parties were excluded from parliamentary representation, because the electoral law imposed various and differentiated minimum theresholds.

Those parties that were excluded from the electoral competition at national level, as well as a few newly established political forces, have lately managed to be represented in regional and local assemblies. In fact, making policy in these contexts does not mean being indifferent to the "national policy" or even abandoning the political project of reaching that level of representation in the future.

4.2 Transparency of the elections and internal transparency of the life of parties and other political groupings

As previously mentioned, given that any limitation not strictly associated with the effectiveness of public electoral procedures (in terms of rationality, transparency, non-discrimination and pluralism) may be considered of dubious constitutionality, the legislator can treat parties differently from other types of associations whenever their "institutional" prominence is evident.

The draft bill under consideration (art. 3) contains some provisions, actually referred only to the *Camera dei Deputati*, aimed at ensuring transparency in elections, as well as economic penalties in case of infringements. Further provisions (art. 5) are dedicated to the openness of party bodies, internal rules and procedures for selecting candidates. Finally, art. 6 provides for the transparency of party funding, contributions, goods or services: these are elements related to the internal management of parties, nevertheless, they become relevant whenever parties are competing in elections and are essential for the prevention of corruption, which is a long-standing phenomenon that pervades the entire public sphere.

As for the first point, the draft bill suggests that emblems submitted by each party or political organisation, their statutes or declarations of transparency, their electoral programmes, the name of party leaders and the lists of candidates in every constituency should be published in a dedicated section of the Ministry of Interior's website, entitled "transparent elections".

As for internal transparency, likewise, party statutes, balance sheets and all other documents required by art. 5 of Decree-Law no. 149/2013 should be made available in a dedicated section of each party's website, entitled "transparency". Unregistered parties, political movements or organisations having chosen not to apply for economic benefits would be required to disclose: the procedures for the adoption of acts that are binding upon the party, movement or political organisation; the number, composition and powers of party decision-making, executive and guarantee bodies, as well as the procedures for their election and their terms of office; the procedures for the selection of candidates; the identity of their legal representatives; the entity responsible for the symbol of the party (or movement or political

organisation), specifying that in case this entity (individual or body) is different from the party itself the documents empowering it should be published as well.

As for the third point, namely the transparency of the economic and financial means available to parties, it should be prefaced that, as previously highlighted, since 2013 direct public funding of parties has been abolished and replaced by some form of "private" (*rectius*, indirectly public) contributions. Therefore, party websites should publish the list of the movable and immovable properties of the party, as well as disclosing the financial instruments available to parties. They should also publish the lists of any contributions received by parties or candidates in any form (including the availability of services, subsidies and contributions), if they amount to € 5000 per year or more. This information will be transmitted to the Commission for the guarantee and transparency of political parties, which should disclose it to all those citizens who have requested it. Every year within July 15, the party legal representatives or treasurers shall provide the Commission with a declaration stating that all contributions received in the preceding year have been published in the party websites.

Furthermore, the text of the draft law mentions political foundations or associations linked to parties or political movements: the relationship between them shall conform to the principles of transparency, financial independence and accounting separation (Martinelli and Vigevani 2016)[12]. With regard to the openness of party accounts, art. 8 of the draft law would amend the existing obligation incumbent on parties and political movements under art. 9 of Law no. 96/2012, namely, that of availing themselves of an auditing firm: this obligation would also be extended to lists of candidates not directly linked to a political party or movement, provided that they have at least one elected candidate in the Italian or European Parliament. Moreover, administrative pecuniary penalties – already envisaged by Decree-Law no. 149/2013 – would become applicable to all parties, even to those not benefiting from the existing forms of financing (especially the voluntary allocation of the two per thousand of the personal income tax) under the current regulation.

The draft law under consideration (art. 7) would also innovate the current rules concerning the possibility for regional and local authorities, also on the basis of agreements with public and private institutions, to facilitate the activity of political entities in economic terms by adopting appropriate regulations. This would represent a further incentive to the

[12] Currently, political foundations are ruled by Law no. 13/2014, unless they contribute to party financing for more than 10% of their annual income.

registration of parties, because only registered parties could take advantage of the supply of goods and services or of the granting of spaces (the maintenance of which would be up to parties) for meetings, assemblies and other political activities. If this provision were adopted, schools would be no longer considered suitable for these purposes, as they presently are pursuant to art. 8 of Law no. 96/2012.

5. The selection of political ruling classes. The case of primaries between the (temporary?) surrender of their regulation by law and their actual incorporation into party statutes

As recently pointed out by many commentators, the Italian case is characterised by the difficulty of adopting a party law which would interpret the constitutional position of parties, coherently linking together their legal status and financing (Biondi 2016b). Moreover, as the consolidated draft bill has intervened in an area having recently undergone a significant regulatory stratification, by analysing its content and its passage through Parliament, one notices that it has dropped several of the issues considered by some of the legislative proposals merged into the consolidated text. In particular, these concerned the possibility for the Government to be delegated for the adoption of a declaratory single text concerning the regulation, funding and transparency of political parties, movements and groupings. Furthermore, no reference has been introduced to the funding of parties from private sources, as well as to the incompatibility between public office and party positions (Tarli Barbieri 2016).

Another noteworthy issue is, in my opinion, the one concerning the procedures for the selection of candidates[13].

As already mentioned, there are good constitutional reasons for believing that the legal system should predominantly attribute to parties the role of selecting those running for public office and institutional roles. Candidates are in fact the main conduit through which political demands of individuals or groups are translated into binding political decisions. Therefore, any legislator bent on regulating the party system and, more generally, political representation, is called upon to offer concrete solutions for rendering them respectful of the rights of party members and voters. As noted in the previous sections of this essay, the efforts made by the

[13] The draft laws C. 3494 *Zampa* and C. 3610 *D'Alia* would delegate the Government to adopt a legislative decree for regulating the system of primaries for the selection of candidates in general elections.

legislator to pressure political parties to adopt organisational stability and integral transparency are rooted in the Constitution. Still, there is no constitutional basis that can be identified for any possible attempt to prevent parties from submitting lists of candidates, should these parties be not internally regulated in detail (as some of the original proposals required) or standardised with regard to rules about candidates for public office or party positions.

The vote – as the expression of a preference or a choice, in general terms – is also frequently used outside the legal environment. It is significant in the legal field only if it is part of an expressly regulated procedure in which liberty, equality and in some circumstances also secrecy, are always guaranteed. Moreover, although the vote is not an exclusively constitutional institution, still it is a constitutional act *par excellence*, primarily because only thorough the vote can the representation be produced and projected into institutions reflecting a pluralistic source of origin (Ferrara 2000: 5 et seq.).

Reproducing here some past considerations (Marsocci, 2012b), it is worth highlighting the main sub-division between votes producing the effect of composing a monocratic or a collective body and votes determining the content of a decision, namely, the constituent element of an act. Appointments, elections, assessments or deliberations are properly constitutional acts only if made by a public authorities (offices or bodies, among which the electorate, which is among the republican constitutional bodies) in the exercise of official functions. Therefore, votes cast in the context of the "life" of political parties, which have a constitutional relevance but are not properly constitutional bodies, as well as "internal" votes (those cast for appointments or elections to party positions or even for the adoption of decisions made by some party internal bodies) cannot be considered constitutional acts, but merely internal decisions of associations, among which one should distinguish between votes aimed at defining lists of candidates and votes by which some candidates are actually elected and appointed to their offices.

Primaries – such as they have been long used in the Italian political scene – are actually consultations, they cannot be considered as proper elections, simply because those called upon to vote in primaries (namely party members, voters or even non-nationals[14]) within parties and party coalitions vote purely on the selection of those eligible to be candidates

[14] There is nothing to prevent minors or even foreign citizens from this kind of consultation. On the contrary, their exclusion would represent a stretch with regard to their freedom of association in political parties, as neither art. 18 Cost. nor art. 49 Cost. require adulthood for the exercise of this right.

(Marsocci 2011: 5 et seq.). The result of the primaries will not attribute any position (within or outside the party) to those elected, but will simply recommend their candidacy to those who have the power to do so, namely the current party leaders. Of course this kind of "recommendation" will be more effective when intra-party rules require it as a compulsory and binding praxis.

