Federalism and Constitutional Law

The Italian Contribution to Comparative Regionalism

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Chapter 8

Asymmetries in the Italian regional system and their role model

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8 Asymmetries in the Italian regional system and their role model

Francesco Palermo[1]

I. Introduction

The Italian regional system is not often referred to in comparative federal studies. The reason for this is not only the deliberate absence of any reference to federalism in the Italian constitution and its clear rejection in the case-law of the Constitutional Court,[2] but also and foremost the lack of a 'federal spirit' (Burgess 2012) in how the system operates and the limited 'culture of autonomy' in the political process (Toniatti 2018). Consequently, Italy is missing in the more traditional lists of federal or quasi-federal countries (see Watts 2008, 25), subjective as they might be. However, some institutional features of the Italian regional system are particularly relevant to the theory and practice of comparative federalism (Palermo and Kössler 2017, 6). This is the case, in particular, of asymmetry in constitutional status, institutions, powers, finances, and inter-governmental relations, making Italy one of the most differentiated countries in the world.

Asymmetry in Italy is not only *de facto*,[3] with the deep economic, political, social, cultural, geographic, historical, linguistic, and other differences among the various parts of a highly diverse country. It is also, and to a quite remarkable extent, *de jure*, with different rules as to most elements of governance. As asymmetry is becoming one of the most important features of contemporary federal systems (Tarlton 1965, Agranoff 1999, Council of Europe 2013, Sahadžić 2020), and Italy has not only the longest experience with it, but also a wide variety of reasons behind asymmetry, a lot can be learned and inferred from such experience when analysing federal phenomena.

This chapter explores the multidimensional, devolutionary asymmetry of Italian regionalism, both in terms of constitutional law and of powers transferred to (and

1 Full professor of comparative constitutional law, University of Verona and head of the Institute for comparative federalism, Eurac Research, Bolzano/Bozen.

2 See in particular judgment 365/2007, in which the Court adopts a very 'conservative' understanding of federalism, according to which federal countries are only those where a federal compact is stipulated by the constituent entities. Since this is not the case in Italy, as sovereignty is allocated in the Italian people and exercised primarily by the national Parliament, the country is not considered a federation. See Bartole 2007.

3 For the distinction between *de facto* (political) and *de jure* (legal) asymmetry see Watts 2008.

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used by) the regions, with particular regard to the developments that took place after the constitutional reform of 2001. It starts by providing some essential information on the reasons behind asymmetry and on its evolution (II.), it then looks at the main instruments of constitutional (III.) as well as legislative, administrative, and financial asymmetry (IV.), and it concludes (V.) by showing the current trends and possible lessons that the Italian experience has to offer in this regard to the global debate on asymmetry in federal and regional systems.

II. Background and evolution of regional autonomy

Italy is a deeply diverse country, and regional diversity is not limited to the constitutional-legal framework. Widespread variations can be detected, inter alia, in geography,[4] in demographic factors,[5] in the economy,[6] in culture and identity, in the human capital,[7] as well as in the political landscape (Wilson in this volume). The enormous socio-economic divide between the northern and southern part of the country is just one out of many differential factors.

The drafters of the 1948 constitution were fully aware of such deep divides and at the same time they were afraid that reflecting them too much in the new constitutional framework could represent a threat for the national unity – which had yet to be achieved – and for the very territorial integrity of the country (Rolla 2015). Despite the prevailing reluctant attitude towards too strong a decentralization, the establishment of a strong sub-national level of government was inevitable in at least five areas: Trentino-Alto Adige/South Tyrol, Aosta Valley, Friuli-Venezia Giulia, Sicily, and Sardinia. In the case of Trentino-Alto Adige/South Tyrol it was inevitable, for Italy had to comply with the international obligations imposed by the Paris Peace Treaty (1947), which included the Gruber-De Gasperi Agreement (1946) on the protection of the German-speaking minority in

4 Geomorphological features differ significantly. Mountains form 100per cent of Trentino-South Tyrol but only 1.4 per cent of Apulia; flat areas cover around 50 per cent of Veneto, Lombardy, and Emilia-Romagna, but only the 23.2 per cent of the national territory.

5 Lombardy is the mostly populated region (>10 million inhabitants), while Aosta Valley is the smallest (<130,000). In size Lombardy is just the fourth region (<24,000 km2), while Sicily ranks first (around 26,000 km2) and Aosta Valley is the smallest (<3,300 km2). Discrepancy can be seen even in terms of population density, with a ratio ranging from Campania (427 inhabitants/km2) to Aosta Valley (39 inhabitants/km2).

6 The GDP per capita (nominal income) amounts on average to 36,000 euro in the Northwest and only to 19,000 euro in the South. On the other hand, the autonomous province of Bolzano (South Tyrol) is well above the average with 47,000 euro, while Calabria is last with 17,000 euro. Unemployment is on average 6.1 per cent in the North and 17.6 per cent in the South. Anyway, interesting exceptions to this pattern are represented by Basilicata in the South with a rate of 10.8 per cent, and Liguria in the North with 9.6 per cent. At either end of the territorial ranking are South Tyrol with 2.9 per cent and Calabria with 21.6 per cent; data from 2018 (ISTAT 2020).

7 See the big differences in performance by high school students in nationwide evaluations 2019: https://invalsi-areaprove.cineca.it/docs/2019/Rapporto_prove_INVALSI_2019.pdf.