Therefore, if apparently the result of primaries does not function as an immediate and direct appointment to public office or positions in the party, primaries cannot be considered – even symbolically – as an expression of direct democracy, and only very indirectly they can they be regarded as representative democracy, given that no one will be elected as a consequence of those votes. Primaries are instead an expression of solidarity-based participation in the political life of the democracy, if only because they allow individual options to be counted together with other votes. Their results will serve to collect and evaluate the opinions about a certain issue of all those belonging to a group. Nevertheless, since the essential characteristics of the vote (liberty, personality, secrecy, equality) are poorly guaranteed during primaries, it can be further assumed that these votes are of a non-electoral nature in a technical sense.

Should the Parliament decide to dictate rules that are applicable to all political groupings, they could be not excessively detailed, otherwise they would actually usurp the autonomy of parties in self-regulation and self-organisation. If anything, the Parliament could adopt – or at least somehow promote the adoption of – provisions pursuant to which party statutes and regulations shall contain consultative procedures (as well as the related guarantees of individual and collective rights) for the selection of those eligible for positions in a party. Each party will be called upon to justify its own choices between open or closed consultations before its members and supporters, as well as its choices regarding the level of effectiveness of the provided guarantees and the respect for transparency and openness. On the basis of these elements, citizens will choose whether or not to participate in the consultation.

A radically different reasoning must be carried out when primaries (aimed at selecting candidates for representative assemblies at regional and local levels) are associated to the electoral process, as already laid down in the legal order of some Italian regions. In other words, when primaries have become building blocks of public procedures, with the aim of forcing parties to respect the principle of non-discrimination among selected candidates. For instance, consider the long history of the affirmation of primaries in the United States of America, aimed at fostering the participation of African-Americans in the elections, or the cases of South American countries.

Should the Parliament decide to expressly include primaries in the election procedures at national/European level, it would certainly limit the private autonomy of political groups. In other words, the intrusion of the law in the concrete ways of expressing the democratic method within political parties would be justified by their intention of participating in elections. As the overall purpose of the law should be that of protecting the political rights of every citizen in every stage of the electoral process[15], it could go as far as laying down non-negotiable processes for the selection of candidates by parties, even in the early stages of the election procedures, both for the allocation of seats in representative assemblies and for the appointment of city Majors or regional/local Presidents. However, primaries would be inadmissible if aimed at selecting monocratic offices that are not elected but are instead appointed by other bodies whose constitutional powers cannot be reduced, such as the case of the nomination of the Prime Minister by the President of the Republic.

Moreover, it has to be noted that the possibility for voters to indicate their preferences for specific candidates to both Houses of Parliament through the ballot has been symbolically replaced – as a sort of compensation – by that of voting in primaries (moreover, only a few parties hold primaries). In my opinion, this tendency contributes to downgrading the electoral moment and confusing the political rights of citizens and the responsibility of the ruling classes, within and outside traditional parties. If this is the political goal that the Parliament intends upon pursuing, it can be argued, then, that the introduction of primaries by law will be of no advantage for the constitutional democracy.

Concluding on this point, even though the incessant transformism of Italian political parties makes the supervision of their internal democracy particularly difficult, an attempt can be made to present a condensed analysis on how many and which are the parties whose statutes provide for primaries, and in what way. I have considered parties that have been registered at the date of 30 November 2015 (in the national Register of political parties established by art. 4 of Decree-Law no. 149/2013) and among these I have selected those having obtained at least the three per cent of the votes cast in the last general election (February 2013).

The statute of the *Partito Democratico* (25.4% in the 2013 general election) is extremely sensitive in regards to this issue. Art. 2 sect. 4 of its statute lays down that all its electors have the right to vote in primaries for

[15] In fact, some decisions taken by the Constitutional Courts between the Seventies and the Nineties (especially no. 203/1975 and no. 422/1955) gave relevance to the role of political parties in the electoral process, thus exploiting the full potential of the constitutional provision, without deploring the lack of a party law and determining the functions of parties by their role in the democratic system (Rivosecchi 2016: 7).

the selection of candidates to positions in the party and public office. Moreover, art. 18 rules on primaries for monocratic office pursuant to intra-party regulations (namely, the Framework Regulation for the selection of candidates to institutional offices).

The statute of *Scelta Civica* (8.3% in the 2013 general election) states that the party's national direction shall establish the procedures for potential primaries for the selection of candidates (art. 17 sect. 2).

The statute of *Fratelli d'Italia - Alleanza Nazionale* (2% in the 2013 general election, in which it took part with the name of *Fratelli d'Italia*) dedicates art. 2 to "participation". Its sect. 6 states that the party considers primaries as the principal method for selecting candidates for public institutional bodies at all levels. A regulation on primaries shall be proposed by the party's national executive and adopted by the party's national direction.

The statute of *Sinistra Ecologia e Libertà* (3.2% in the 2013 general election, later dissolved in February 2017 and re-founded with the name of *Sinistra Italiana*) lays down (art. 1 sect. 5) that the party promotes and organises practical experiences of participatory democracy, also through primaries. Participatory and direct democracy will gradually shape the internal democracy of the party.

Among the main unregistered (up to November 2015) parties, neither the *Lega Nord per l'indipendenza della Padania* nor the *Popolo delle libertà* (21.6% inthe 2013 general election) consider any form of primaries for the selection of candidates. Moreover, the *MoVimento Cinque Stelle* (21.6% in the 2013 general election), that considers itself a "non-party", has a "non-statute" whose art. 7 declares that candidates will be selected before every election in a transparent manner through online procedures, according to rules to be better determined on the basis of the type of election and the experience gained over time.

6. Intra-party democracy and electoral system: concluding remarks

Again in these months, the currently transformational Italian political groupings are feeling the urge to address the issue of the choice of Italy's election system. Thus has dictated the Constitutional Court in two recent and well-known decisions (no. 1/2014 and no. 35/2017), and has decided the electoral body in the referendum of 4 December 2016, repealing the Law of constitutional review which was actually linked to the electoral Law no. 15/2015. It is still unknown whether or not it will lead to an attempt at mending the tissue twice lacerated by the Constitutional Court (Luciani 2017: 5) or if

political forces will have the intention, and above all the ability, to seriously amend a model that, by transforming votes into seats, makes concrete the way in which popular sovereignty expresses itself and produces material effects of a representative nature in a pluralistic democracy.

It is more than understandable to express caution – if not scepticism – about the "value" of the choices that will be made, as well as about their full compliance with those authoritative judgements. Since there is no electoral model that is ruled by the Constitution in detail, and a democratic system shall leave a certain margin of legislative discretion in this field (Zagrebelsky 2017), it is certain that the long-awaited reform of the party system, either from the parties themselves or outside of them, is both cause and effect of this uncertainty, as described in the previous sections of this chapter.

Conclusively, it is worth recalling some of the essential connections between the form of parties and the electoral system (as well as between these elements and the form of government)[16].

Electoral laws are proposed and adopted by political forces sitting in the Parliament at that moment. Not even on the abstract assumption that such legislative procedure involves only the most "virtuous" parties, would the debate be free from concerns on what effect the new regulation would have on the electoral competitions in the near future or from judgements about the balance of power within each political organisation.

However, the Italian case demonstrates the unsettling propensity – which has continued to consolidate itself over time – for the adoption of laws with numerous and not-insignificant flaws, so that it has required the intervention of the Constitutional Court (De Fiores 2015). Beside the various limits established by those decisions (Luciani 2017), the Court's judgements have highlighted the correlation between the instability of parties (with regard to their organisation and values) and the instability of the electoral law (in terms of its non-durability over time and its excessive permeability to the contingent demands of the political leaderships). Party instability that goes far beyond the still current and urgent issue of the stability of government coalitions, being the issue of governability juxtaposed but not necessarily antagonistic to that of representativeness. This instability derives strictly from the illogicality and internal incoherence of the electoral models that have been recently proposed, as well as from the excessive fragmentation of the party system as a whole.

In particular, the reforms of the electoral system that have been adopted since the late 1990s have all produced (or confirmed) a tendency to concentrate in party leaders the powers to choose not only candidates at all levels of

[16] Deeply analysed links by constitutional studies, even before the parties found their formal place in the Constitutional Charters.

representation in assemblies, but also candidates for premiership. Moreover, as is well known, in the recent past the political forces with greater electoral strength have privileged a coincidence between premiership and leadership, thus producing a further hierarchy and personalisation in the management of political organisations. This element becomes problematic when linked to the tendency of enhancing the role of the Government in the electoral process to the detriment of that of the Parliament, as well as considering loyalty to the party leaders as a predominant value compared with the prohibition of a binding mandate pursuant to art. 67 Cost. This last tendency, more than any other, radically challenges the constitutional function of parties as an intermediary body and an instrument for rationalising the exercise of power in a democracy.

If it comes to a regulation of primaries aimed at selecting candidates for positions outside the party, thus trying to rationalise the political power by means of the law, it will become necessary, then, to introduce procedures for verification of their compliance with the rules contained in party statutes and internal regulations for implementing the law. These rules shall not only protect party members, but also the citizens as voters. Therefore, the law, going beyond the provisions of art. 3 of the Decree-Law no. 149/2013, shall prescribe binding rules about the procedures for a fully transparent holding of primaries and they shall entrust to a specific independent authority the task of guaranteeing it, but shall also clarify the way in which internal party rules, aimed at ensuring the smooth operation of such procedures, can be equipped with efficiency and effectiveness.

Will the legislator (namely, the parties represented in Parliament) be capable of all this?

3. The Think Tank and The Funding of Politics: The Italian Way[*]

SUMMARY: 1. Introduction: the American genesis. – 2. Spotlight on Italy – 3. Understanding the think tank phenomenon. – 4. Why think tanks in Europe: context variables. – 6. Parties, leaders, and foundations. – 7. Italy: weak parties and think tanks. – 8. Personal think tanks. – 9. Conclusions.

1. Introduction: the American genesis

The term "think tank" has been fully included in the Italian lexicon for less than two decades. Earlier, the term had been the domain of a few initiates, scholars of United States politics or of North American policy sciences.

Although the term is an American invention from the time of the Second World War, today we also define as "think tanks" research centres already active in the early twentieth century. It entered into military jargon when the Department of Defense created special sections to analyse how the War was going. The places where these sections met – which isolated scientists, officials and experts from the daily tasks of the conflict – were nicknamed "think tanks." Going back to the era when this expression came into being, some word play is revealed: although the obvious meaning of the term contains the concept of a "tank" as a receptacle for the thinking being done inside, the word clearly carries the connotation of the more bellicose armoured vehicle. It is no accident that another nickname from the time that did not play on the war metaphor – "brain box" – did not enjoy the same success. War – real or metaphorical as it may be – was often to come into contact with what went on at these idea factories, where cultural ammunition for the public debate is produced today.

The thinking heads that the Second World War had brought together after the conflict did not disperse, but were again engaged to fight the Cold War. The term was also used to describe the Rand Corporation, the world's largest think tank (with a current budget exceeding $ 150 million a year), created in 1946 as an offshoot of the Department of Defense (see below). The expression "think tank" entered into common usage, coming out the winner against a host of competing nicknames that arose in the 1960s –

[*] Written by Mattia Diletti.

brain bank, think factory, egg-head row – to define the units of experts at think tanks, but also at universities, who took part in planning the social policies of Lyndon Johnson's Great Society and in waging the Cold War. More generally, there was an attempt to give a name to those increasingly numerous groups of specialists that, from think tanks (institutions that now enjoyed great prestige) and from universities, moved into government, with the aim of supporting its activities both at home and abroad.

In 1971, American journalist Paul Dickson, hired by the American Political Science Association to publish his research entitled *Think Tanks*, put out his first analysis on this subject. Later, at the turn of the 1990s, the term came back into vogue, thanks to certain American political scientists drawn to a new development: the emergence and consolidation of highly ideological think tanks, most of which conservative. The Old Guard of Washington think tanks, for decades synonymous with scrupulous, top-notch social research, was cast aside by the new institutes created in the 1970s, which were interested less in methodological nuance and more in political results and media impact. The advent of a conservative intelligentsia was a Copernican revolution, made possible by Ronald Reagan's victory in the 1980 presidential elections.

This revolution was eminently described by the American political scientist Ted Lowi in the early 1990s. According to Lowi, until the 1980s, the Republican Party had never had prominent intellectuals. All this changed with Ronald Reagan. Not only were Republican intellectuals appointed to strategically important government posts, but a full-fledged conservative intelligentsia made its entry into the staff and onto the editorial pages of major newspapers, magazines, periodicals, and television broadcasters. Many of them were full-time researchers at conservative think tanks. In the 1970s "conservative intellectual" was an oxymoron. In the 1980s it has become a major growth industry. Whatever happens to the Republican Party, in Lowi opinion, conservative intellectuals would have kept conservatism alive nationally (Lowi, 1992).

Ten years later, with George W. Bush's victory in the 2000 election, things went precisely as Lowi had anticipated: the conservative intellectuals made their return to the control room, picking up where they had left off in 1992. And with them, scientific/academic and journalistic interest in think tanks reappeared – an interest justified by their important role in developing the American response to the 11 September 2001 terrorist attacks. But beginning in 2006, when the Democrats took back Congress, we began to witness the emergence of new liberal centres.

2. Spotlight on Italy

The very first Italian reconnaissance of think tanks took place in 1997 (Radaelli and Martini 1998), 26 years after the first American research; the following year, Cespi (Centro Studi di Politica Internazionale) – a foreign policy think tank linked to the Italian Communist Party in the 1980s – published a report on American think tanks (Zampaglione 1998), paying attention to how expertise was organised, produced, and disseminated in the United States, which is to say in an institutional context where the abilities to propose policy solutions are not the domain of the political parties; we later find them cited in some passages of one of Italy's first manuals on public policy analysis (Regonini 2001). To cement its popularisation, three key elements were still missing, which were to fall into place in the first decade of the 2000s: a great story to be told and covered in the media; the spread of these institutions in the Italian political system, and full access to their products via the web, transforming them into ready-to-use sources for scholars, journalists, activists, private citizens, and so on.

The story to be told is that of the strategy for the Greater Middle East and George W. Bush's Global War on Terror, framed by media around the world as the encounter between the neoconservatives at Washington think tanks – the American Enterprise Institute and the Project for the New American Century being the most cited – and the least intellectual President in American history, forced by the tragedy of 11 September to come up with a "Grand Strategy" to be defined in detail in both ideological and operative terms.This marriage between President Bush and the presumed disciples of philosopher Leo Strauss became a media event, and shined the spotlight, for the whole world, on the cultural institutions where they worked («Anyway, I was too poor and too Jewish to be accepted at Harvard», the old neoconservative Irving Kristol would say to explain his affiliation with the American Enterprise Institute; Kristol 1999); and a number of European scholars treated think tanks as vehicles of hegemonic practices à la Gramsci, even if implemented by the American right (Desai 1994, Filippini 2011, Pautz 2012).

This media prominence intersected with the transformations in the Italian political system. In extremely brief terms, it was supposed that: a) the processes of personalisation of politics; b) the organisational and cultural destructuring of the parties; c) the presidentialisation of the executives at the various institutional levels (with the consequent expansion of the role of "the President's" staff and experts); and d) the evolution of governance and policymaking processes, which made room for the contribution of new stakeholders bringing knowledge resources (experts and interest groups),

made fertile terrain for the birth of think tanks, with their own unique characteristics (Diletti 2011). Continuing with these hypotheses, research was then done on the field of Italian think tanks, showing above all how they multiplied in the period from 1993 to 2011 (during which time they more than tripled in number, from 33 to 105), and in particular in the period from 2005 to 2011 (from 65 to 105)[1]; and how about one third of these think tanks were connected with individual political leaderships: in the decade when the institution of the think tank became popular and well-known around the world (well beyond the circle of insiders), the conditions were being created in Italy for it to develop and take root, thanks to the individual enterprise of the worlds of politics and research.