South Tyrol, which was attributed a high degree of autonomy (Woelk, Palermo, and Marko eds., 2008). As for the other regions, threats of possible secession made the establishment of a sub-national level of government seem ever more pressing: Aosta Valley formalized in 1943 a proposal for greater autonomy, and Sicily drew in 1946 a constitution for a possible independent state, later adapted in 1948 as a special statute of autonomy (*statuto di autonomia*) under the new constitution. Furthermore, geographical remoteness had to be taken into account for the island of Sardinia, while special treatment for Friuli-Venezia Giulia was the result of its location at the border with the Iron Curtain and of the international regime for the area of Trieste until 1954, rather than of the presence of the Slovene minority.

Against this background, the republican constitution of 1948 provided for an innovative experiment with regionalization. Five – out of twenty – regions were provided with a 'special' status:[8] three in the Alpine arch in the North, inhabited by sizeable minority groups and all situated in the periphery (Aosta Valley, Trentino-South Tyrol – consisting of the autonomous provinces of Trento and Bolzano/Bozen[9] – and Friuli-Venezia Giulia), and the two main islands (Sicily and Sardinia). Each special region has a different system of powers due to bilateral negotiations with the central authority, which is guaranteed by a 'special statute', a basic law which has the rank of a national constitutional law. At the same time, the regionalization of the whole country, with the establishment of 'ordinary' regions, was supposed to avoid too strong an asymmetry between the five special regions and the rest of the territory, and to experiment with a 'third way' between a federal and a unitary system (Arban in this volume).

However, the early establishment of the 15 ordinary regions failed[10] and for at least 20 years regionalism was implemented in the special regions only. Ordinary

8 Terminology is telling of the understanding of autonomy by the drafters of the constitution. Article 116 Const. stipulates that "Friuli-Venezia Giulia, Sardinia, Sicily, Trentino-Alto Adige/*Südtirol* and Valle d'Aosta/*Vallée d'Aoste* enjoy special forms and conditions of autonomy pursuant to their respective special statutes adopted by constitutional law". While covering 25 per cent of the regions and over 20 per cent of the territory, these regions are considered 'exceptional'.

9 The two autonomous provinces are comparable to a special region as to their competence catalogue, and the region has no significant powers left.

10 The reasons were especially political in nature. The two main parties in the constitutional assembly which drafted the constitution in 1946–47 (the Christian-Democratic Party and the Italian Communist Party) had opposite views on regionalization: the Christian-Democrats, inspired by the social doctrine of the Catholic Church, advocated the principle of subsidiarity and promoted (moderate) decentralization; the Communists firmly opposed decentralization as a principle at odds with democratic centralism. The compromise produced a modest regionalization. However, just after the elections in 1948, when the Christian-Democrats won the majority and formed a government with the liberals pushing the Communists in the opposition, the attitude towards decentralization radically changed for political opportunism: the Christian-Democrats, ruling in Rome, opposed decentralization in order to preserve their power, and the Communists supported it for exactly the same reasons, as they were in the opposition in Rome but very strong in some parts of the country. Ordinary regions were set up

regions were established as late as in the 1970s. Since then, a permanent increase in the regional powers gradually narrowed the gap between ordinary and special regions. The path has been all but straightforward and coherent, influenced by shifting political priorities and very much determined by constitutional adjudication: as there still is no effective institutional representation of regional interests at central level, progress could often be achieved only through litigation by challenging national legislation before the Constitutional Court (Delledonne in this volume). These conflicts and a jurisdiction underlining the necessity of cooperation and consultation led to the gradual emancipation of ordinary regions and to the establishment of instruments aimed at improving intergovernmental cooperation (Ceccherini and Woelk in this volume).

In the 1990s, important legislative reforms have been adopted, especially on the pressure from the more active ordinary regions to develop their potential for self-government and thus increasing asymmetry in the exercise of autonomous powers. The political demand for more self-government became an absolute priority for the rich and industrialized northern regions and at the same time for the government in Rome. Also due to pressures by a federalist, and on occasions secessionist, political party, the issue of federal reform had to be dealt with politically and in more comprehensive and symbolic terms, thus requiring a constitutional reform (Fasone and Piccirilli in this volume). In 1999 and 2001, two major constitutional amendments were approved that considerably increased the autonomy of ordinary regions, with the political aim of reducing institutional disparities between special and ordinary regions, offering the latter powers similar to those enjoyed by the former. The two-track asymmetry – ordinary and special regions – is confirmed, though the distribution of legislative and administrative powers between the central authority and the sub-national entities has been substantially reviewed.

III. Constitutional asymmetries and their instruments

A. Special regions

While the constitutional reforms in 1999 and 2001 significantly reduced disparities between special and ordinary regions in terms of legislative powers, profound differences remain between the two types of regions. Four institutional (*de jure*) elements are particularly relevant: the rank of the statute of autonomy, the extent of legislative and administrative powers, the financial regime, and the intergovernmental relations. The varied implementation of these features among the special regions has not only increased the differences between special and ordinary regions, but also those among each special region.