Today, four new elements are to be taken into consideration, four important context variables that influenced the action of Italian think tanks over these five years: the continued economic crisis; the fleeting stabilisation of the Italian political system thanks to the political and governmental leadership of Matteo Renzi, which however was not tough enough to replace the old centre of gravity that was Berlusconi and to convince the country to orient itself towards a new constitutional arrangement (in which some technocratic knowledge centres might have imagined the creation of a system favourable to "American-style" competition, with think tanks and knowledge centres competing to attract the attention of a "Prince" who, upon being placed at the centre of a strengthened institutional and government order, would have had the need to create a team of the "President's" experts); the consolidation of the *Movimento Cinque Stelle* – and nothing was known about how it might relate to the policy advice circuits; and the end of the regime of public funding of political parties.

For this chapter, and for the economy of the entire volume, the last point is of particular interest (even if it may be read only in light of the interpretative hypotheses listed earlier): that is to say whether, and in what way, it may be supposed that overcoming the system of public financing of politics will be able to modify the role and functions of the so-called "political foundations", by influencing the strategies and repertoires of action adopted by these foundations, by the political class, and by private donors.The thesis to be maintained here – which, given that there is no way to carefully observe the political foundations' flows of funding during the election period, remains a hypothesis – is that the foundations will not

[1] This paper was written near the conclusion of the second census of Italian think tanks. The first was made public by the Department of Communication and Social Research at Sapienza University of Rome in December 2012; the second will be presented in early 2018.

change their mission in coming years, but will accentuate their nature (to be illustrated below) of providing support to the individual political leaderships and to the organisation of their individual political machines: a situation of "every man for himself" that already today characterises the models of inter-party relating.

To be sure, think tanks can be the antechamber and training ground for the financing of election campaigns, as they drive the consolidation of political and economic relationships; but there is doubt as to whether think tanks will become Italian versions of Political Action Committees (or "Pacs": American non-profits that carry out indirect election campaigning, raising funds that are reused in theme communication campaigns for or against a local or national candidate, or for or against candidates with position X on issue Y).

However, to explain why a text on think tanks may be considered of use for a volume on political financing, it will be necessary to clarify why Italian think tanks differ – partially but significantly – from those elsewhere in Europe and from the American model of reference (for example, the considerable presence of "personal think tanks" created around individual political leaderships is unique to Italy, Diletti 2011). By illustrating and comparing how think tanks are studied, and what relationships they maintain with institutions, political leaders, interest groups and parties, we end up discussing the specific features of the Italian case and their real or potential relevance in the evolving system of financing Italian politics

3. Understanding the think tank phenomenon

The study of the think tank phenomenon has consolidated over the past twenty-five years. The chief pattern is of course that of North America, the Continent where they first took root a century ago, and became established (Smith 1991, McGann1992). In actuality, by the 1970s and '80s, the debate over think tanks had already gone through the traditional opposition of Millsian elitists against pluralists. The former – from Shoup to Minter, Dye, Silk and Silk, Saloma, Dhomoff, and Peschek – intended to empirically show how think tanks were in essence a platform to create consensus among American ruling elites: academia, politics, and business all joined together around a common objective – an action of "frame building"(or of hegemony, to use other categories) on specific policy problems, supported by the specialists that brought the think tanks to life. This viewpoint was confirmed by Dye in the early 2000s, when he defined them as a tool of "top down policymaking*"* (Dye 2000).

The issue was also dealt with in Italy, and most recently by Ernesto D'Albergo (2017), through the empirical analysis of the strategies adopted by some economic actors to influence the policymaking process, in the field he defined as the production of "conceptual resources" (semantic and cognitive; see also Plehwe 2015). Some years earlier, this was alluded to by Luciano Gallino (2012) and Rita di Leo (2012): «in think tanks, the intellectual is the expert in the marketplace of ideashe or she sells to the elites, thereby obtaining honours and remuneration» (di Leo 2012: 122). Think tanks would then, in essence, be in competition to gain control over the symbolic primary resources: as Elmer Schattschneider maintained, «the definition of alternatives is an instrument of supreme power» (Schattschneider 1960). It is a role that appears more decisive the more we have to deal with the cognitive chaos of complex decision-making processes.

For the pluralists, however, the think tank is one of multiple organisations that contribute towards defining and formulating public policies (Polsby 1984): although they are marked by functional specificity, they tend to be dispersed among the other actors and interest groups legitimately competing to influence the policymaking process. Whatever the viewpoint of American political scientists may have been in the 1970s and '80s, it bears noting that the ecosystem of American think tanks never stopped growing. Over time, a highly articulated market took shape: nearly four hundreds institutions in Washington D. C. alone, many of which topping the world rankings drawn up every year in James McGann's *Global Go to Think Tank Index Report*.

Think tanks, then, have been described as «independent policy research institutes […] engaged in the analysis of public policy issues independent from government, political parties and interest groups» (Stone 1996); defined as «public policy research institutes» (Polsby 1984, McGann 1992); as «policy planning organization» (Peschek 1987); as a «policy elite» (Smith 1991); as «independent public policy research institutes» (Rich 2004); as a «nonpartisan policy research organization» (Hird 2005); even arriving at Thomas Medvetz's definition as «inhabitant of an interstitial field» (Medvetz 2012). Many of these definitions contain the essentially pluralist conception of the think tank, as a player independent of the government and the State, and thus the expression of civil society, and assessable first of all for the accuracy and quality of the research it does: a normative conception of the think tank's function.

However, beginning in the 1990s, some comparative research efforts[2] showed the similarities and differences characterising the different types

[2] See: Weiss 1992, Radin 2000, Stares and Weaver 2002, Stone, Denham and Garnett 1998, Stone and Denham 2004.

of organisations that allow experts to produce expertise, including those organisations linked directly to bureaucracies, to corporations, to interest groups, to parties, and so on. In this way, such definitions as Contract Research think tank, Ministerial think tank, Party think tank, and Research Oriented Ngos (Weaver and Stares 2001) were coined and reused, which made it possible to create "grey" areas in which institutions that did not respond one hundred percent to the characteristics of the American-type pattern might be identified as think tanks. This effort of enlarging the scope of definition was an attempt not to confine the phenomenon to restricted boundaries and within canons inapplicable outside the "mother country" of the United States, by accepting the existence of *sui generis* think tank types, and by adapting the definitions to settings with conditions not comparable with the case of the United States. And thanks to this effort, it is now easier to study, assess, and analyse these centres' role in the various political systems – even in those where think tanks do not have the means, the tradition, and the standing they have in the United States. This is even more the case if we set the phenomenon (but this is no place to review the literature) within the framework of the more recent studies of the relationship between knowledge and democracy – which is to say the relationship between experts, institutions, and the production of public policies (Howlett and Craft 2012, Regonini 2012).

In Europe, in fact, there is the tendency to use "greyer" definitions, which highlight the common aspirations of centres and foundations: that is to say, the attempt to guide and/or to condition the policymaking process through research or the public intervention of experts, specialists, and intellectuals. The President of the French Observatory on Think Tanks, Selim Allili, in fact defines a think tank as «a permanent organisation whose chief vocation is to provide solutions for public policies» (Allili 2008). It is a definition that allows one to overlook the structural dependency of many European centres on public funding or on the absence – often caused by economic problems – of permanent research structures.

4. Why think tanks in Europe: context variables

There are several different reasons to explain the varying fortunes of think tanks in each country: institutional elements, which determine the quality and quantity of the access points that vary depending on a country's institutional arrangement and the policy regime in force in a given sector

(May and Jochim 2013); the various patterns of "policy style," and the ability/possibility/will of bureaucracies or of political leaderships to accept that knowledge resources provided (more or less transparently) by other stakeholders are used in the decision-making process; the characteristics of the spoils system on the national and local levels, especially in the apparatus of executive power; aspects of an economic and tax-related nature, for the various tax exemption regimes in force in the United States and in Europe; the persistence, in certain European countries (and Germany first and foremost), of organisations within the parties that continue to perform a traditional activity of producing research, analysis, and political and cultural debate; and the presence of think tanks perceived as *quasi*-governmental institutions playing the role– in conditions of semi-monopoly – of bipartisan "research and development" centres for the political, bureaucratic, and economic elites in each individual country (such as the role of Chatham House in Great Britain, for example).

Having stated this, there are factors that have promoted, in Europe as well, the emergence of research institutions of this kind. Let us try at least to make a summary list of these factors: the first is the consolidation of the processes of expanded governance[3], in which think tanks can with greater likelihood be involved (at various phases of the decision-making process); then there is the tendency towards the strengthening of local powers, regulatory authorities, and monitoring agencies – a trend that, as in the American case, guarantees a potentially greater number of access points for developing influence through knowledge resources (Dente 2011); the multi-level dimension of European governance, which allows think tanks to offer their interlocutors expertise and policy solutions suitable for managing this complex decision-making structure; the increasingly crucial role of lobbying in producing information and expertise – an activity that often relies on outside agencies (like think tanks) to which to turn in order to obtain this type of "product" (the "position paper") to be utilised in advocacy and communication actions; the importance of instruments through which to produce not only expertise but "culture" as well, thanks to the offer of policy solutions hinging upon a cultural paradigm and a shared system of values.

But other reasons are no less important: the need, within increasingly fragmented policy sectors, to find genuine tools of "parallel diplomacy" through which to build and structure – in a permanent or contingent way – relationships and dialogue; the emergence of new policy entrepreneurs

[3] See: D'Albergo e Segatori 2012, Fedele 2002, Kooiman 2003, Gualmini 2003, Belligni 2004, Ferrarese 2010, Profeti 2010.

originating from the ranks of political parties, administrations, businesses, or universities and striking out on their own, founding think tanks and research organisations oriented towards influencing and/or sustaining decision-making processes; the exponential growth of the potential to access policy information, thanks above all to the development of the Internet (although unlike the United States, we cannot imagine the advent of genuine policy analysisTV stars, some of whom are think tank experts and an integral part of the information system on the all-news television channels); and last but not least, the process of the personalisation of European politics and the presidentialisation of the executives and of the parties (Poguntke and Webb 2005, Calise 2010, Passarelli 2015, Musella and Webb 2015), taking place throughout the continent but with unique characteristics in the Italian context, where parties and personal currents are joined by full-blown "personal" think tanks (which, as already pointed out, on their own represent about one third of Italian think tanks).

6. Parties, leaders, and foundations

Before going into the unique feature of the Italian case – the rise of the "personal think tanks" model – we must understand a vision of the relationship between think tanks and the system of parties, or better between the think tanks and the parties as an organisation (and therefore, in essence, a viewpoint must be embraced with which to read the process of their organisational evolution). While this does not appear to be a theme of great importance in the United States, it is for Europe. In the case of the United States, we take for granted a certain fragility in the parties' organisation and programming, which American political scientists have been analysing since the second post-War period (summarised in Wattenberg 1998); in fact, for almost three decades we have been applying the definition of "candidate centred" electoral competition model (Wattenberg 1991), explaining its nature on the basis of a mix of institutional variables, primacy of media logicin the mechanisms of electoral competition, the mechanics of the campaign finance system, and the system for selecting leadership and candidacies.

This image of a party with a low threshold of internal discipline has been partially modified thanks to a slow and gradual strengthening of the two major parties' central structures, going hand in hand with a far more marked intra-party ideological convergence (Abramowitz 2015). In this case, too, the theme of the financing of politics is of great importance: in fact, the National Committees (formed for the most part by fundraisers),

perform the role of economic supporters of "last resort" for congressional candidates, in accordance with a centrally defined national strategy (the weight of this strategy varies from one election to the next: the most renowned was Chairman Howard Dean's "fifty-state strategy" in the 2006 midterm elections). In essence, the parties are today considered more "national" and less a function of the local committees; more organised and professionalised than they were in the years of Kennedy and Nixon. These are structures understood as the candidates' "service providers" in a system that remains, however, candidate-centredand marked by low voter turnout, by the great influence of interest groups in defining the elected candidates' agenda, and by the citizens' extreme distrust of the parties themselves (Lowi et al. 2015).

In this light, think tanks play a role in support of the unity of the coalitions within the parties, at least in the dimension of greatest importance for American parties – that of the party in office. The so-called "partisan think tanks" emerging in the 1970s alongside the "university without students" (Weaver 1989) in the manner of the Brookings Institution – two examples: the Center for American Progress (2004) in the Democratic camp and the Heritage Foundation (1973) in the Republican one – offer staffing, data, and policy proposals ideologically geared to the two parties' members of congress. While it is true that «to a certain degree, ideology has replaced organisation as the glue for party unity» (Lowi et al. 2011: 501), it is clear that think tanks have performed a function as aggregator for the convergence of a "worldview" and policy proposals, in an interstitial dimension of policy in which the exchange of ideas and the formulation of these proposals takes place in a network dimension (interest groups, experts, media, politics, bureaucracy, and so on).

Think tanks are therefore also "service providers" of the American political class, with a unique, hybrid function (that of offering knowledge for deliberation and a platform for building networks and relationships, but with no formal relationship with the American parties' "light" structures) addressing separate institutions of the American political system: here we have described above all the relationship between elected members of congress and think tanks, but account must be taken of the prevalent attention in fact given to the institution of the presidency. Given the dense interaction with the policy proposals initiated by the government, light must also be cast on the function of "government-in-waiting" these structures play while patiently waiting for the presidential administrations to form and enlist the policy elite that will have to support the presidential action (Diletti 2009) – a scheme, it bears mentioning, that appears to have imploded with the outsider Trump.

In the European case, the situation shows a general framework that is relatively differentiated, but with certain decisive elements of convergence, including that of perceiving and structuring itself as a function of the individual political leaderships. It has already been pointed out that the presence of such policy advice organisations as think tanks is constantly increasing in Europe too (McGann 2016), and that one of the variables explaining this growth may be seen in the processes of the personalisation of politics, of the presidentialisation of the parties and institutions[4].

In the boundless literature on the topics that we have just listed, it is worth citing an old analysis – even too optimistic over the results of decision-making centralisation processes and over leaders' problem solving abilities – by Yehezkel Dror on the central importance of rulers (Dror 1987 expressly claimed the need to use so outmoded a word as *ruler*). The intergovernmental and interministerial nature of policy problems increases the needs for coordinating and strengthening their spheres of competence; the needs for implementing structural adjustments relatively quickly require concentrating powers; the needs for innovation require policy entrepreneurship capacities and real powers, all at the same time. According to Dror, all this reinforced the central nature of the technocratic centres "close to" the political leaderships (which is to say, that maintain a relationship of trust with them) and inside the apparatus of the executives. If government leaderships have become the linchpin of democratic political systems, Dror maintains, functional capacities ought to be implemented that guarantee their effectiveness; the expanded tasks and responsibilities of the executive would therefore increase the need to resort to consultants, experts, and policy specialists to maintain adequate standards and effectiveness in government action (Dror 1987).

This makes clearer the think tanks' role in a context of weakening party organisations – which in Europe tend to outsource certain functions, such as those of generating policy proposals and programming elements – that the political leaderships themselves have attributed to these institutions. Throughout Europe, centres and think tanks close to individual national leaders have come into being, that would have the purpose of reorganising and disciplining a party's cultural coordinates[5], or of "capturing" the "heart

[4] For the case of the United States, consider the fundamental contribution by Theodore Lowi in *The Personal President*, 1985, reviewed by *The New York Times* at that time in an article tellingly titled *Too Great Expectations*.

[5] Tony Blair's Policy Network in the case of the Labour Party; Jose Zapatero's Fundación Ideas for the Psoe; Terra Nova in France as long as the Strauss-Kahn option for the 2012 presidential elections remained viable. For the cases of Great Britain and Germany, see Pautz 2012.

of executives" (Criscitiello 2004) with a handful of trusted policy specialists, in order to secure full control over the government's agenda[6].