The *statute of autonomy* is the basic law that outlines the structural elements of each region. The statutes of autonomy of special regions are adopted by the

only in 1970, when a center-left coalition was built (Christian-Democrats and the Italian Socialist Party) and some form of political cooperation with the Communist Party was started.

national parliament by constitutional law (article 116.1 of the constitution),[11] while those of ordinary regions are adopted by regional assemblies by a special procedure (art. 123.2 const.).[12] The entrenched process for the approval of autonomy statutes of special regions makes it harder to amend them. Thus, on the one hand, the special autonomy is more securely guaranteed, being regarded as a fundamental constitutional principle (D'Atena 2014, 10); on the other hand, such a strong guarantee can turn into a 'golden cage', making it highly difficult to update the statutes.[13] The only exception consists in the financial provisions, which may be amended by an ordinary national law, after an agreement between the central and the regional executives.[14] This procedure reflects the essence of the principle of bilateral cooperation, ensuring the parity of the parties involved during the negotiations. By no means can the central authority unilaterally revise the statute provisions regulating the financing regimes, as financial intergovernmental relations with special regions can only be defined bilaterally. At the same time, the approval of the financial agreement by the national parliament is meant to guarantee its sovereignty in budgetary affairs.

Under the constitutional framework prior to the 2001 reform, the special regions were entitled to much broader *legislative and administrative powers* than the ordinary regions. While the latter could legislate in a limited number of subjects, listed under article 117 of the constitution, and only within the framework outlined by a national law, the special regions had much broader jurisdiction, with their powers being listed in their respective statutes of autonomy and, in most cases, they could legislate without requiring prior state intervention. As of 2001, ordinary regions enjoy a quite similar legislative power, as the previous limitations were removed. The sources of law underlying the two types of regions, however, remain different: while the constitution outlines the rules for the distribution of powers between the centre and the ordinary regions, the powers of the special regions are laid down in both the constitution and each individual statute of

11 The process to adopt constitutional laws is laid down in article 138 const. It requires two votes by each of the two chambers of parliament, both by absolute majority of the members with an interval of at least three months. If in the second vote a two-thirds majority is reached, no referendum can take place. If only the absolute majority is in favour in the second reading, a nationwide referendum can take place.

12 Absolute majority of the members in two votes to be expressed with an interval of at least two months and possible confirmative referendum upon request of one-fiftieth of the voters in the region or one-fifth of the members of the regional assembly.

13 This is confirmed by the fact that none of the special statutes has been significantly amended since their adoption, with the exception of that of Trentino-Alto Adige/South Tyrol, which was extensively modified in 1972 following a long and complex agreement with the German speaking minority in Alto Adige/South Tyrol, resulting in the abolition in fact (but not formally) of the region and the transfer of nearly all legislative and administrative powers to the two autonomous provinces of Trento and Bolzano/Bozen. Conversely, the statutes of ordinary regions, all adopted in the 1970s, have all been replaced by new ones between 2002 and 2012. Attempts to reform the statutes of special regions after the constitutional reform from 2001 have been made but all failed so far.

14 This holds true in all special regions, with the partial exception of Sicily.

autonomy, thus making the framework rather complex and even contradictory at times, often requiring the final say by the Constitutional Court. In addition, competences from the national level can be transferred or delegated to special regions, either by law or, more frequently, by means of enactment decrees.[15]

As to *finances*, each special region has a different agreement with the centre, mostly regulated in its respective autonomy statute. In general, financial arrangements are quite generous towards the special regions compared to the others, although after the adoption of strict austerity measures as of 2010 the picture is more nuanced (Valdesalici in this volume).

Finally, one characteristic common to all special regions – perhaps the most important from an institutional standpoint – is that they may *negotiate* with the state, bilaterally and on equal footing, the development of their autonomy regime. For each special region a joint body (*commissione paritetica*) is established based on the principle of parity, that is with an equal number of representatives of the central government and of the region concerned.[16] The members are appointed half by the national government and half by the region, with different rules in each region as to the role of regional governments and parliaments in designating their members. The joint committees follow procedures resembling negotiations in the field of international relations: either there is consensus among the parties, or no agreement is reached. Put differently, the relationship between the central authority and the special regions is not based on hierarchy but on equality. These bodies draft the bylaws (*norme di attuazione*), implementing provisions of the respective autonomy statutes, which are submitted to the national government and approved in form of governmental decrees (Cosulich 2017). Joint committees are formally designed as consultative bodies of the national government, which means that they can be renewed each time the government changes, but they can substantially be considered as quasi-legislative organs, as the government is not allowed to unilaterally amend the drafted decree.[17]

The binding force of enactment decrees is superior to that of parliamentary statutes. According to the constitution, regular governmental decrees have the same force as the laws of parliament (article 77). This means that a subsequent law of parliament can abolish or amend a governmental decree and vice versa (*lex posterior derogat priori*). However, where the enactment decrees for the implementation of the autonomy statutes are concerned, they cannot be amended by a subsequent law of parliament. In simple words, enactment decrees enjoy a position higher than the ordinary laws of parliament and thus hold a status that is in between an ordinary law and a constitutional law.[18]

15 On the enactment decrees see below. Where this opportunity has more consistently been used is in Trentino and South Tyrol (in the latter even more), which have been granted jurisdiction, for example in the fields of land register, invalidity pensions, vehicle registration authority, energy, personnel of the Courts, shop opening times, and many others.