The personalisation of the foundations, then, is not only an Italian trend, but a general one: the think tank appears functional to the democracy of leaders (Calise 2016). Even the énarque Emmanuel Macron (who belongs to a historically self-sufficient establishment), during the French election campaign, was matched with the liberal think tank Institute Montaigne[7]– and speaks of strengthening the places where the political class, experts, and the interest groups that support them economically are constituted in a network of pluralistic discussion. It is a search to simplify the relationship between interests and the decision-making process, a "rock" in the *mare magnum* of the complexity of contemporary governance processes, to be grabbed hold of in order to build channels of relationships and influence.

7. Italy: weak parties and think tanks

Alfio Mastropaolo's interpretation of the transformation of party organisations uses the metaphor of post-Fordist evolution, holding parties to have borrowed their forms of organisation from private enterprise: for example, the abandonment of the labour intensiveprocesses that marked value creation in the Fordist era (Mastropaolo 2011). If enterprises have become capital intensive (and labour saving), «in parallel, parties have ceased being membership intensive to become leadership intensive. As highly media-heavy services enterprises, they have even borrowed the technique of outsourcing» (Mastropaolo 2011: 193).

To stay with the corporate metaphor, the think tank is to parties – or to its leaderships – as Research and Development are to the private firm: a function that can be easily outsourced. The field of extra-party and extra-political functions thus expands (Panebianco1982) and, in the Italian case, the transformation of these institutions into instruments of the leader – the corporation's Ceo leading the group of majority shareholders with the largest shareholding package – rather than of the party is reinforced. Although research on the actual empirical repercussions of the "leaderisation" and presidentialisation of Italian political parties can by no means be

[6] Which is what Margaret Thatcher did in 1979, by placing experts from the Centre for Policy Studies and the Institute for Economic Affairs within the Policy Unit at Downing Street, after shutting down the Central Policy Review Staff, composed of career bureaucrats (Rhodes and Dunleavy 1995).

[7] His movement *En Marche*, journalists say, has its legal headquarters in the private home of the Institute's Director.

calledcompletely comprehensive, there are sources to turn to (Musella 2014) and they now also regard the issue of the financing of politics (Fiorelli 2017).

In essence, one agrees with those who describe the leader's party as characterised by the presence of new party elites «chosen directly by the leader, in his or her trust, and accountable to him or her» (Viviani 2015: 145, who in turn makes reference to Pakulski and Körösényi, 2012: 148). This is not the case only for the followers of the leaders established in elective bodies, but also for consulting and staff size (see also Verzichelli 2010, Prospero 2012, Raniolo 2013, Mancini 2015). It is a new, leader-centred élite (Viviani 2015: 145), which in turn conveys relationships and spheres of competence: the leader has access to the network of reference of his or her staff – or of his or her circle of relationships in the broad sense, not always pigeon-holed in formal offices – while the actors in the aforementioned networks keep open the relationship channels with the "presidential circle", which is to say with those who act as gatekeepers to the political leadership. It is the relational and network dimension of politics (congenial to the organisational forms of certain types of think tank), which replaces and/or accompanies that of party membership, of the traditional affiliation and the now time-tested model of control within parties, adopted by interest groups in other seasons of Italian politics (Morlino 1991, Lizzi and Pritoni 2017). It is a dimension towards which, for the Italian case, a great effort of empirical research should be guaranteed, in order to comprehend the new weblike dimension of political organisation, which is to say of the effective modes of relationship and overlapping that political leaderships and their staffs construct with organised interests, the media, portions of public bureaucracy (in this sense, see Di Mascio 2012), local administrators, old and new forms of the parties' territorial settlement, and the occasionally activated Internet fans.

In accepting the interpretation of contemporary democracy as a system that had transitioned from the modes of "mass democracy" to those of "public democracy" (Manin 2010), a new representation was quite rightly attributed to the political leaderships. And the political leaderships would then have shattered the forms of representation of twentieth-century organised democracy by building a direct channel of communication with the citizens, thus managing to break the organised interests' hold on power precisely by virtue of a direct relationship with the citizen/voter (free to punish or penalise the leader and his or her governing action, Fabbrini 1999).

This normative vision of the function of leadership – political and governmental, so popular among scholars, the media, and the citizens themselves (Urbinati 2015) – imagines a political context in which «democratic leadership can take upon itself and synthesise representation of the broad landscape of individuals and social parties, without having to go

through intermediate legitimisation processes, but by interacting directly with the voting body», thus capable of «forcing the same established interests and of overcoming resistance in making choices of breakage, without having to mediate with parties, lobbies, trade unions, and industry associations» (Viviani 2015: 143).It is a vision, however, that expunges the reality of the play of interactions, relationships, vetos, alliances, compromises, and so on, in which political leaderships are actually immersed, and which condition their birth, consolidation, ability to procure resources, visibility, legitimacy, and a future in their post-political life (on this last point, see Musella 2014): a game in which interests – and above all those that are best equipped – come back through the window after having gone out the door of the "directism" of the "democracy of the public".

The established mechanism of primaries as a tool for selecting leadership accentuates the organisational isolation of "personalised" structures (Melchionda 2005). As AlfioMastropaolo points out, if «the constellation of concurring factions that comes together in the party cannot reach an agreement on leadership, primaries are a way out of a jam» (Mastropaolo 2011: 197). It is a method that makes it possible to experience the relationship between party components while overcoming the need for internal solidarity, for synthesis in programming, and for sharing the "cash". In this vein, one may understand the reason behind the birth of "personal foundations", useful for feeding autonomy and internal competition among the various figures in the same party: think tanks can guarantee the construction of a "do-it-yourself" ideology and a minimum programming base for the political leader – a megaphone with which to express his or her thoughts on the media, economic support for his or her staff, and relationships with the interest groups in the sectors of public policy in which he or she is a participating player.

8. Personal think tanks

In the Italian case, it was considered useful to proceed with an *ad hoc* characterisation of the various models of think tanks present in our country (Diletti 2011). There are four types: 1) personal think tanks (connected with individual political leaderships); 2) policy-oriented research centres (those more similar to the American model, which is to say organisations with semi-permanent research structures whose primary objective is to use knowledge resources to influence the policy debate); 3) policy forums (discussion centres in which the economic, cultural, and political elites can dialogue on specific problems of public policy); 4) foundations of political

culture and memory, connected to the political/cultural tradition of an area or of a leader of reference from the past (Gramsci, Sturzo, Einaudi…), that perform, however, no function of preserving memory or of archiving, but are a presence in the current political debate. Here, we shall deal only with the first type, mindful that, of course, some of the functions and activities performed by the think tanks that allow a relationship between politics and interests to be built also take place in other categories of think tank. Only the first type is of interest to us, since it is the chief one implicated as a direct vehicle for funding the political class.

There are 33 personal think tanks – 28% of the total (see Table 1). These are the ones that have ended up in the eye of the media storm – on more than one occasion – and attracting particular attention since the new legislation on financing political parties did not include them in any way, except where they serve as intermediaries for the financing of parties or as direct donors (if an association or foundation donates an amount exceeding 10% of its total budget to a party, it will be subject to the obligation of transparency and of publication of its financial statements). In essence, if a think tank's activity is not directly linked to a party's funding, it can maintain the current degree of regulatory opacity as regards its financial statements, as if it were not an instrument of political action, and is if a portion of the economic support by private parties to politics did not come through it.

Political foundations in Italy go through cycles of bad press. This took place, for example, in December of 2014, after the Rome public prosecutor's inquiry on the Mafia in Rome – an investigation referred to as *Mafia Capitale* – gave rise to operation *Terra di Mezzo*, from which it was learned that *Fondazione Nuova Italia* (chaired by former Roman mayor Gianni Alemanno) allegedly performed the role of treasury to collect the money bestowed by a group of known criminals and bribe payers. Headlines read: «Now tell us who's paying you»[8]; «Where there are political foundations, there is a whiff of corruption»[9]; «Mafia Capitale: making the rounds of the political foundations» [10] ; «All the bank transfers to the political foundations»[11]. And so on, for all of 2015, thanks also to an additional vein of controversy that impacted foundations starting from an investigation – investigative journalism in this case – promoted by *L'Espresso*, which devoted the cover of its 19 December 2014 issue to Italian think tanks («Foundations: so now politicians are making money»)[12]. The publication of

[8] *Ora diteci chi vi paga* (ilfattoquotidiano.it).
[9] *Dove ci sono le Fondazioni politiche, c'è aria di corruzione* (beppegrillo.it).
[10] *Mafia Capitale, il giro delle Fondazioni politiche* (lettera43.it).
[11] *Tutti i bonifici alle fondazioni politiche* (iltempo.it).
[12] *Fondazioni, così ora i politici fanno cassa*.

the inquiry came a week after the words of the President of the national anti-corruption authority Raffaele Cantone, to the same magazine: «There are no more parties. It is useless to impose transparency in the financial statements of political parties, which are now bled dry and no one's financing them any longer. Today, real power passes through foundations […]. Through other mediations, foundations obtain the money that is the real engine of election campaigns. They can pocket hundreds of thousands of euros without accounting for it. They are now beyond any possibility of control».

Then came the arrests of a handful of managers at the Modena cooperative Cpl Concordia in March 2015, connected with an inquiry on the building of the gas distribution network on the Island of Ischia: the names of Massimo D'Alema and of *Fondazione Italianieuropei* emerged in the wiretaps and the media circus again came down upon the system of political foundations. They were presented as opaque, entangled in murky business, built to find deception after the public funding of political parties had ended. And again we have *L'Espresso* with the cover story «Politicians' hidden money»[13]; in 2017, when newspapers were covering the wiretaps in the Consip case, foundations were again cited: «The (secret) money to political foundations, from Quagliariello to D'Alema»[14]; shortly thereafter, Raffaele Cantone returned to the subject, maintaining that «it is necessary to deal with the issue of lobbies and of regulating the Foundations that deal in politics, and that are regulated today as if they were *bocce* clubs»[15].

There are actually four proposed laws for regulating foundations (Pisicchio and Misiani in the Chamber of Deputies; Lanzillotta and Quagliariello in the Senate); overlapping in part with one another, they demand overcoming these institutions' murky accounting by introducing accounting obligations, the creation of registers, a basis for verifying their activities and for maintaining a regime of transparency (under penalty of losing the tax exemption they enjoy), and regulation of their relationship with the parties and of access to top offices, in order to prevent conflicts of interest[16]. However, the proposed laws, which would be the natural corollary of the new legislation on the funding of politics, were stymied in Parliament.

Think tanks clearly lend themselves to a certain kind of press. In contemporary democracies – the democracies of the "discontented" as they were defined by AlfioMastropaolo (2011) – think tanks easily fall prey to the

[13] *I soldi nascosti dei politici* («L'Espresso», 4 January 2016).

[14] *I soldi (segreti) alle fondazioni politiche*, *da Quagliariello a D'Alema* («Corriere della Sera», 7 March 2017.

[15] «La Nazione», 23 May 2017.

[16] Consider, for example, the fact that many of these institutions are funded by public-sector enterprises, whose leaders are political appointees.

media hunt; they are places frequented by the elites – politicians, intellectuals, experts, corporate executives bureaucrats – where it is imagined that networks can be born and deals transacted. They are places far from the spotlight – initiatives are often taken behind closed doors while the media report very little of what is discussed inside; when they emerge on the general public's radar, one more readily recalls the scandals than the journalistic account of boring conferences.

Table 1 - Personal think tanks and political culture foundations in Italy (1989-2017)

Name of the think tank	*Year of foundation*	*Founded by*
Centro per un futuro sostenibile	1989	Rutelli
Liberal ✝	1995	Adornato
Italianieuropei	1998	D'Alema/Amato
Mezzogiorno Europa	2000	Ranieri (*)
Free Foundation	2000	Brunetta
Astrid	2001	Bassanini
Nens	2001	Visco/Bersani
Fondazione Nuova Italia ✝	2003	Alemanno
Glocus	2003	Lanzillotta
Europa Civiltà	2004	Formigoni
Magna Carta	2004	Quagliariello
Centro Formazione Politica✝	2005	Cacciari
Eunomia	2005	Nardella
Economia Reale	2005	Baldassarri
Fare Futuro	2007	Urso (**)
Medidea✝	2008	Pisanu
Cloe ✝	2008	Minniti
Persona Comunità Democrazia	2008	Castagnetti
Folder ✝	2009	Di Pietro
Riformismo e Libertà	2009	Cicchitto
Italia Protagonista	2009	Gasparri
Italia Futura✝	2009	Montezemolo
Costruiamo il futuro	2009	Lupi
Symbola	2009	Realacci

Icsa	2009	Minniti
Sudd	2009	Bassolino
Italia decide	2009	Violante
Riformisti Europei†	2010	Vizzini
Fondazione per la Libertà	2010	Matteoli
Democratica	2010	Veltroni (***)
Zefiro†	2010	Pittella
Liberamente	2010	Gelmini
Meseuro	2010	Pittella/Mauro
Fondazione Cristoforo Colombo †	2011	Scajola
Spazio alle idee†	2011	Zingaretti
Cercare ancora	2011	Bertinotti
iThink	2011	Marino
Human Foundation	2012	Melandri
Fondazione Open	2012	Renzi
Ricostruiamo il Paese	2013	Tosi
Think Tank Group	2013	Artom/Colomban
Cantiere Stabilità	2015	Fanucci
Volta	2016	Da Empoli
Associazione Casaleggio	2017	Casaleggio

* The Foundation came into being at the initiative of Giorgio Napolitano.
** Since 2011, Adolfo Urso has been the new President of *Fare Futuro*, alternating with Gianfranco Fini.
*** In 2015, the Foundation changed its name to *iDemLab*, with Salvatore Vassallo as its president.

However, the personal think tank type includes political culture foundations that in terms of number of years of activity, continuity, and ability have won prestige and visibility for themselves; others maintain a very low level of research and public intervention (Diletti and Di Giammaria 2014); noteworthy in comparison with other types of think tank are these organisations' high rates of birth, death, and replacement. In 2009, shortly after the birth of the Pd and Pdl parties, many aspiring think tanks became vehicles for repositioning leaders, currents, and groups (in a setting of the strong ideological, cultural, and organisational indeterminacy of the two new major umbrella parties). Some have not withstood the change in the

political framework, while others were born with the purpose of constituting new platform foundations (in the usual pairing of know howand "know who", Boorstin 1971). Over time, the reasons for which a personal think tank is created have changed: on the one hand we have *Italianieuropei* or *Magna Carta*, which formed as "generalist" think tanks and had the goal of influencing and renewing the political debate of the country and of its own political and cultural field; on the other, there is the new, personal and at the same time single-issue think tank (certifying the stability of the relationships between a politician and a policy sector's specific interest groups): for example, Marco Minniti's *Icsa*, in the security and defence sector, or Ermete Realacci's *Symbola* on the environment and new models for development and innovation. Both became institutional interlocutors of their think tanks' stakeholders of reference.

The four think tanks just mentioned were born in the first decade of the 2000s: of the think tanks born during that decade, eleven are now gone, without counting *VeDrò*, a policy forum inspired by Letta. In the second decade of the 2000s, think tanks have been following the events – and the upward and downward slopes – of the leading players in the Italian political class. In the first place, there is the model of Renzi, who built a mechanism for interacting with his economic supporters that was agile, different from the *Italianieuropei* model, and a benchmark in the first phase of the phenomenon's emergence. While *Italianieuropei* appears as a rather articulated centre for spreading culture – a miniature version of the parties' old centres, with seminars and conferences, training, and publishing activity – *Fondazione Open* has reduced its activity to the event at the Leopolda station (*kermesse della Leopolda*), a place from which the leader speaks to his closest community and outlines the programme and the issues to be put on the agenda (with strong similarities to the organisational arrangement of Letta's *VeDrò*, from which personnel has been funnelled). *Fondazione Open* does not carry out permanent activities of spreading ideas, which in the Renzi universe have been devolved upon Giuliano da Empoli's *Fondazione Volta* and *Fondazione Eyu*. The latter appears to be a bizarre return to the past: it is a party Foundation (Pd), and for this reason it is not considered among the personal think tanks, run exclusively by men from its majority (but led by a market research entrepreneur like Adrio De Carolis from *Swg*), but a financing vehicle distinct from Fondazione Open (a dual funding track for the Democratic Party area: one on the inside and one on the outside, having different figures of reference who often intermediate the donors and supporters themselves).