16 Aosta Valley wasn't entitled to use these instruments – at least formally – until 1993.

17 Constitutional Court, ruling no. 37/1989.

18 See Constitutional Court, judgements No. 20/1956, 22/1961, 151/1972, 180/1980, 237/1983, 212/1984, and 160/1985.

The rationale is to put state and special regions on an equal footing in negotiations. If a law of parliament could trump a piece of legislation negotiated bilaterally by the same number of representatives of the state and of the special region, the whole system would be impaired and, in sum, senseless. This is why, when it comes to the relations between the national level and the special regions (as well as to the protection of minority groups by means of special territorial autonomy, where relevant), the principle of democratic legitimacy is limited by the principle of parity. In fact, several aspects raise issues of compatibility with the democratic principle. It can be surprising, for instance, that decrees adopted by small, unelected bodies, in an untransparent manner (no public records exist of the work of the committees) and enacted by the government prevail over the laws of parliament. As the Constitutional Court noted, however, such derogation is justified by the constitutional requirement of protecting the special regions in the process of implementation of their autonomy statutes, that are constitutional laws of the state. And it is not by chance that the court never struck down an implementing decree, affirming that the peculiar, bilateral procedure for its approval is per se the guarantee of a joint will, which is enough to presume that this is respectful of the constitution.[19]

As to the scope, almost all the relevant contents of the autonomy statutes can be regulated by enactment decrees.[20] Originally, they were supposed to achieve two fundamental aims: on the one hand, the transfer of administrative functions from the state to the special regions (including finances and human resources); on the other hand, the adoption of detailed provisions in issues regulated in a general fashion by the autonomy statute.[21] However, given the privileged position of this kind of provision, the enactment decrees have been used by some special regions beyond the 'mere' implementation of the autonomy statutes. Some measures provide, for instance, the transfer of new competences beyond the division of legislative and administrative powers laid down in the autonomy statute or even substantially change the provisions of the autonomy statutes.[22] As a matter of fact, they have evolved from an instrument of implementation of the statute into an ordinary instrument of government. According to the constitutional jurisprudence these sources of law can 'integrate' the provisions of the statue of autonomy, provided that they do not betray the aim the statute is grounded upon.[23]

19 Judgement No. 213/1998.

20 As to the financial relations with the state, they are generally regulated by both enactment decrees and special laws of the Parliament. The latter require the consent of both the state and the special autonomy. Also in these laws, thus, the principle of parity clearly comes to the fore.

21 For example, regarding South Tyrol, practical rules on issues like the ethnic quota system in the administration, the use of languages, the school system, the census of language groups, etc., are to be found in enactment decrees.

22 This was the case, for example, for the enactment decree on the administrative court for South Tyrol, which provides for an entirely political appointment of judges, contrary to the general rule which would impose a selection based on merit (DPR 426/1984).

23 See Constitutional Court, judgements no. 20/1956, 212/1984, 341/2001.

Although in some areas the enactment decrees were probably abused, this instrument has proven to be the key to the establishment of a sound and legally guaranteed system of rules on delicate aspects of the autonomy regime, where it has been correctly exploited. Not all the regions have made the same use of the joint committees: as of summer 2020, the adopted enactment decrees for Trentino-South Tyrol were 189, almost 5 times those for Sicily and Sardinia (41 and 42) and 3 times more than for Aosta Valley (62 acts so far).[24]

All this confirms that in practice asymmetry is a feature characteristic not only of the relationship between special and ordinary regions, but also among the special regions themselves. After all, big differences equally exist among the ordinary regions, with very different degrees of development of self-government, of economic performance, and of political as well as administrative capacity (for the links between economic development and use of autonomy see Trigilia 2001).

B. Ordinary and (potentially) differentiated regions

With regard to the ordinary regions, the constitutional amendments of 1999 and 2001 provided for a relevant change of their status. In 1999, the direct election of the regional president was introduced (the only case in Europe), in order to enhance political stability (Fusaro 2004). It also strengthened their constitutional autonomy, as the basic laws of the ordinary regions are now adopted by the regions themselves – and no longer eventually approved by the national parliament as before.

The reform of 2001 completely reshaped the relations between the centre and the ordinary regions. The equality of all component units of the 'Republic' (state, regions, provinces, municipalities) was introduced, expressing the idea of (functional) 'spheres' rather than (hierarchical) levels of government. Most importantly, the reform drastically changed the distribution of legislative and administrative powers between state and regions. The constitution (article 117) now lists all legislative powers of the state as well as the fields of concurrent legislation (i.e. those in which regions can legislate only within the framework of general guidelines determined by a national law). Residual powers now lie with the regions, according to classic federal schemes. Administrative powers are no longer connected with the power to legislate, but distributed in a flexible manner according to the criteria of 'subsidiarity, differentiation and proportionality' (article 118). Financial autonomy of sub-national entities is enhanced (article 119) and regions have to establish a consultative body for the representation of local authorities within their territory (article 123.4). The elimination of preventive national control (before the reform, all regional laws had to be approved by the government before entering into force) marks the (formally) equal rank of regional and national legislation.

24 The number of implementing decrees approved greatly depends on the political climate between the concerned region and the national government: during the 1996–2001 legislative period, 27 bylaws were issued for Trentino- South Tyrol, 9 for Friuli-Venezia-Giulia, 8 for Aosta Valley, 6 for Sardinia and 4 for Sicily.

Moreover, the reform of 2001 provided for another form of constitutional asymmetry, taking into account the strong factual, economic, and political asymmetry among the ordinary regions. While keeping the basic distinction between ordinary and special regions, the constitution allows for further differentiation among the ordinary regions, based on the same principle of negotiation that informs the special regions. Those ordinary regions that fulfil certain budget criteria – the ones in the North are generally more interested in this opportunity due to their financial capacity – can negotiate with the national government the transfer of legislative competence up to 23 subject matters, most of them very significant,[25] and this agreement has to be approved by absolute majority in the national parliament (article 116.3). This provision introduces an additional layer of constitutional asymmetry covering significant areas, like education, environment, energy and transport. While so far no such agreement could be reached, Emilia-Romagna, Veneto, and Lombardy are in the process of completing negotiations, the last two after receiving a strong political mandate by regional referenda held in 2017[26] (Piccirilli 2018). Seven more ordinary regions have formally mandated their President to start the negotiations[27] and three have started initiatives in the same direction,[28] so that only two regions have not taken any action.[29] If this process will be concluded, the asymmetrical features of Italian regionalism will further increase.