Fondazione Open received just over four million euros in four years, from 2012 to 2016: the donors who voluntarily permitted publication of their names and the amount they paid can be consulted on the foundation's

website. The numbers are still rather contained, when considering the costs of an election campaign – the Democratic Party alone, for the 2013 political elections, spent about € 6 million (2 million less than 2008) – but are useful for keeping the individual political machines afloat. *Volta*, Giuliano Da Empoli's think tank, looks like a Leopolda master class, but does not even publish its donors' names online. *Fondazione Eyu*, on the other hand, works on funding individual research and discussion activities. The President of the steering committee is *Democratic Party* treasurer Francesco Bonifazi and the donors may be gleaned only by observing the sponsors of the individual initiatives (the yearly budget planned for 2106 comes to about € 500,000).

In the second decade of the 2000s, on the other hand, in the centre-right area, very little happened. Aside from the already mentioned demises, we may note the birth of Flavio Tosi's *Fondazione Ricostruiamo il Paese* – the vehicle for abandoning Salvini's Northern League. Noteworthy, on the other hand, is the approach towards think tank practices – of contained network and production – made in the camp of the *Movimento Cinque Stelle*, exploiting the basin of relationships of the *Think Tank Group* of the current Councillor for Investees of the Municipality of Rome in the Raggi government, Massimo Colomban, and through *Associazione Casaleggio*, which held its first public meeting (*Sum*) in April 2017.

To return to the subject of the relationship between interests and think tanks – in this case personal ones – certain interviews with think tank donors might be interesting to note, from which extremely different sensitivities emerged: it is clear that, for some, it is still essentially a matter of introducing oneself into an access point offered by the political system to formalise a relationship with political leaders. If we had been used to thinking that «in liberal democracies, groups' most frequent targets for access are the government, public bureaucracy, and parliament» (Mattina 2010), in the democracies of the parties – and of the personal think tanks – another access point is that of the leaderships as such. It has been made clear that access to leaderships is perceived as «a sort of privileged relationship»; when it is established with top-level leaders who belong to different parties, a signal is obtained: of the possibility of getting one's message through to the greatest number of seats, and of the measure of one's prestige. For others, it is simply a matter of acquiring a relationship, as if funding a think tank were the purchase of a number from the phone book and therefore of a relationship[17].

[17] In some cases, of maintaining a relationship, as takes place with "militant entrepreneurs" who transfer their economic support, which was once dedicated to a party or current, to a think tank of reference.

9. Conclusions

We have yet to answer the question raised at the beginning of the previous paragraph: are think tanks the new piggy banks of politics? The answer is yes, if we take as a reference the timeline that a historian would construct to describe this phenomenon. And also yes, if we were to use as a barometer the journalistic sensationalism that has often cast the spotlight on these institutions. No, if we conceive of think tanks as an organisational tool born as a consequence of the new regulations for funding politics. The current Italian regulation requires, in essence, full transparency if the funding for an election campaign comes on behalf of third parties. Paragraph 4, art. 5, of Legislative Decree no. 149 of 28 December 2013, converted into law on 21 February 2014, clearly states that financing originating from associations and foundations is subject to the same rules of transparency as direct funding: in essence, one cannot see what benefit there is to going through third parties when it is possible to fund a party directly in an election campaign; nor can one see why foundations, so careful (especially in certain cases) to defend their donors' privacy, should suddenly expose them to media visibility by financing a party.

In one of the first interviews conducted in 2011 with *Italianieuropei*'s leading figures, the foundation's ability to raise its own funds thanks exclusively to the contribution of private parties – for example by organising fundraising dinners to provide the foundation with its own endowment as required by law (with an ante on the order of 50 million lire) – was proudly recounted. It was "*all'Americana*": the interviewees, as often took place in the early 2000s, had been to the United States to observe how Washington think tanks worked. For the interviewer, two impressions emerged – and being impressions, while not scientific, they were rather clear: the parties were structures in strong decline – it was the late 1990s – if a leader on the order of Massimo D'Alema was preparing his post-presidential future (after Palazzo Chigi) in an autonomous and personal structure, and not in the party ranks with a new office; the quest for private funding to support politics was definitively legitimised, even in the suspicious world of the *Italian Left*. After all, it was only indulging public opinion, which was so anti-party that it considered political organisations to be unfundable with public money (as the 1993 referendum had sanctioned).

Since then, however, the ability of self-financing of politics does not appear to have seen spectacular evolution (likely contributing to this is the permanent access to public resources). The impression, which ought to be supported with a careful comparative analysis of the parties' and foundations' budgets for the next two years, is that we are in store for largely

under-financed politics in the future. Although this hypothesis might be disproved by the facts, it seems hard to imagine parties capable of replacing public income with the same amount of private funding, particularly in a new regime in which it is quite unclear what future the crime of influence peddling will have. As Pierluigi Petrillo maintained in an interview with the online magazine *Formiche*[18], «the combined force of the now only private financing of politics, of the crime of unlawful influence peddling, and of the non-regulation of pressure groups will become a bomb during the next election campaign». In the same interview, he rightly stressed that, «as usual, here reforms are approved piecemeal. We have made the financing law. Fine. But the whole context? We didn't deal with it. It's like building a cathedral in the desert – something we're very good at here in Italy».

In this framework, foundations and think tanks are both tempest-tossed ships – for which a new standard-setting is rightly demanded, in order to lead them to less murky waters – but also small rafts, almost handcrafted, that allow a part of the political class to stay afloat. These are institutions whose budgets in most cases do not exceed € 500 thousand a year, with a highly limited number of hired staff (rarely more than 3 or 4 permanent employees). Lurking in the background is the silhouette of the shapeless organisations that parties are today (or better, organisations that are largely mouldable depending on the leadership's choices).

In actuality, we are dealing with the unknown of the new financing model, of post-2013 politics, in which foundations maintain their capacity for resilience and attraction. Some political leaders have preferred to use think tanks by virtue of the broad degree of autonomy they grant – also in building direct and personal relationships with the representatives of interest groups – outside the formal party structures. As already pointed out, the stronger the erosion process of party organisations and of political cultures is, the more strongly affirmed will be the personalised models of political organisation, in which even the funding of the organisation's own public viability is managed autonomously. The new regulations, if one may hazard a prediction, will increase the trend of working on one's own, which will lead to opting to strengthen personalised financing networks in accordance with an almost Darwinian natural selection: not everyone will be able to adapt.

Since we cannot foresee the extent to which parties will be able to withstand the impact of their public defunding, foundations are, at the moment, a decisive spare wheel for supporting political life day to day, and a training ground for fundraising operations.

[18] http://formiche.net/2017/03/12/petrillo-lobby-finanziamento-politica/.

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Chapter 3

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This book, published with research funds from the University of Rome La Sapienza, aims at disseminating knowledge about the Italian system of political parties and political foundations among non-Italian scholars, in the light of the recent legislative reforms in this field. Due to their nature as free associations of citizens under art. 49 Cost., political parties are supposed to enjoy a full autonomy in determining their own purposes, internal organisation and financial management. However, the recent regulation on the funding of political parties contains provisions aimed at influencing the contents of party statutes, imposing upon them several organisational obligations. Moreover, some draft laws concerning the internal regulation of parties have been proposed, with the idea of making intra-party democracy not only a pre-requisite for obtaining funds, but also for competing in elections. However, many argue that a law should be the least invasive possible, and parties should instead proceed to self-reformation. The stronger the erosion process of party organisations and of political cultures is, the more strongly affirmed will be the personalised models of political organisation, in which even the funding of the organisation's own public viability is managed autonomously. This is why ever more frequently some political leaders make use of think tanks for fund-raising, by virtue of the broad degree of autonomy that they enjoy.

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