It must be noted, however, that this process has been and still is confronted with enormous resistance, in some political circles and, above all, by several intellectuals, especially from the South, who consider the *de jure* differentiation among the ordinary regions a threat to national unity and solidarity as the equalizing role of the state would be reduced (Viesti 2019). Such reaction is indicative of the overall dominant attitude in the country vis-à-vis asymmetry (which is to be at best tolerated but possibly limited, covering up with formal equality the immense differences that exist in practice) and ultimately vis-à-vis autonomy as a whole, as autonomy means differentiation and the same rule for all is the opposite of autonomy (Bin 2016).

From a systematic point of view, a structural difference between 'special' and 'differentiated' autonomy will remain. While in both cases the degree of regional

25 They include, inter alia, education, security on workplace, disaster management, part of the pensions, research, airports, energy management, transport and navigation networks, environmental protection, cultural heritage, and others.

26 In Veneto, support for more autonomy in the referendum was a landslide 98.1 per cent of the votes cast (57.2 per cent turnout); in Lombardy 95.3 per cent (but turnout 38.3 per cent). In Emilia-Romagna no referendum was held. The three regions signed preliminary agreements in 2018; after the 2018 elections, negotiations restarted with the new government. After some stop and go, the government drafted a general bill on regional differentiation in 2019, whose discussion has been postponed due to the coronavirus emergency.

27 Campania, Liguria, Lazio, Marche, Piedmont, Tuscany, and Umbria.

28 Approving motions, resolutions, or recommendations; this is the case of Basilicata, Calabria, and Apulia.

29 Abruzzo and Molise.

autonomy is negotiated, only for special regions negotiation is based on parity and amounts to a fundamental principle of the constitutional order, whereas 'differentiated' ordinary regions negotiate based on the principle of loyal cooperation[30] (Woelk in this volume) but not on equal footing. And in fact, while special status is irrevocable (as a principle, not necessarily in all its manifestations), differentiation based on article 116.3 const. can be revoked unilaterally by the national legislator.

IV. Legislative, administrative, and financial asymmetry

As mentioned above, the 2001 constitutional reform provided the ordinary regions with much broader legislative and administrative powers than before, elevating them to a level quite similar to that of the special regions with regard to the scope of their legislative power. Yet, the sources of law underlying these two types of regions remain different: legislative powers of special regions are not regulated by the national constitution in the first place, but by their autonomy statutes, i.e. by national constitutional laws. However, where the 2001 reform has provided ordinary regions with a greater degree of autonomy, this automatically extends to special regions too, as long as their statutes are not updated (article 10, const. law no. 3/2001).[31]

Asymmetry results also from autonomous legislative choices by each region. In some case, the scope of such choice and graduation might depend on the nature (special or ordinary) of the regions, for example in the electoral legislation (Trucco and Bailo 2020). The special regions may regulate their system of government and the electoral rules in the so called 'statutory laws', that are regional laws adopted following a reinforced procedure and thus having a stronger binding force than regular regional laws. These laws have to comply with the constitution and must respect the fundamental principles of the legal system (including those set by national legislation). Ordinary regions can also choose their system of government (in the respective statute of autonomy), provided that the fundamental principles laid down in the national legislation are respected,[32] and can adopt their own

30 As confirmed by the department for legal affairs of the national government in an opinion issued on 19 June 2019.

31 In practice, there have been no significant cases of competences attributed to the ordinary regions that special regions did not have and that they therefore claimed. No single Constitutional Court ruling dealt with such case. However, this clause is systematically relevant since the reform established a powerful residual powers rule, establishing that regions (all of them) retain the residual legislative power in all subjects not specifically attributed to the exclusive competence of the central authority or to the shared competence (art. 117.4 Const.).

32 Some regions have tested the limits of such fundamental principles especially by trying to circumvent the national rule that allows the regions to opt either for a quasi-presidential system (popular election of the regional president and new elections if he/she is dismissed by the regional assembly) or for a parliamentary system (president elected by the assembly, that can freely dismiss him/her). In the case of Calabria, which tried to go for a middle-way between the two (the assembly could dismiss the president and

electoral laws, within the limits of a national framework law.[33] Consequently, very different electoral and institutional systems exist in the regions. In South Tyrol – a consociational, ethnic, proportional democracy – and in Aosta Valley there is a parliamentary system, with the executive elected by the regional Parliament. In all other (ordinary and special) regions, including Trentino governed by the same statute as South Tyrol, the system is presidential, i.e. the regional President is directly elected within a majoritarian, bipolar, competitive democracy. All ordinary regions except two have so far adopted their own electoral laws and quite remarkable differences exist despite the limits imposed by the national legislation (Camera dei Deputati 2020).

A wide-ranging regional asymmetry can be found with regard to the scope of administrative autonomy. The rules determining administrative competence after the reform from 2001 are different between special and ordinary regions. The principle of parallelism still applies to the former, i.e. the special regions hold administrative competence in the subject-matters they are attributed legislative power; in practice, they either (and more frequently) delegate it to local entities, or implement it directly making use of their offices. In ordinary regions, instead, administrative functions are vested in principle with the municipalities, except when larger entities (provinces/metropolitan cities, regions, or the state) better guarantee their exercise based on the principles of "subsidiarity, differentiation and appropriateness" (article 118.1 const. – Martinico in this volume). This means, in practice, that administrative functions are not assigned by the constitution – that only determines the criteria for their distribution – but by the national and the regional legislation (Carli 2018, 112). This means, in turn, that the same administrative function is not carried out by the same level of government in all regions, and that the degree of asymmetry in this area is, at least potentially, quite strong.

Asymmetry is very significant also with regard to financial autonomy. While both ordinary and special regions enjoy financial autonomy both on spending and revenue, the differences in quantitative and qualitative terms are huge, not only between the two categories of regions,[34] but also, in particular, among the special regions[35] (Valdesalici in this volume). These as well as the structural, procedural,

replace him/her by the vice president), the Constitutional Court struck down the regional provision (judgement 2/2004).

33 Law 165/2004.

34 The financing system of ordinary regions is rooted in the constitution (article 119) and most implementing regulation have been adopted between 2009 and 2011 by the national legislature. Financing is mainly tax-revenue linked to the territorial fiscal capacity. Special regions enjoy a wider autonomy within a financial regime set forth by the respective autonomy statute, whose specific regulations have to be agreed between each entity and the central authority in bilateral negotiations.

35 Most revenues for special regions come from a share of national taxes referable to the regional territory, but remarkable differences exist as to the sharing percentage, which varies from 30 per cent (Friuli-Venezia Giulia) to 90 per cent (Trentino-South Tyrol and Aosta Valley). Also the criteria for distribution are different. Furthermore, Sicily has a different mechanism of accounting, according to which tax-revenue coming from sharing schemes are accounted for own-taxes.

and numerical differences between and among the regions remain,[36] despite the austerity measures introduced by the national government in the aftermath of the financial crisis between 2008 and 2012 which have overall reduced regional financial autonomy for both categories of regions.[37] A number of further smaller asymmetric features also exist. For example, while special regions are in charge of their local government, in ordinary regions local government is mostly regulated by national legislation (Longo in this volume), and the capital city of Rome enjoys a further special regime different to that of any other city (article 114.3 const.; Orso 2020).

V. Concluding remarks: trends of asymmetry in theory and practice

Borrowing from Friedrich (1968), asymmetry, like other manifestations of federalism in broader sense, is a process. In the Italian context, this process is unfolding in waves, with regard to both the institutional and the political dimension.

Institutionally, the establishment of forms of asymmetry has normally been counteracted by more symmetric trends. This first happened in the very drafting process of the constitution, when ordinary regions were created primarily in order to limit the centrifugal dynamic of the special regions. In the early 1970s, when ordinary regions were eventually set up, a big step towards asymmetry was made in Trentino-South Tyrol, by de facto dismantling the region and creating a unique institutional configuration, with two autonomous provinces quite different from one another under the same statute of autonomy. The gradual emancipation of ordinary regions led to the constitutional reform in 2001, which aimed at reducing the gap between the two categories of regions. At the same time, the reform opened up to a further layer of differentiation, by allowing ordinary regions to take up additional powers in significant areas. While the attempts to do so were frustrated by limited implementation of the constitutional provisions, all ordinary regions were able to adopt their new autonomy statutes and so to strengthen their autonomy and ~~to~~ experiment with more differentiation. This was not the case for the special regions, whose statutes of autonomy remain old, as they do not take into account the constitutional reform of 2001 and are hence becoming obsolete in a number of areas, with overall negative consequences for their asymmetric potential. In parallel, two main constitutional reform projects, one aiming at increasing regional autonomy (2006) and the other at curtailing it (2016), have been rejected by popular vote after having been passed in Parliament.[38] In the

36 The Constitutional Court ruled that the national power to trump regional competences in time of emergency cannot circumvent the conventional principle underlying the relationships between the central authority and the special regions (judgements no. 182/2011, 262/2012, 104/2013, 229/2013, 19/2014, 26/2014).

37 According to the Constitutional Court, (economic) emergency justifies the action by the national government going beyond the formal allocation of powers (inter alia judgment no. 10/2010).

38 During the third government led by Silvio Berlusconi (2005–2006), a far-reaching constitutional amendment to overcome the reform of 2001 was presented, concerning

meantime, austerity measures after the economic crisis limited the margin of autonomy of both ordinary and special regions altogether, although with quite different impact on each region. Finally, when the process leading to differentiation among ordinary regions was almost completed, a change in government (2019) and the emergency prompted by the outbreak of the coronavirus pandemic (2020) stalled the process again.

Politically and practically, the attitude towards asymmetric autonomy has also been swinging. Some special regions abandoned quite early their 'autonomist consciousness': in particular, Sicily and Sardinia concentrated more on the creation of political ties with the central government and on benefiting from the considerable financial aids granted by the central authority rather than on taking advantage of the potential of their institutional autonomy. During the 1990s, autonomy and differentiation became popular and politically viable, up until the constitutional reform in 2001. Over the past 20 years, autonomy lost its political appeal: some scandals at regional level lowered support for regional autonomy, the budget cuts after the economic crisis made it even less popular, and overall the discourse about unity and solidarity dominates the political debate. Not least, the party that was campaigning for autonomy and differentiation (*Lega*, formerly *Lega Nord*) changed its political priorities and became a national/nationalistic rather than federalist party. The effects of the corona crisis are still to be evaluated, as on the one hand the calls against regional differentiation especially in health care became loud, but on the other hand the necessity of a differentiated approach to a very different impact of the virus in the various regions became evident, and the political role of some regional presidents during the crisis grew immensely (Delledonne and Padula 2020).

The pendulum is constantly shifting and so is the relevance of asymmetry in practice. Some trends, however, remain the same. The *first* is the overall growing degree of institutional and political asymmetry, despite several attempts to limit it. This is due to the mounting difference among the regions, which in one way or another finds avenues to be reflected, at least in part, in the institutional structure and, much more, in the management of policies. Paradoxically, the more the prevailing political discourse calls for unity, solidarity, and formal equality among the territories, the more the differentiation grows in practice. Differentiation does not necessarily mean more autonomy, it can also mean less. For example, the trajectory of the special regions shows that some have increased their autonomy over time, while in others it became less. Friuli-Venezia Giulia was created as late as

53 articles of the whole constitution and was finally adopted by the center-right coalition's majority in parliament in November 2005. However, its entry into force was prevented by a popular vote (61 per cent against) in a referendum held in June 2006. A second attempt was made during the government by Matteo Renzi (2014–2016). The proposal aimed at designing a different Senate in terms of composition, powers, and representation. Under the proposed reform, the Senate would have lost almost all its power; the senators would have no longer been elected directly but would have been selected by regional assemblies. Also in this case, a referendum was called in 2016 and rejected the reform (59 per cent against).

1963, only after the international monitoring phase of Trieste ended, and from the beginning had a narrower scope of autonomy compared to the other special regions, starting from the financial endowment. Sicily and Sardinia currently enjoy a degree of autonomy that resembles much more those of ordinary regions than those of other special ones. Thus, in practice, the only truly special regions are the two small alpine areas inhabited by sizeable minorities, Trentino-South Tyrol and Aosta Valley (Bin 2002), representing together less than 3 per cent of the Italian population and less than 4 per cent of the national territory. In fact, differences among special regions are so significant that it is questionable whether one can consider special autonomies as belonging to one single category or rather each special region as a case per se (Palermo and Parolari 2018). Furthermore, the likely start of the process of formal differentiation of the ordinary regions will further increase the degree of asymmetry in the Italian regional system.

The *second* common trend is the inevitable push for asymmetry that derives from an ineffective model of multilateral intergovernmental relations (Ceccherini in this volume). The Senate has not been designed as a territorial second chamber, and the numerous attempts and proposals to make it such not only failed (such as in the referenda in 2006 and 2016), but are also in vain (Ruggiu 2006). In fact, comparative analysis clearly shows that territorial second chambers are currently unfit to properly represent territorial interests, due to the inevitable prevalence of the political dimension, and this happens even in the case of the German *Bundesrat*, which is the only 'non-parliamentary' body in which the subnational governments are represented and vote as such and upon instruction by the respective governments (Palermo 2018). Therefore, alternative, executive bodies based on cooperation are established and are blooming everywhere, doing what second chambers are not able to do, i.e. negotiate issues of subnational interest with the national interlocutor, at the level where political power is allocated: the executive. In Italy, this task is performed by the conferences, notably the State-Regions Conference', but this also proves to be ineffective. It guarantees a formal consultation when regional interests are affected, but it lacks real decision-making power. Furthermore, even if it had more power, it remains structurally unfit to accommodate claims by individual regions, being a collective body working according to the majority principle. Whenever cooperative forms are not (perceived as) sufficient, or when certain territories present a strong (minority) identity or other factors that make them different from the rest of the country, multilateral fora are normally unfit to fulfil their claims for differential treatment. This is why in Italy, regions (especially those that are stronger in political or other terms) pursue bilateral forms of negotiation with the national level: the less effective the multilateral instruments or the more adversarial the political relations between individual regions and the center, the more bilateral channels are pursued and the multilateral ones ignored or bypassed. Joint committees in place for special regions and similar mechanisms that will be established for differentiated ordinary regions are and will be used to a growing extent, thus further enhancing bilateralism and the following asymmetry.

The *third* trend could be called the asymmetric development of asymmetry, or the shifting pendulum of asymmetry. Over 70 years, and even more over the past

20 years following the constitutional reform of 2001, the constitutional picture has become more complex and more asymmetric. The multidimensional constitutional asymmetry in Italy includes several categories of regions: the special ones (each one with a very different degree of autonomy in terms of form of government, distribution and use of legislative and administrative competences, and financial arrangements); the ordinary ones negotiating additional legislative powers with the central government, and the remaining ordinary regions.

Since 2001, a quasi-federal constitutional structure coexists with a weak federal culture and the pendulum oscillates wildly between (symmetric) centralization and (asymmetric) decentralization. Such oscillations have relatively little to do with the constitutional framework and much more with the political attitude[39] and the case-law of the Constitutional Court, which is the real umpire of asymmetry in practice: overall, devolution of powers and asymmetry have been very much supported by the Court before the 2001 reform, and were since then overall discouraged by the same Court. More recently, the pendulum of asymmetric regionalism has been put into motion again, right after the failure of a constitutional reform that intended to reduce the overall scope of regional autonomy, especially through the strong popular support for the initiatives of the northern regions to achieve differentiated degrees of autonomy.

In any case, asymmetry has been from the outset and continues to be the main feature of Italian regionalism, the only one making it possible to accommodate such a great deal of diversity within a common framework, in a difficult and never stable search for a new balance. Given the growing diversity and claims for its recognition in most countries of the world, a closer look at Italy's overall successful experience with asymmetric regionalism is highly advisable.

Literature

Robert Agranoff (ed.), *Accommodating Diversity: Asymmetry in Federal State* (Nomos, 1999)

Sergio Bartole, 'La Corte costituzionale chiude al "federalismo" dal basso' (2007) 6 *Giurisprudenza costituzionale* 4039

Roberto Bin, 'L'autonomia e i rapporti tra esecutivo, legislativo e le commissioni paritetiche', in Andrea Di Michele, Francesco Palermo, and Günther Pallaver (eds.), *1992: Fine di un conflitto. Dieci anni dalla chiusura della vicenda sudtirolese* (Il Mulino, 2002) 205

Roberto Bin, 'Chi ha paura delle autonomie?', in *Scritti in ricordo di Paolo Cavaleri* (ESI, 2016) 52

Michael Burgess, *In Search of the Federal Spirit* (Oxford Univ. Press, 2012)

Camera dei Deputati (Servizio Studi), 'Le leggi elettorali regionali. Quadro di sintesi', 3 August, n. 109 (2020), http://documenti.camera.it/leg18/dossier/pdf/AC0365.pdf?_1592119803131

Massimo Carli, *Diritto regionale* (Giappichelli, 2018)

Matteo Cosulich, *Il decreto legislativo di attuazione statutaria nelle regioni ad autonomia speciale* (Editoriale Scientifica, 2017)

39 The reform of 2001 was scarcely implemented also because several regions did not make use of the opportunities provided by the new constitutional framework and just some were proactive.

Council of Europe, Congress of Local and Regional Authorities, 'Regions and Territories with Special Status in Europe', Resolution and Study, CPR(25)2 (2013)

Antonio D'Atena, 'Passato, presente… e futuro delle autonomie regionali speciali' (2014) 4 *Rivista AIC*, https://www.rivistaaic.it/it/rivista/ultimi-contributi-pubblicati/antonio-d-atena/passato-presente-e-futuro-delle-autonomie-regionali-speciali

Giacomo Delledonne and Carlo Padula, 'Accentramento e differenziazione nella gestione dell'emergenza pandemica' (2020) 4 *Le Regioni* 753

Carl J. Friedrich, *Trends of Federalism in Theory and Practice* (Praeger, 1968)

Carlo Fusaro, 'La forma di governo regionale: pregi e difetti di una soluzione che funziona', in Stefano Ceccanti and Salvatore Vassallo (eds.), *Come chiudere la transizione* (Il Mulino, 2004) 167

ISTAT, 'Conti economici territoriali, 2016–2018' (2020), https://www.istat.it/it/files//2020/01/Conti-economici-territoriali.pdf

Federico Orso, 'Per il governo di Roma capitale: tra specialità e ordinarietà' (2020) 1 *Le Regioni* 75

Francesco Palermo, 'Beyond Second Chambers: Alternative Representation of Territorial Interests and their Reasons' (2018) 10 (2) *Perspectives of Federalism* 50

Francesco Palermo and Karl Kössler, *Comparative Federalism* (Hart, 2017)

Francesco Palermo and Sara Parolari (eds.), *Le variabili della specialità* (ESI, 2018)

Giovanni Piccirilli, 'Gli "Accordi preliminari" per la differenziazione regionale' (2018) 2 *Diritti regionali*, https://www.dirittiregionali.it/wp-content/uploads/2018/04/documento-integrale-5.pdf

Giancarlo Rolla, 'Alcune considerazioni in merito al fondamento costituzionale del regionalismo speciale. L'apporto del diritto comparato' (2015), 13 *federalismi.it*, https://www.federalismi.it/nv14/articolo-documento.cfm?Artid=29838&content=Alcune+considerazioni+in+merito+al+fondamento+costituzionale+del+regionalismo+speciale.+L%27apporto+del+Diritto+comparato&content_author=%3Cb%3EGiancarlo+Rolla%3C/b%3E

Ilenia Ruggiu, *Contro la Camera delle Regioni. Istituzioni e prassi della rappresentanza territoriale* (Jovene, 2006)

Maja Sahadžić, *Asymmetry, Multinationalism and Constitutional Law: Managing Legitimacy and Stability in Federalist States* (Taylor & Francis, 2020)

Charles D. Tarlton, 'Symmetry and asymmetry as elements of federalism: a theoretical speculation' (1965) 27 (4) *Journal of Politics* 861

Roberto Toniatti (ed.), *La cultura dell'autonomia: le condizioni pre-giuridiche per un'efficace autonomia regionale* (Università di Trento, 2018), e-book at https://iris.unitn.it/retrieve/handle/11572/202049/324873/LIA-eBook-Cultura-dellautonomia%20%282%29.pdf

Carlo Trigilia, 'Social Capital and Local Development' (2001) 4 (4) *European Journal of Social Theory* 427

Laura Trucco and Francesca Bailo, 'Forma di governo regionale e legislazione elettorale' (2020) 2 *Osservatorio sulle fonti* 1047, https://www.osservatoriosullefonti.it/archivi/archivio-saggi/speciali/speciale-la-forma-di-governo-regionale-a-vent-anni-dalla-legge-costituzionale-n-1-del-1999/1560-forma-di-governo-regionale-e-legislazione-elettorale/file)

Gianfranco Viesti, *Verso la secessione dei ricchi? Autonomie regionali e unità nazionale* (Laterza, 2019)

Ronald L. Watts, *Comparing Federal Systems* (McGill–Queen's University Press, 2008)

Jens Woelk, Francesco Palermo, and Joseph Marko (eds.), *Tolerance through Law. Self Governance and Group Rights in South Tyrol* (Brill-Nijhoff, 2008)